

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

September 17, 2019

The Judicial Conference of the United States convened in Washington, D.C., on September 17, 2019, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

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

Second Circuit:

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

Third Circuit:

Chief Judge D. Brooks Smith
Chief Judge Christopher C. Conner,
Middle District of Pennsylvania

Fourth Circuit:

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

Fifth Circuit:

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

Sixth Circuit:

Chief Judge Ransey Guy Cole, Jr.
Judge Thomas B. Russell,
Western District of Kentucky

Seventh Circuit:

Chief Judge Diane P. Wood
Judge Rebecca R. Pallmeyer,
Northern District of Illinois

Eighth Circuit:

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

Ninth Circuit:

Chief Judge Sidney R. Thomas
Judge Rosanna Malouf Peterson,
Eastern District of Washington

Tenth Circuit:

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

Eleventh Circuit:

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

District of Columbia Circuit:

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

Federal Circuit:

Chief Judge Sharon Prost

Court of International Trade:

Chief Judge Timothy Stanceu

The following Judicial Conference committee chairs also attended the Conference session: Circuit Judges Michael A. Chagares, Richard R. Clifton, Ralph R. Erickson, Thomas M. Hardiman, Debra Ann Livingston, Raymond J. Lohier, Jr., David W. McKeague, and Anthony J. Scirica; District Judges John D. Bates, Susan R. Bolton, Audrey G. Fleissig, Nancy Freudenthal, Nicholas G. Garaufis, John W. Lungstrum, Ricardo S. Martinez, Roslynn R. Mauskopf, Donald W. Molloy, Karen E. Schreier, Rodney W. Sippel, Sidney H. Stein, and Anthony John Trenga; and Bankruptcy Judges Helen E. Burris and Dennis Dow. Attending as the bankruptcy judge and magistrate judge observers, respectively, were Bankruptcy Judge Catherine Peek McEwen and Magistrate Judge Candy W. Dale. Collins Fitzpatrick of the Seventh Circuit represented the circuit executives.

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

Attorney General William P. Barr addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice. Senator Lindsey Graham, Senator Patrick Leahy, and Representative Hank Johnson spoke on matters pending in Congress of interest to the Conference. In executive session, the Conference heard from an expert in cybersecurity.

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.

EXECUTIVE COMMITTEE

RESOLUTION

The Judicial Conference approved a recommendation of the Executive Committee to adopt the following resolution recognizing the substantial contributions made by Judicial Conference committee chairs whose terms of service end in 2019:

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

HONORABLE HELEN E. BURRIS

Committee on Audits and Administrative Office Accountability

HONORABLE KAREN E. SCHREIER

Committee on the Administration of the Bankruptcy System

HONORABLE RICHARD R. CLIFTON

Committee on Federal-State Jurisdiction

HONORABLE DONALD W. MOLLOY

Advisory Committee on Criminal Rules

HONORABLE SUSAN R. BOLTON

Committee on Space and Facilities

Appointed as committee chairs by the Chief Justice of the United States, these outstanding jurists have played a vital role in the administration of the federal court system. These judges served with distinction as leaders of their Judicial Conference committees while, at the same time, continuing to perform their

duties as judges in their own courts. They have set a standard of skilled leadership and earned our deep respect and sincere gratitude for their innumerable contributions. We acknowledge with appreciation their commitment and dedicated service to the Judicial Conference and to the entire federal judiciary.

MISCELLANEOUS ACTIONS

The Executive Committee—

- Approved interim fiscal year (FY) 2020 financial plans for the Salaries and Expenses, Defender Services, Court Security, and Fees of Jurors and Commissioners accounts.
- Approved, on behalf of the Judicial Conference on an expedited basis, a request from the Committee on the Administration of the Bankruptcy System to amend the Regulations for the Selection, Appointment, and Reappointment of United States Bankruptcy Judges, *Guide to Judiciary Policy*, Volume 3, Chapter 3, to except the District of Columbia Circuit from the requirement that members of a merit selection panel appointed to consider applicants for a bankruptcy judgeship vacancy must be residents of the circuit within which the appointment is to be made.
- Requested the Defender Services Committee, with the assistance of the Federal Judicial Center, 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 that have been approved by the Judicial Conference, and of the degree to which those actions have addressed the concerns identified in the report.

COMMITTEE ON AUDITS AND ADMINISTRATIVE OFFICE ACCOUNTABILITY

INVESTIGATIVE SERVICES BY THE ADMINISTRATIVE OFFICE

In 1988, on recommendation of this Committee, the Judicial Conference authorized the Director of the Administrative Office (AO) to continue to provide investigative assistance, with available resources, to a circuit judicial council or court,

upon request of the council or chief judge of the court in which the services are to be performed to address fraud, waste, and abuse allegations (JCUS-SEP 88, p. 57). The Committee noted that this policy does not accurately reflect the AO's practice of also providing investigative services at the request of a federal public defender (FPD) or bankruptcy administrator (BA) to address allegations of fraud, waste, or abuse relating to the staff or activities of their offices. The Committee also recognized that it is the chief judges of the courts of appeals who, as the appointing authorities for FPDs and BAs in their respective circuits, have the responsibility to address allegations of fraud, waste, or abuse by FPDs or BAs themselves. The Committee therefore recommended that the Judicial Conference amend its 1988 policy regarding the AO's provision of investigative services to clarify that the Director may also provide investigative assistance, with available resources, to an FPD or BA upon request for their respective organizations, except regarding the FPD or BA themselves. Allegations involving the FPD or the BA would be forwarded to the appointing chief judge. The Conference approved the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Audits and Administrative Office Accountability reported that it was briefed on various matters relating to the AO's handling of complaints and allegations, including implementation of a process to expand information provided to complainants. The Committee was also updated on the status of various audits, including results of audits of bankruptcy trustees, court units, federal public defender and community defender organizations, and the Court Registry Investment System. In addition, the Committee was briefed on ongoing efforts to develop consolidated judiciary financial reporting and a more integrated approach to internal controls to support consolidated financial statements. Finally, the Committee concurred in a recommendation of the Committee on Information Technology to eliminate the requirement for the AO to examine and comment upon the adequacy of courts' enforcement of appropriate internet use policies as part of the cyclical audit process.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

COMMITTEE ACTIVITIES

The Committee on the Administration of the Bankruptcy System reported that it approved best practices related to management of unclaimed funds and presented

them to the bankruptcy court community. In addition, the Committee reviewed and approved a draft interim report on horizontal consolidation prepared by the Federal Judicial Center (FJC), and provided the draft report to the Court Administration and Case Management Committee's cost-containment subcommittee for consideration at its fall 2019 meeting. The Committee also approved the FJC's proposed design for a study to develop new bankruptcy case weights. Finally, the Committee considered whether to identify additional courts to participate in the bankruptcy judgeship vacancy pilot, approved by the Judicial Conference in September 2014, but decided to defer the matter until its December 2019 meeting, when it will reevaluate needs for bankruptcy judge resources.

COMMITTEE ON THE BUDGET

FISCAL YEAR 2021 BUDGET REQUEST

After considering the budget requests of the program committees, the Budget Committee recommended to the Judicial Conference a fiscal year 2021 budget request of \$7.46 billion in discretionary appropriations, which is 3.5 percent above assumed discretionary appropriations for fiscal year 2020, but \$71.2 million below the funding levels requested by the program committees. The Judicial Conference approved the Budget Committee's fiscal year 2021 budget request, subject to amendments necessary as a result of (a) new legislation, (b) actions of the Judicial Conference, or (c) any other reason the Executive Committee considers necessary and appropriate.

COMMITTEE ACTIVITIES

The Committee on the Budget reported that it discussed the status of the fiscal year 2020 appropriations cycle, the continued importance of congressional outreach, and the status of various cost-containment initiatives. The Committee also discussed recommendations from the Budget and Finance Advisory Council (BFAC) on potential incentives to encourage court units to consider consolidation and/or flexible sharing arrangements. The Committee requested that the Committees on the Administration of the Bankruptcy System, Court Administration and Case Management, Criminal Law, Judicial Resources, and the Administration of the Magistrate Judges System, in coordination with the Administrative Office, consider the BFAC's recommendations, provide input on their viability and potential impact, and make recommendations to the Budget Committee following their fall/winter 2019 meetings regarding which potential incentives should be pursued.

COMMITTEE ON CODES OF CONDUCT

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Judicial Conference in March 2019, the Committee received 20 new written inquiries and issued 21 written advisory responses. During this period, the average response time for requests was 16 days. In addition, the Committee chair responded to 19 informal inquiries, individual Committee members responded to 214 informal inquiries, and Committee counsel responded to 737 informal inquiries, for a total of 970 informal inquiries.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

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). At this session, the Judicial Conference approved two recommendations of the Committee on Court Administration and Case Management related to these schedules, as set forth below.

Email Records. The Committee on Court Administration and Case Management considered whether to apply the judiciary’s existing records disposition schedules to email by clarifying that the term “correspondence” in the records disposition schedules includes email. The Committee noted that clarifying the definition of correspondence would provide better guidance to courts seeking to determine whether a particular email should be retained. The Committee also noted NARA’s longstanding policy that it is a document’s content and not its form that determines whether the document is subject to retention, as well as the fact that while many email records will be subject to retention, a good number would be considered “transitory” and therefore not subject to the records disposition schedules. Finally, the Committee recognized that most judiciary records subject to retention, including those delivered by email, should already be captured and stored outside of the email system in existing software applications for records management purposes. The Committee accordingly recommended that the Conference approve revisions to the judiciary’s records disposition schedules to apply the schedules to email. The Conference

approved the Committee’s recommendation and authorized the revised schedules to be transmitted to NARA for its concurrence.

Local Rules. The judiciary’s records disposition schedules do not address the retention of records pertaining to local rules, which govern practices and procedures of individual courts. Noting that records related to local rules should be preserved permanently because they show a court’s requirements for matters not covered by the Federal Rules and serve as the de facto historic record of a court’s requirements, the Committee recommended that the Conference approve an addition to Records Disposition Schedule 1, Item C(5), and Records Disposition Schedule 2, Item B(9), to designate records pertaining to local rules as permanent. The Conference approved the Committee’s recommendation and authorized the revised schedules to be transmitted to NARA for its concurrence.

ELECTRONIC PUBLIC ACCESS FEES

The judiciary provides electronic public access to court documents primarily through the Public Access to Court Electronic Records (PACER) service, which, pursuant to Public Law No. 102-140, is funded by electronic public access (EPA) user fees set by the judiciary. The Judicial Conference has established a fee exemption policy that automatically exempts or waives fees in certain circumstances, including where a user’s charges total \$15 or less per calendar year quarter (JCUS-SEP 11, p. 16). The Committee on Court Administration and Case Management recommended raising the threshold for the quarterly fee waiver from \$15 to \$30, adjudging the projected loss in revenue to the judiciary to be acceptable in light of the increased public access this change would provide. On the Committee’s recommendation, the Conference approved amending Item 8 of the EPA Fee Schedule to update the first bullet point as follows (new language underlined, deleted language struck through):

“No fee is owed for electronic access to court data or audio files via PACER until an account holder accrues charges of more than ~~\$15.00~~\$30.00 in a quarterly billing cycle.”

PLACES OF HOLDING COURT

At the request of the District of Arizona, and on recommendation of the Committee on Court Administration and Case Management, the Judicial Conference agreed to support legislation to amend 28 U.S.C. § 82 to add Flagstaff and Yuma,

Arizona, as places of holding court in the District of Arizona. The district sought this change to accommodate the substantial growth in activity in both cities.

ELECTRONIC COURT RECORDS REFORM ACT

Pursuant to Public Law No. 102-140, the judiciary's PACER system and other electronic public access programs, including the Case Management/Electronic Case Files (CM/ECF) system, are funded entirely through user fees which the judiciary is authorized to charge for electronic public access. Two bills were introduced in the 116th Congress, H.R. 1164 and S. 2064, both entitled the "Electronic Court Records Reform Act of 2019," which would require the judiciary, among other things, to make all documents in the PACER system available free of charge, and to consolidate the CM/ECF system into a single filing system for all federal courts. The Senate bill would also authorize the Judicial Conference to collect filing fees for cases filed in the federal courts that are "commensurate with the burden imposed on the court by the party" and that "impose a lesser fee on filers who are filing on behalf of individuals" in order to cover the cost of maintaining the PACER system.

Upon reviewing the legislation, the Committee expressed strong concerns that H.R. 1164 would remove the current fee-for-service model without providing an alternative funding mechanism for PACER, CM/ECF, and other electronic public access programs, and that S. 2064 would dramatically increase filing fees in a manner that would negatively impact access to justice and unreasonably shift the cost burden of maintaining PACER to litigants, who may not be proportionate users of PACER's services or even use PACER at all. In contrast to the scheme contemplated by the Senate bill, the Committee noted that efforts undertaken by the judiciary to ensure that public access fees do not create unnecessary barriers or burdens to the public have resulted in an allocation of the vast majority of PACER maintenance costs to the system's largest users (typically commercial entities that resell PACER data for profit). Finally, the Committee concluded that it would be impractical, if not impossible, to administer the type of sliding-scale filing fee envisioned by S. 2064.

In light of these concerns, the Committee recommended that the Judicial Conference oppose the "Electronic Court Records Reform Act of 2019" (H.R. 1164 and S. 2064) and any other similar legislation that would:

- a. Eliminate the judiciary's statutory authorization to charge user fees for access to the PACER system without providing a workable alternative funding mechanism to finance the programs funded by the current fees and for any related new requirements in the legislation, to the extent that it

- would impose an unfunded mandate on the judiciary; or
- b. Authorize the judiciary to increase filing fees to compensate for the elimination of PACER user fees, or require the judiciary to structure such filing fees commensurate with the burden imposed on the court by the party (with a lesser fee charged to individual filers), to the extent that:
 1. Shifting the costs of providing access to the PACER system from PACER users to litigants filing cases in the federal courts would increase barriers to filing suit for many litigants and thus unduly hinder access to justice; and
 2. Any requirement for filing fees to be “commensurate with the burden imposed by the party” and to “impose a lesser fee on filers who are filing on behalf of individuals” would be administratively unworkable.

The Conference adopted the Committee’s recommendation.

COMMITTEE ACTIVITIES

The Court Administration and Case Management Committee reported that it considered and declined to endorse a proposal to change reporting requirements for habeas petitions and motions to vacate sentences under the Civil Justice Reform Act. The Committee also discussed its ongoing efforts related to various jury administration matters, and to limiting the dissemination of information about criminal defendants’ cooperation with the government. In addition, the Committee discussed and reaffirmed its support for the judiciary’s current restrictions on accessing data on CM/ECF replication servers, as well as for additional restrictions that would prohibit accessing or using certain types of CM/ECF replication server data without individual courts’ consent.

COMMITTEE ON CRIMINAL LAW

JUDGMENT FORMS IN CRIMINAL CASES

On recommendation of the Committee on Criminal Law, the Judicial Conference approved revisions to AO Form 245C (“Amended Judgment in a Criminal

Case”) to implement a recommendation of the Task Force on Protecting Cooperators; and to the following judgment forms to incorporate the new restitution and assessment provisions of the “Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018” (AVAA) as well as to facilitate the imposition of joint and several restitution: (1) AO Form 245B (“Judgment in a Criminal Case”); (2) AO Form 245C (“Amended Judgment in a Criminal Case”); and (3) AO Form 245D (“Judgment in a Criminal Case for Revocations”). To address a concern of the Task Force that AO Form 245C includes an obvious indicator of a defendant’s cooperator status, the revised form moves this indicator from the publicly available portion of the form to a new, publicly unavailable portion of the form. The revisions to AO Forms 245B, 245C, and 245D also allow courts to document the imposition of new AVAA assessments, specify how they will be credited in relation to other payments, and include necessary information in cases involving joint and several liability.

PRETRIAL SERVICES INVESTIGATION AND REPORT MONOGRAPH

On recommendation of the Committee, the Judicial Conference approved revisions to the *Pretrial Services Investigation and Report* (Monograph 112), *Guide to Judiciary Policy*, Vol. 8, Pt. A. Monograph 112 provides guidance on the investigation of pretrial defendants and the preparation of reports for judges to assist them in determining whether to release or detain defendants before trial. The revisions to Monograph 12 remove non-policy and procedural guidance contained in Part A of the monograph, to be included in a new *Pretrial Services Investigation Policy and Procedures Manual*; restructure the monograph’s confidentiality regulations for clarity and move them from the appendix to Part A of the monograph; and, consistent with the judiciary’s efforts to reduce unnecessary pretrial detention, add guidance recommending that the Federal Pretrial Risk Assessment be completed prior to completion of the pretrial services report.

COMMITTEE ACTIVITIES

The Committee on Criminal Law reported that it discussed the implementation of the First Step Act of 2018, Pub. L. No. 115-391, including the increased resources that will be required for the probation and pretrial services system to effectively supervise thousands of inmates that are released early to the community. The Committee and the Administrative Office will continue to collaborate with the Department of Justice, the Bureau of Prisons, and other stakeholders to implement the Act and understand the potential impact of the various provisions of the Act on the judiciary. The Committee was also briefed on the results of surveys of district judges

and probation and pretrial services officers gauging their overall satisfaction with presentence investigations and reports. The survey results will be used to determine whether changes should be made to policy or procedural requirements in this area.

COMMITTEE ON DEFENDER SERVICES

COMMITTEE ACTIVITIES

The Committee on Defender Services reported that it approved a recommendation to increase the 2013 experience-based (presumptively reasonable) hourly rate ranges for experts and service providers in Criminal Justice Act (CJA) mega cases as follows: (a) paralegals, \$75-\$125 per hour (increased from \$25-\$55); (b) investigators, \$75-\$125 per hour (increased from \$55-\$100); and (c) mitigation specialists, \$125-\$175 per hour (increased from \$75-\$100). The Committee also continued its discussion of a follow-up study of alternative organizational models to the independent defender commission proposed by the final recommendation of the Report of the Ad Hoc Committee to Review the Criminal Justice Act (Cardone Report), and created a working group to make recommendations to the full Committee on the scope of the study and an entity or entities who could perform the study. In furtherance of Cardone Report interim recommendations adopted by the Judicial Conference, the Committee also recommended that the Judicial Resources Committee recommend the Conference approve eight additional positions for the National Litigation Support Team, and met with the Director of the Federal Judicial Center regarding increased training on e-discovery, defense best practices, and CJA voucher review. Finally, the Committee approved a request from the federal public defender for the Western District of North Carolina for FY 2021 funding to establish a circuit-wide capital habeas unit within the district's federal defender office to represent federal capital habeas corpus petitioners pursuant to 28 U.S.C. § 2254.

COMMITTEE ON FEDERAL-STATE JURISDICTION

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported that it reviewed proposed legislation that would create a prominent role for federal courts in the congressional redistricting process. The Committee also discussed opportunities for enhanced communication and cooperation between state and federal courts. In addition, the Committee continued its consideration of potential legislative proposals

for inclusion in its ongoing jurisdictional improvements project that would address current procedures regarding snap removal and removal of admiralty claims.

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 feedback from a limited group of judiciary filers who were authorized to use the system to file their 2018 annual reports. Following the Judicial Conference's March 2019 approval of an increase to the maximum amount filers may be reimbursed for professional fees incurred in the preparation of financial disclosure reports from \$1,000 to \$1,370, the Committee studied whether an additional increase was warranted and decided to defer consideration of an additional increase until the summer of 2023. As of May 23, 2019, the Committee had received 4,186 financial disclosure reports and certifications for calendar year 2017 (out of a total of 4,194 required to file), including 1,223 annual reports from Supreme Court justices and Article III judges; 338 annual reports from bankruptcy judges; 575 annual reports from magistrate judges; 1,584 annual reports from judicial employees; and 466 reports from nominee, initial, and final filers.

COMMITTEE ON INFORMATION TECHNOLOGY

LONG RANGE PLAN FOR INFORMATION TECHNOLOGY IN THE FEDERAL JUDICIARY

Pursuant to 28 U.S.C. § 612 and on recommendation of the Committee on Information Technology, the Judicial Conference approved the fiscal year 2020 update to the *Long Range Plan for Information Technology in the Federal Judiciary*. Funds for the judiciary's information technology program will be spent in accordance with this plan.

USE OF THE INTERNET

In 2001, the Judicial Conference adopted a policy reaffirming that individual courts have the responsibility to enforce appropriate internet use policies, and directing the Administrative Office, as part of its regular audit process, to examine and comment

upon the adequacy of the courts' enforcement methods (JCUS-SEP/OCT 01, pp. 43-44). This policy was subsequently codified in the *Guide to Judiciary Policy*, Volume 15, § 510.10, to include federal public defender organizations. Noting that the additional IT security measures and expanded IT security audit procedures that have since been implemented now afford the protection from the threat of unsafe websites contemplated by the audit requirement, the Committee recommended, with the concurrence of the Committee on Audits and Administrative Office Accountability, that the Conference amend its 2001 policy by eliminating the requirement that the Administrative Office, as part of its regular audit process, examine and comment upon the adequacy of the courts' enforcement methods. The Conference adopted the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Information Technology reported that it considered factors to be addressed in an analysis it will be undertaking, 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. The Committee also continued its discussion regarding the standardization of IT security tools, including concerns raised by courts and steps being taken to address them. In addition, the Committee noted the judiciary's achievement of 100 percent participation in the 2018 reporting period of the IT security self-assessment program, whose purpose is to identify areas for improvement in the judiciary's IT security program.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that 74 intercircuit assignments were undertaken by 64 Article III judges from January 1, 2019, to June 30, 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 four proposed intercircuit assignments of bankruptcy judges and five 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. Patent and Trademark Office, U.S. Agency for International Development, Federal Clerks of Court Association, Federal Judicial Center, and Administrative Office, including its Defender Services Office. Representatives from the University of South Carolina's Rule of Law Collaborative and the American Bar Association's Rule of Law Initiative also made presentations relevant to the Committee's work.

COMMITTEE ON THE JUDICIAL BRANCH

RETIREMENT OF TERRITORIAL DISTRICT COURT JUDGES

At the request of territorial district court judges, and on recommendation of the Committee on the Judicial Branch, the Judicial Conference agreed to seek amendments to 28 U.S.C. § 373 to make the retirement benefits of territorial district court judges similar to those of Court of Federal Claims judges, and to pursue the amendments in the current Congress. Noting the similarities between territorial district court judgeships and Court of Federal Claims judgeships, both of which are term-limited and dependent on presidential reappointment and thus at elevated risk for potential infringement upon judicial independence, the Committee concluded that extending to territorial district court judges a retirement plan similar to that for the Court of Federal Claims may help to alleviate the risk of such infringement and rectify the disparate treatment of two similarly situated groups of judges.

COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that it participated in the ninth Judicial-Congressional Dialogue, an initiative that began in 2014 with the goal of increasing understanding between the legislative and judicial branches. The event was held May 15, 2019 and featured a conversation between Mr. Jeffrey Rosen, President and Chief Executive Officer of the National Constitution Center, and Mr. Richard

Brookhiser, author and historian, focused on Mr. Brookhiser’s biography of Chief Justice John Marshall, *John Marshall, the Man Who Made the Supreme Court*.

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

COURT LAW CLERK PILOT PROGRAM

The Judicial Conference has approved three phases of a pilot program to evaluate whether providing additional law clerks in courts with extremely heavy caseloads could expedite case resolution (JCUS-MAR 11, p. 23; JCUS-MAR 14, p. 21; JCUS-SEP 15, p. 21; JCUS-MAR 16, pp. 19-20). While the program had been scheduled to sunset on September 30, 2018, the Judicial Resources Committee twice recommended, and the Conference approved, extending the program by one year (first to September 30, 2019, and then to September 30, 2020) to allow the Committee and the Administrative Office (AO) sufficient time to develop and refine possible parameters for a national program before deciding whether the pilot should be made a permanent national program or allowed to end (JCUS-MAR 18, p. 20; JCUS-MAR 19, p. 28). At its June 2019 meeting, the Committee agreed to establish an ad hoc subcommittee on court law clerks to assist the AO with its continuing analysis, and asked the subcommittee to present its recommendation to the Committee no later than June 2020. To allow the AO enough time to conduct a thorough review of the program with the assistance of the new subcommittee, the Committee recommended that the Judicial Conference extend the expiration date of the court law clerk pilot

program for one additional year, from September 30, 2020 to September 30, 2021. The Conference approved the Committee's recommendation.

CHAMBERS LAW CLERK QUALIFICATION STANDARDS

The qualification standards for chambers law clerks to be appointed or promoted to Judiciary Salary Plan (JSP) grade 12 or above include the requirement that the candidate be a member of the bar of a state, territory, or federal court of general jurisdiction. *Guide to Judiciary Policy*, Volume 12, Chapter 5, Appendix 5F. In 1988, the Judicial Resources Committee began a practice whereby its chair could waive this requirement in situations where the candidate is qualified for admittance to the bar but traveling to the place of admittance would be impractical or a hardship. This led to a process in which courts submitted bar waiver requests to the AO for review and submission to the chair of the Committee for approval.

To streamline the process for approving waivers and thus allow for more timely decisions, the Committee recommended that the Conference approve a change to the chambers law clerk qualification standards to allow the AO's Chief Human Resources Officer to waive the bar membership requirement for chambers law clerks at JSP grades 12 and above when the candidate has met all requirements for admission, but has not been admitted because they are required to appear in person and are unable to travel to the location to complete the admissions process because of the expenses involved, or because the workload in chambers does not allow for the law clerk's absence. The Conference approved the Committee's recommendation.

PRO SE AND DEATH PENALTY LAW CLERK SUPERVISORY POSITIONS

Over the past few years, courts have requested that the Judicial Resources Committee establish a supervisory pro se/death penalty law clerk position, with at least one court requesting that the position be established at the JSP-15 grade level. On recommendation of the Committee, the Judicial Conference in September 2018 approved a new lead pro se/death penalty law clerk position description, which included responsibility for managing the work of other pro se and death penalty law clerks (JCUS-SEP 18, p. 24). However, the Committee noted that the position could not include supervisory duties because a 1994 Judicial Conference policy allowed only the chief judge (or a judicial officer or clerk of court designated by the chief judge) to supervise pro se law clerks, and death penalty law clerks are supervised in the same manner as pro se law clerks. In the absence of formal supervisory functions, the lead pro se/death penalty law clerk position was classified at the JSP-14 grade level, which

is the target grade for pro se and death penalty law clerks. Because the 1994 policy had been recommended to the Conference by the Committee on Court Administration and Case Management, the Judicial Resources Committee asked that Committee to consider modifying the policy on pro se law clerk supervision.

Recognizing that many courts have come to rely on senior pro se and death penalty law clerks to perform many of the day-to-day oversight functions essential to the efficient operation of the pro se and death penalty law clerk programs, the Committee on Court Administration and Case Management recommended, and the Judicial Conference approved, an amendment to the 1994 policy regarding a chief judge's authority to appoint and supervise pro se law clerks to include death penalty law clerks, and to allow a chief judge to delegate supervisory authority to another judicial officer, the clerk of court, or a pro se/death penalty law clerk (JCUS-MAR 19, pp. 15-16).

In light of the revised policy permitting chief judges to delegate supervisory authority to pro se/death penalty law clerks and the general practice of classifying supervisors at least one grade level above the highest-level position they supervise, the Judicial Resources Committee recommended that the Judicial Conference approve amending and reclassifying the lead pro se/death penalty law clerk position description to a supervisory pro se/death penalty law clerk position description with a target grade of JSP-15. The Conference adopted the Committee's recommendation.

EXCEPTION TO COURT REPORTER STAFFING AUTHORIZATION

In September 2017, the Judicial Conference adopted the first staffing formula for court reporters, which was later amended in September 2018 (JCUS-SEP 17, p. 18; JCUS-SEP 18, pp. 24-25). Also in September 2018, the Judicial Conference established the following process for authorizing and allocating court reporter positions pursuant to 28 U.S.C. § 753(a):

- (1) The number of court reporters authorized by the Judicial Conference in a district may not exceed the total of the number of authorized Article III judgeships, the number of senior judges certified for a court reporter, and for uncertified senior judges, the number of court reporters calculated by multiplying the quotient derived in the court reporter staffing formula by 1,763.04.

- (2) The number of court reporters allocated to a district will be determined by the Judicial Conference-approved staffing formula for court reporters.
- (3) Local courts will have the discretion to fund court reporters from decentralized local funds above the funding allocation if the number onboard does not exceed the Judicial Conference authorized total for the district as derived in (1).
- (4) If a court would like to exceed the Judicial Conference authorized total, the court must use the options available in 28 U.S.C. § 753, or request an exception from the Judicial Resources Committee and Judicial Conference (JCUS-SEP 18, pp. 25-26).

The Middle District of Georgia requested that the Conference set the district's authorized level of court reporters at no less than five for a five-year period beginning in fiscal year 2020. The court expressed concern that its maximum authorization may fall below 5.0 in fiscal year 2020 or beyond based on the current in-court hours of its senior judges, and that year-to-year fluctuations in senior judge hours could force the court to hire and fire court reporters based upon fractional changes each year. According to the court, such volatility in staffing levels would negatively impact the recruitment and retention of court reporters, particularly in the district's rural divisions where the court has difficulty locating qualified contract court reporters. On recommendation of the Judicial Resources Committee, the Conference approved the district's request.

STAFFING FORMULAS

Court of Appeals and Circuit Offices. In accordance with its schedule for updating staffing formulas every five years, the Committee on Judicial Resources considered updates to the formulas for all court of appeals and circuit offices, including the offices of court of appeals clerks, staff attorneys, circuit executives, circuit mediators, circuit librarians, and bankruptcy appellate panel clerks. After extensive data collection and input from the courts, the Committee recommended, and the Judicial Conference approved—

- a. New staffing formulas for the offices of circuit executives, circuit librarians, circuit mediators, court of appeals clerks, staff attorneys, and bankruptcy appellate panel clerks, to be applied starting in fiscal year 2020, which provide an increase of 99.9 full-time equivalent (FTE) positions, based on statistical

year 2018 workload;

- b. The continued use of three-year averages for case filings when implementing the approved staffing formulas for the court of appeals clerks; the use of two-year averages for case filings when implementing the approved staffing formulas for staff attorneys; and the use of single-year totals for the offices of circuit executives, circuit librarians, circuit mediators, and bankruptcy appellate panel clerks; and
- c. The use of a discrete staffing formula factor for 13.4 additional FTE staff attorney positions in the Eleventh Circuit’s Office of Staff Attorneys.

Bankruptcy Administrator Offices. As part of the scheduled five-year updates of staffing formulas, the Committee considered proposed revisions to the staffing formula for bankruptcy administrator offices. On recommendation of the Committee, the Conference approved the continued application of the current bankruptcy administrators’ offices staffing formula to be applied starting in fiscal year 2020, which provides 48.50 FTE positions, using data from statistical years 2018 and 2019.

STAFF COURT INTERPRETER POSITIONS

Using established criteria, the Committee recommended, and the Conference approved, one full-time Spanish staff court interpreter position for the District of Colorado, and one additional full-time Spanish staff court interpreter position for the Middle District of Florida, to be considered for inclusion in the judiciary’s fiscal year 2021 request.

MODEL EMPLOYMENT DISPUTE RESOLUTION PLAN

In January 2018, the Director of the Administrative Office established the Federal Judiciary Workplace Conduct Working Group (Working Group) to examine the sufficiency of safeguards currently in place within the judiciary to protect court employees from wrongful conduct in the workplace. In June 2018, the Working Group issued a report recommending improvements to these safeguards, including a number of recommendations with regard to the *Model Employment Dispute Resolution (EDR) Plan*. On recommendation of the Judicial Resources Committee, the Judicial Conference in September 2018 approved changes to the *Model EDR Plan* to implement two of the Working Group’s recommendations while the Committee continued its consideration of the remaining recommendations related to the *Model*

EDR Plan. These changes were to (1) cover all employees in the judiciary, including paid and unpaid interns and externs; and (2) extend the time for initiating an EDR complaint from 30 to 180 days (JCUS-SEP 18, pp. 29-30). In March 2019, on the respective recommendations of the Committee on Codes of Conduct and the Committee on Judicial Conduct and Disability, the Conference also adopted amended Codes of Conduct for U.S. Judges and for Judicial Employees, and amended Rules for Judicial-Conduct and Judicial-Disability Proceedings, to address other recommendations of the Working Group (JCUS-MAR 19, pp. 12-13, 25-26).

At its June 2019 meeting, the Committee considered a revised *Model EDR Plan* to incorporate the Working Group’s remaining recommendations concerning the plan and to ensure consistency with the revised Codes of Conduct and Rules for Judicial-Conduct and Judicial-Disability Proceedings, taking into consideration feedback received on the proposed amendments during a judiciary-wide comment period. The revised *Model EDR Plan* includes: (1) clear definitions and examples of “wrongful conduct”; (2) three flexible options to resolve workplace conduct issues: Informal Advice, Assisted Resolution, or a Formal EDR Complaint; (3) flowcharts that explain EDR rights and options for resolution; and (4) training requirements for EDR coordinators and judiciary employees.

On recommendation of the Judicial Resources Committee, the Conference adopted the revised *Model EDR Plan*, and delegated to the Committee the authority to make such non-substantive changes or technical amendments that the Committee may later deem to be necessary.

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that it submitted to the Committee on the Budget a FY 2021 budget request for programs under the Judicial Resources Committee’s jurisdiction that was equivalent to a 1.8 percent increase over the FY 2020 assumed obligations and would result in 11,929 FTE positions for court staff under its jurisdiction. Subsequent to the meeting, the chair adjusted the Committee’s recommendation using updated caseload data, resulting in a recommendation to the Budget Committee of 11,920 FTE positions.

COMMITTEE ON JUDICIAL SECURITY

COMMITTEE ACTIVITIES

The Committee on Judicial Security reported that it endorsed revisions to the *Guide to Judiciary Policy* that would create a uniform standard of eligibility for emergency relocation allowances to be applied to both judges and employees. The Committee also met with the new Director of the U.S. Marshals Service, who provided an update on his strategic priorities for the agency, and with representatives from the Federal Protective Service (FPS), who discussed a recent Government Accountability Office report regarding FPS's placement within the Department of Homeland Security (DHS) and the recent decision by the Secretary of DHS to transfer FPS from DHS's Cybersecurity and Infrastructure Security Agency to its Management Directorate. In addition, the Committee supported the *U.S. Courts Design Guide* Working Group's recommendation to amend *Design Guide* standards to permit an additional security camera in the courtroom, provided that juror anonymity could be preserved.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

CHANGES IN MAGISTRATE JUDGE POSITIONS

After considering the recommendations of the Committee on the Administration of the Magistrate Judges System and the views of the Administrative Office, the district courts, and the judicial councils of the circuits, the Judicial Conference agreed to (a) authorize an additional magistrate judge position at St. Louis in the Eastern District of Missouri; (b) authorize an additional magistrate judge position at San Diego in the Southern District of California; and (c) increase the salary level of the part-time magistrate judge position at Santa Barbara in the Central District of California from Level 2 (\$77,611 per annum) to Level 1 (\$97,014 per annum) of the five-level salary structure for part-time magistrate judges, effective October 1, 2019.

ACCELERATED FUNDING

On recommendation of the Committee on the Administration of the Magistrate Judges System, the Conference agreed to designate for accelerated funding, effective

April 1, 2020, the new full-time magistrate judge positions in the Eastern District of Missouri at St. Louis, and in the Southern District of California at San Diego.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Magistrate Judges System reported that pursuant to Judicial Conference policy regarding the review of magistrate judge position vacancies (JCUS-SEP 04, p. 26), for the period between its December 2018 and June 2019 meetings, the Committee, through its chair, approved filling 18 magistrate judge position vacancies in 17 district courts. At its June 2019 meeting, the full Committee considered three courts' requests to fill magistrate judge position vacancies, voting unanimously to approve two of the requests but to decline the third due to that court's overall caseload and the comparatively low number of duties handled by the magistrate judges. Following the meeting, that court withdrew its request to fill the vacancy. For the period of time running from the end of its December 2018 meeting through its June 2019 meeting, the Committee also approved requests from 11 courts for the recall or extension of recall of 17 retired magistrate judges, including requests by two different courts to recall one retired magistrate judge in both courts. Finally, the Committee formed a subcommittee to consider whether to ask the Judicial Conference to endorse certain suggestions for magistrate judge utilization relating to off-the-record referrals to magistrate judges.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

FEDERAL RULES OF APPELLATE PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Appellate Rules 35 (En Banc Determination) and 40 (Petition for Panel Rehearing), together with committee notes explaining their purpose and intent. The Judicial Conference approved the proposed amendments and authorized their transmittal to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Bankruptcy Rules 2002 (Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief is Sought in Ancillary and Other Cross-Border Cases, United States, and United States Trustee), 2004 (Examination), 8012 (Corporate Disclosure Statement), 8013 (Motions; Intervention), 8015 (Form and Length of Briefs; Form of Appendices and Other Papers), and 8021 (Costs), together with committee notes explaining their purpose and intent. The Judicial Conference approved the proposed amendments and authorized their transmittal to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

The Conference also approved, on recommendation of the Committee, revised Official Bankruptcy Form 122A-1 (Chapter 7 Statement of Your Current Monthly Income), effective December 1, 2019, for use in all bankruptcy proceedings commenced after the effective date and, insofar as just and practicable, all proceedings pending on the effective date.

FEDERAL RULES OF CIVIL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Civil Rule 30 (Depositions by Oral Examination), together with committee notes explaining their purpose and intent. The Judicial Conference approved the proposed amendments and authorized their transmittal to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

FEDERAL RULES OF EVIDENCE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Evidence Rule 404 (Character Evidence; Crimes or Other Acts), together with committee notes explaining their purpose and intent. The Judicial Conference approved the proposed amendments and authorized their transmittal to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure reported that it has formed a joint subcommittee comprised of representatives of the Advisory Committees on Appellate, Bankruptcy, Civil, and Criminal Rules to consider a suggestion from the Chair of the Advisory Committee on Appellate Rules to study whether the current midnight electronic filing deadline should be changed to an earlier time in the day, such as when the clerk's office closes in the respective court's time zone. The Committee also reported that it adopted procedures for handling submissions outside the standard public comment period, including those addressed directly to the Committee rather than to the relevant advisory committee.

COMMITTEE ON SPACE AND FACILITIES

COURTHOUSE PROJECT PRIORITIES

The *Federal Judiciary Courthouse Project Priorities (CPP)* identifies the judiciary's priorities for new courthouse construction. Part I lists the projects for which the judiciary will request funding in its annual budget submission. Part II consists of the judiciary's out-year courthouse construction priorities. The priority order of all projects on Part I is maintained until a project is fully funded, at which time the project is removed from the list. The priority order of projects on Part II is updated each year based on the project's urgency evaluation score, which is developed as part of the judiciary's Asset Management Planning process (see JCUS-MAR 08, p. 26). On recommendation of the Committee on Space and Facilities, the Judicial Conference adopted a fiscal year (FY) 2021 *CPP*, which carried forward all the projects on Part I and Part II of the FY 2020 *CPP*, as they had not yet received full funding, and added a project in Bowling Green, Kentucky to Part II. The projects on the FY 2021 *CPP* were approved in the following priority order:

- a. Part I: (1) Hartford, Connecticut; and (2) Chattanooga, Tennessee; and
- b. Part II: (1) Bowling Green, Kentucky; (2) Greensboro/Winston-Salem, North Carolina; (3) Hato Rey, Puerto Rico; (4) McAllen, Texas; and (5) Norfolk, Virginia.

FEASIBILITY STUDIES

Courthouse construction projects must have a completed General Services Administration (GSA) feasibility study prior to being placed on the *CPP* (JCUS-MAR 08, p. 26). After considering the space, security, and building needs at the courthouses in Sherman/Plano, Texas and Dallas, Texas, the Committee on Space and Facilities recommended that the Judicial Conference request that the GSA perform feasibility studies for both courthouses. The Conference adopted the Committee's recommendation.

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

A special proceedings courtroom is considered an exception to the *U.S. Courts Design Guide* if (a) it is provided at a location other than the district headquarters; (b) there are fewer than four district judge courtrooms (even at a headquarters location); or (c) more than one such courtroom is provided in a facility (JCUS-MAR 08, p. 28). The Eleventh Circuit Judicial Council, on behalf of the Northern District of Alabama, requested an exception to the *Design Guide* to include a special proceedings courtroom in the program of requirements for a new courthouse construction project in Huntsville, which is not a headquarters location. The court noted that using the only special proceedings courtroom in the district more than 100 miles away for its large jury trials, multi-defendant proceedings, and ceremonial events presents logistical issues and significantly increased costs, and that having a special proceedings courtroom would allow the court to hold naturalization ceremonies. On recommendation of the Committee on Space and Facilities, the Conference approved an exception to the *U.S. Courts Design Guide* to include a special proceedings courtroom in the program of requirements for the new courthouse construction project in Huntsville, Alabama.

COMMITTEE ACTIVITIES

The Committee on Space and Facilities reported that it discussed multiple issues with GSA representatives, including the desire to conduct more in-person training sessions on the Service Validation Initiative, a joint effort designed to evaluate and improve the services that the judiciary receives from GSA. The Committee also provided input on several proposed changes to the *U.S. Courts Design Guide* offered by the *U.S. Courts Design Guide* Working Group. In addition, the Committee

approved amendments to the business rules of the Circuit Rent Budget and Asset Management Planning programs to establish a program of requirements and funding to support replacement space for existing non-resident courthouses, consistent with criteria adopted by the Conference in March 2019 for courts to use in justifying a request for replacement space.

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