

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

*MARCH 11, 2008
WASHINGTON, D.C.*

*JUDICIAL CONFERENCE OF THE UNITED STATES
CHIEF JUSTICE JOHN G. ROBERTS, JR.,
PRESIDING
JAMES C. DUFF, SECRETARY*

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March 11, 2008

The Judicial Conference of the United States convened in Washington, D.C., on March 11, 2008, 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 Michael Boudin
Judge Ernest C. Torres,
District of Rhode Island

Second Circuit:

Chief Judge Dennis Jacobs
Chief Judge William K. Sessions III,
District of Vermont

Third Circuit:

Chief Judge Anthony J. Scirica
Chief Judge Garrett E. Brown, Jr.,
District of New Jersey

Fourth Circuit:

Chief Judge Karen J. Williams
Chief Judge James P. Jones,
Western District of Virginia

Fifth Circuit:

Chief Judge Edith Hollan Jones
Judge Sim Lake,
Southern District of Texas

Sixth Circuit:

Chief Judge Danny J. Boggs
Judge Thomas M. Rose,
Southern District of Ohio

Seventh Circuit:

Chief Judge Frank H. Easterbrook
Judge Wayne R. Andersen,
Northern District of Illinois

Eighth Circuit:

Chief Judge James B. Loken
Judge Lawrence L. Piersol,
District of South Dakota

Ninth Circuit:

Chief Judge Alex Kozinski
Judge Charles R. Breyer,
Northern District of California

Tenth Circuit:

Chief Judge Robert H. Henry
Judge Alan B. Johnson,
District of Wyoming

Eleventh Circuit:

Chief Judge J. L. Edmondson
Judge Myron H. Thompson,
Middle District of Alabama

District of Columbia Circuit:

Chief Judge David Bryan Sentelle
Chief Judge Thomas F. Hogan,
District of Columbia

Federal Circuit:

Chief Judge Paul R. Michel

Court of International Trade:

Chief Judge Jane A. Restani

The following Judicial Conference committee chairs attended the Conference session: Circuit Judges Julia Smith Gibbons, Roger L. Gregory, Carl E. Stewart, and Richard C. Tallman, and District Judges Joseph F. Bataillon, Julie E. Carnes, Dennis M. Cavanaugh, John Gleeson, Janet C. Hall, Robert L. Hinkle, D. Brock Hornby, Mark R. Kravitz, Barbara M.G. Lynn, Gordon J. Quist, Lee H. Rosenthal, George Z. Singal, Ortrie D. Smith, Laura Taylor Swain, John R. Tunheim, and Thomas I. Vanaskie. Bankruptcy Judge David S. Kennedy and Magistrate Judge Robert B. Collings were also in attendance. Millie Adams of the Eighth 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 Jill C. Sayenga, Deputy Director; William R. Burchill, Jr., Associate Director and General Counsel; Laura C. Minor, Assistant Director, and Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat; Cordia A. Strom, Assistant Director, Legislative Affairs; and David A. Sellers, Assistant Director, Public Affairs. District Judge Barbara Jacobs Rothstein and John S. Cooke, Director and Deputy Director of the Federal Judicial Center, and District Judge Ricardo H. Hinojosa and Judith W. Sheon, Chair and Staff Director of the United States Sentencing Commission, were in attendance at the session of the Conference, as was Jeffrey P. Minear, Administrative Assistant to the Chief Justice. Scott Harris, Supreme Court Counsel, and the 2007-2008 Supreme Court Fellows also observed the Conference proceedings.

Solicitor General Paul D. Clement addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice. Senators Patrick Leahy, Arlen Specter, and Richard J. Durbin and Representatives John Conyers, Jr., and Lamar S. Smith spoke on matters pending in Congress of interest to the Conference.

REPORTS

Mr. Duff reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office (AO). Judge Rothstein spoke to the Conference about Federal Judicial Center (FJC) programs, and Judge Hinojosa reported on Sentencing Commission activities. Judge Hornby, Chair of the Committee on the Judicial Branch, presented a report on the judicial salary restoration initiative, and Judge Tunheim, Chair of the Committee on Court Administration and Case Management, presented a preliminary report on a study of courtroom use.

EXECUTIVE COMMITTEE

LONG-RANGE PLANNING

The Executive Committee considered the Judicial Conference's long-range planning process and how to revitalize it. Preferring not to initiate a large-scale planning effort similar to that which produced the *Long Range Plan for the Federal Courts* in 1995, the Committee determined to pursue with the Chief Justice the creation of a new strategic and operational planning process that would involve Conference committees and operate under the oversight of the Executive Committee.

COMMITTEE MATTERS

The Executive Committee referred three items to other committees for further consideration. It asked the Committee on Judicial Resources to reexamine the September 2005 Judicial Conference policy limiting court executive salaries to the salary paid to district judges (see JCUS-SEP 05, p. 29). In addition, it asked the Committee on Court Administration and Case Management to review the impact on judiciary policy and practice of recent legislation regarding senior district judge participation in local court governance and, as it pursues initiatives to move official records to electronic media, to ensure that the judiciary will continue to have access to its older records, including those preserved in obsolete formats.

MISCELLANEOUS ACTIONS

The Executive Committee—

- Approved on behalf of the Conference a request of the Committee on Judicial Resources to expand the Conference's saved pay policy to include unit executives and others whose pay would be reduced by a management action placing the employees under a different salary plan or pay table;
- Approved on behalf of the Conference revisions to Bankruptcy Official Forms 1, 22A, 22B, and 22C, to be effective January 1, 2008;
- Approved final fiscal year 2008 financial plans for the Salaries and Expenses, Defender Services, Court Security, and Fees of Jurors and Commissioners accounts;
- Agreed on behalf of the Conference to amend the *U.S. Courts Design Guide* to delete time frame references from two planning assumptions used for projecting certain space requirements;
- Based on requests from the respective committees, agreed to seek the Chief Justice's approval for expanding the Judicial Security Committee's membership to include regional circuit representation and the Bankruptcy Committee's membership to include an additional bankruptcy judge on a permanent basis as well as regional circuit representation by Article III judge members;
- Agreed that the Rules Committee (or its Civil Rules Advisory Committee) communicate the Committee's concerns to Congress regarding the proposed "Sunshine in Litigation Act," S. 2449, 110th Congress, after coordinating with the Administrative Office; and
- Approved a resolution on behalf of the Conference honoring Chief Judge Thomas F. Hogan's outstanding service as Chair of the Executive Committee.

COMMITTEE ON THE ADMINISTRATIVE OFFICE

COMMITTEE ACTIVITIES

The Committee on the Administrative Office reported that it was briefed on, and expressed its support for, efforts underway to improve the Administrative Office's communications with the courts. These efforts include a review of the Administrative Office's advisory structure; a redesign of the *Guide to Judiciary Policies and Procedures*; and improvements to the J-Net. In connection with its review of the implementation of the 1995 *Long Range Plan for the Federal Courts*, the Committee expressed its belief that consideration of administrative structures and responsibilities, including the appropriate mix of decentralization and centralization, should continue to be a strategic concern and expressed its support for development of an integrated strategic planning process. The Committee was briefed on the activities of the Office of Judicial Conference Executive Secretariat, major AO initiatives, and AO audit and review activities.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

OFFICIAL DUTY STATION

On the recommendation of the Bankruptcy Committee and in accordance with 28 U.S.C. § 152(b)(1), the Judicial Conference approved a request of the Second Circuit Judicial Council to redesignate the official duty station of Bankruptcy Judge Stephen D. Gerling, from Utica to Utica, Syracuse, or Albany, in the Northern District of New York.

COMMITTEE ACTIVITIES

The Bankruptcy Committee reported that it heard from its members who serve in liaison roles to other Conference committees on topics including law clerk recruitment, diversity, work measurement, and the courtroom use study. The Committee also received reports on matters of interest from the Chair of the Advisory Committee on Bankruptcy Rules, the Chair of the Administrative Office's Bankruptcy Judges Advisory Group, the President of the National Conference of Bankruptcy Judges, and a representative of the Federal Judicial Center.

COMMITTEE ON THE BUDGET

COMMITTEE ACTIVITIES

The Committee on the Budget reported that it adopted a statement on congressional outreach that memorializes the role of the Budget Committee in preparing the annual budget request as well as a strategy for obtaining resources from Congress. In addition, in response to direction from the Judicial Conference (*see* JCUS-SEP 07, p. 27), the Committee recommended that the AO Director create a working group, chaired by a Budget Committee member, to examine the establishment of chambers-level budgets as a long-term court compensation measure that would accord judges discretion to determine their staffing needs. The Budget Committee also reported that it intends to discuss program-based budgeting in the judiciary at its January 2009 meeting and asked AO staff to prepare materials.

COMMITTEE ON CODES OF CONDUCT

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Judicial Conference in September 2007, the Committee received 52 new written inquiries and issued 51 written advisory responses. During this period, the average response time for requests was 17 days. In addition, the Committee chair received and responded to 54 informal inquiries from colleagues, and individual Committee members responded to 228 such inquiries.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

PRIVACY POLICY

In September 2001, the Judicial Conference adopted a privacy policy that allowed remote access to most electronic case files once certain personal information had been redacted (JCUS-SEP/OCT 01, pp. 48-50; *see also* JCUS-SEP 03, pp. 15-16 and JCUS-MAR 04, p. 10). Since that time, new federal rules of appellate, bankruptcy, civil, and criminal procedure have been adopted pursuant to the E-Government Act of 2002 also to address privacy

and security concerns relating to public access to electronic documents. After reviewing the new federal rules, which are based in large part on the Conference's privacy policy, the Committee on Court Administration and Case Management was of the view that most of the Conference policy was superseded and that only two elements remain. The first establishes procedures for redacting transcripts of court proceedings, which continues to be relevant under the new rules. The second is a list of documents to be excluded from public criminal case files, which is referenced in the Rules Committee notes to the new criminal E-Government rule. After proposing minor amendments to these provisions, the Court Administration and Case Management Committee recommended a revised privacy policy for public access to electronic case file documents consisting of these two provisions. The Conference approved the recommendation.

BANKRUPTCY COURT MISCELLANEOUS FEE SCHEDULE

Noting that the Bankruptcy Court Miscellaneous Fee Schedule had undergone several revisions over the last decade, and as a result had become lengthy and very complicated, the Court Administration and Case Management Committee, in consultation with the Committee on the Administration of the Bankruptcy System, recommended that the Judicial Conference consider proposed changes to clarify items, delete an obsolete fee (and renumber the schedule accordingly), and make stylistic changes to comport with current editorial standards. No substantive amendments were considered. The Conference approved the recommendation and directed the Administrative Office to amend the schedule to read as set forth below.

Bankruptcy Court Miscellaneous Fee Schedule (Issued in accordance with 28 U.S.C. § 1930(b))

The fees included in the Bankruptcy Court Miscellaneous Fee Schedule are to be charged for services provided by the bankruptcy courts.

- The United States should not be charged fees under this schedule, with the exception of those specifically prescribed in Items 1, 3 and 5 when the information requested is available through remote electronic access.
- Federal agencies or programs that are funded from judiciary appropriations (agencies, organizations, and

individuals providing services authorized by the Criminal Justice Act, 18 U.S.C. § 3006A, and bankruptcy administrators) should not be charged any fees under this schedule.

- (1) For reproducing any document, \$.50 per page. This fee applies to services rendered on behalf of the United States if the document requested is available through electronic access.
- (2) For certification of any document, \$9.
For exemplification of any document, \$18.
- (3) For reproduction of an audio recording of a court proceeding, \$26. This fee applies to services rendered on behalf of the United States if the recording is available electronically.
- (4) For filing an amendment to the debtor's schedules, lists of creditors, or mailing list, \$26, except:
 - The bankruptcy judge may, for good cause, waive the charge in any case.
 - This fee must not be charged if –
 - the amendment is to change the address of a creditor or an attorney for a creditor listed on the schedules; or
 - the amendment is to add the name and address of an attorney for a creditor listed on the schedules.
- (5) For conducting a search of the bankruptcy court records, \$26 per name or item searched. This fee applies to services rendered on behalf of the United States if the information requested is available through electronic access.
- (6) For filing a complaint, \$250, except:
 - If the trustee or debtor-in-possession files the complaint, the fee should be paid by the estate, if there is an estate.
 - This fee must not be charged if –
 - the debtor is the plaintiff; or
 - a child support creditor or representative files the complaint and submits the form required by § 304(g) of the Bankruptcy Reform Act of 1994.

- (7) For filing any document that is not related to a pending case or proceeding, \$39.
- (8) Administrative fee for filing a case under Title 11 or when a motion to divide a joint case under Title 11 is filed, \$39.
- (9) For payment to trustees pursuant to 11 U.S.C. § 330(b)(2), a \$15 fee applies in the following circumstances:
 - For filing a petition under Chapter 7.
 - For filing a motion to reopen a Chapter 7 case.
 - For filing a motion to divide a joint Chapter 7 case.
 - For filing a motion to convert a case to a Chapter 7 case.
 - For filing a notice of conversion to a Chapter 7 case.
- (10) In addition to any fees imposed under Item 9, above, the following fees must be collected:
 - For filing a motion to convert a Chapter 12 case to a Chapter 7 case or a notice of conversion pursuant to 11 U.S.C. § 1208(a), \$45.
 - For filing a motion to convert a Chapter 13 case to a Chapter 7 case or a notice of conversion pursuant to 11 U.S.C. § 1307(a), \$10.

The fee amounts in this item are derived from the fees prescribed in 28 U.S.C. § 1930(a).

If the trustee files the motion to convert, the fee is payable only from the estate that exists prior to conversion.

If the filing fee for the chapter to which the case is requested to be converted is less than the fee paid at the commencement of the case, no refund may be provided.

- (11) For filing a motion to reopen, the following fees apply:
 - For filing a motion to reopen a Chapter 7 case, \$245.
 - For filing a motion to reopen a Chapter 9 case, \$1000.
 - For filing a motion to reopen a Chapter 11 case, \$1000.
 - For filing a motion to reopen a Chapter 12 case, \$200.
 - For filing a motion to reopen a Chapter 13 case, \$235.
 - For filing a motion to reopen a Chapter 15 case, \$1000.

The fee amounts in this item are derived from the fees prescribed in 28 U.S.C. § 1930(a).

The reopening fee must be charged when a case has been closed without a discharge being entered.

The court may waive this fee under appropriate circumstances or may defer payment of the fee from trustees pending discovery of additional assets. If payment is deferred, the fee should be waived if no additional assets are discovered.

The reopening fee must not be charged in the following situations:

- to permit a party to file a complaint to obtain a determination under Rule 4007(b); or
- when a debtor files a motion to reopen a case based upon an alleged violation of the terms of the discharge under 11 U.S.C. § 524.

- (12) For retrieval of a record from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court, \$45.
- (13) For a check paid into the court which is returned for lack of funds, \$45.
- (14) For filing an appeal or cross appeal from a final judgment, \$250.

This fee is collected in addition to the statutory fee of \$5 that is collected under 28 U.S.C. § 1930(c) when a notice of appeal is filed.

Parties filing a joint notice of appeal should pay only one fee.

If a trustee or debtor in possession is the appellant, the fee must be payable only from the estate and to the extent there is any estate realized.

Upon notice from the court of appeals that a direct appeal or direct cross-appeal has been authorized, an additional fee of \$200 must be collected.

- (15) For filing a case under Chapter 15 of the Bankruptcy Code, \$1000.

This fee is derived from and equal to the fee prescribed in 28 U.S.C. § 1930(a)(4) for filing a case commenced under Chapter 11 of Title 11.

- (16) The court may charge and collect fees commensurate with the cost of providing copies of the local rules of court. The court may also distribute copies of the local rules without charge.
- (17) The clerk shall assess a charge for the handling of registry funds deposited with the court, to be assessed from interest earnings and in accordance with the detailed fee schedule issued by the Director of the Administrative Office of the United States Courts.
- (18) For filing a motion to divide a joint case filed under 11 U.S.C. § 302, the following fees apply:
 - For filing a motion to divide a joint Chapter 7 case, \$245.
 - For filing a motion to divide a joint Chapter 11 case, \$1000.
 - For filing a motion to divide a joint Chapter 12 case, \$200.
 - For filing a motion to divide a joint Chapter 13 case, \$235.

These fees are derived from and equal to the filing fees prescribed in 28 U.S.C. § 1930(a).

- (19) For filing the following motions, \$150:
 - To terminate, annul, modify or condition the automatic stay;
 - To compel abandonment of property of the estate pursuant to Rule 6007(b) of the Federal Rules of Bankruptcy Procedure; or
 - To withdraw the reference of a case or proceeding under 28 U.S.C. § 157(d).

This fee must not be collected in the following situations:

- For a motion for relief from the co-debtor stay;
- For a stipulation for court approval of an agreement for relief from a stay; or
- For a motion filed by a child support creditor or its representative, if the form required by § 304(g) of the Bankruptcy Reform Act of 1994 is filed.

ELECTRONIC PUBLIC ACCESS FEE SCHEDULE

The current versions of the Case Management/Electronic Case Files (CM/ECF) system and the Public Access to Court Electronic Records (PACER) system no longer provide direct dial-up remote access because of expanded accessibility through the internet. Accordingly, on the Committee's recommendation, the Conference agreed to amend the Electronic Public Access Fee Schedule to eliminate reference to dial-up access fees.

RECORDS MANAGEMENT

Courts of Appeals/Bankruptcy Appellate Panels. In March 2005, the Judicial Conference endorsed a proposed agreement between the National Archives and Records Administration (NARA) and the Administrative Office that paper case files in bankruptcy and district courts utilizing the national CM/ECF system need not be retained for archival purposes after they have been scanned in their entirety into the CM/ECF system (JCUS-MAR 05, pp. 11-12). This disposition authority was subsequently approved by NARA. Courts of appeals and bankruptcy appellate panels have now begun implementation of the CM/ECF system and should have similar authority. On recommendation of the Committee, the Conference agreed to pursue authority for courts of appeals and bankruptcy appellate panels to dispose of paper records received after December 1, 2006, that are converted to Portable Document Format (PDF) for use in CM/ECF. If the authority is obtained, these courts would not need to retain paper records for archival purposes after they have been scanned in their entirety into the CM/ECF system.

Probation and Pretrial Services. A recently released feature of the Probation/Pretrial Services Automated Case Tracking System (PACTS) allows PDF electronic images of documents to be categorized and stored in PACTS in a secure but convenient fashion. In light of this new capability, the Committee recommended that the Conference endorse authority providing that probation and pretrial services offices utilizing PACTS need not retain paper records for archival purposes after they have been scanned in their entirety into PACTS, except for the following documents, which must continue to be maintained: original Sex Offender Registration Acknowledgment Forms, Monthly Supervision Reports (MSR), and any other documents bearing the defendant's/offender's original signature, which have been submitted under oath or include a warning that false statements may be punishable pursuant to 18 U.S.C. § 1001. The Conference adopted the Committee's recommendation.

PLACES OF HOLDING COURT

At the request of the Southern District of Iowa and on recommendation of the Committee, the Judicial Conference rescinded its March 2007 decision to seek legislation to allow that district occasionally to hold civil trials upon party consent in Omaha, Nebraska (*see* JCUS-MAR 07, p. 11). The district informed the Committee that, because of a change in circumstances, it no longer needed use of the space in the Omaha courthouse.

COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported that, among other things, it reviewed the Federal Judicial Center's preliminary report on courtroom usage and outlined several possible policy options that could be considered by the Committee and the liaison committees at their summer 2008 meetings, and by the Judicial Conference in September 2008. In addition, the Committee declined to endorse the Department of Justice's proposal to prohibit public internet access to plea agreements, but it agreed to inform courts of the need to consider adopting local policies on plea agreements while emphasizing that such policies should be the least restrictive to promote legitimate public access. The Committee also decided to establish May 15, 2008, as the date by which all district courts should be compliant with the Conference's electronic transcripts policy.

COMMITTEE ON CRIMINAL LAW

SEARCH AND SEIZURE AUTHORITY

In March 1993, the Judicial Conference adopted Model Search and Seizure Guidelines to guide probation officers when conducting searches and seizures pursuant to conditions of probation or supervised release (JCUS-MAR 93, p. 13). At this session, after extensive review of these procedures, and to ensure the safety of officers and of others at a search scene, the Committee on Criminal Law recommended that the Conference seek legislation that would provide to probation officers conducting searches the same powers available to traditional law enforcement officers to control and direct third parties when safety considerations require. The Committee also recommended that the Conference seek legislation that would permit probation officers, whether in a search context or otherwise, to arrest, based on probable

cause, persons who assault, resist, or impede the officer in the performance of official duties. The Conference adopted the Committee's recommendations.

JUVENILE PRETRIAL SUPERVISION

Currently, there is no clear statutory authority permitting probation or pretrial services officers to supervise juveniles who are released pending adjudication. Pretrial services officers do, however, have authority to supervise juveniles after the disposition stage of proceedings, for example pending an appeal or a petition for a writ of certiorari, and to supervise adult defendants prior to conviction and sentencing. Noting that juveniles who are released prior to disposition may be in need of supervision, and that more juveniles might be released pending adjudication if supervision were an option, the Committee recommended that the Judicial Conference seek legislation that would authorize pretrial services supervision for juveniles released prior to the disposition stage of the proceedings. The Conference adopted the Committee's recommendation.

SUPERVISION OF FEDERAL OFFENDERS MONOGRAPH

On recommendation of the Committee, the Judicial Conference approved revisions to the *Supervision of Federal Offenders*, Monograph 109, to reflect current knowledge in the fields of substance abuse, mental health treatment, and community corrections. The changes are intended to provide officers with practical guidance that has proven to be effective in reducing recidivism rates for offenders.

HOME CONFINEMENT PROGRAM MONOGRAPH

The Committee recommended that the Judicial Conference amend *The Federal Home Confinement Program for Defendants and Offenders*, Monograph 113, to provide more comprehensive guidance on the use of location monitoring technologies for supervision purposes, including Global Positioning System (GPS) technology. These revisions would shift the focus from monitoring defendants and offenders in their homes with single-point location monitoring technology to monitoring these individuals both in their homes and in the community. Since such technology can also be utilized to monitor the location of offenders and defendants who are not subject to home confinement but who nonetheless are subject to conditions of release that limit

their whereabouts, the Committee also recommended that the title of the monograph be changed to *The Location Monitoring Program*. The Conference adopted the Committee's recommendations.

COMMITTEE ACTIVITIES

The Committee on Criminal Law reported that, exercising its delegated authority to make technical, non-controversial changes to the official forms for judgments in a criminal case (JCUS-MAR 04, p. 13), it created an attachment to forms AO 245, 245D, 245H, and 245I to be filed separately. The attachment will satisfy the requirement of 18 U.S.C. § 3612 that personal identifiers must be included on judgments while simultaneously satisfying the E-Government Act of 2002's requirement that personal identifiers be redacted from public documents. The Committee also amended the Guidelines for U.S. Probation and Pretrial Services Officers Supervising Persons Who Have Been Exposed to the Human Immunodeficiency Virus (HIV) or Who Have Acquired Immune Deficiency Syndrome (AIDS), authorizing the recording of defendant and offender HIV or AIDS diagnoses in confidential records within the electronic Probation/Pretrial Services Case Tracking System as well as within traditional paper records.

COMMITTEE ON DEFENDER SERVICES

ADMINISTRATIVE DEPORTATION PROCEEDINGS

On recommendation of the Committee on Defender Services, the Judicial Conference approved revisions to paragraph 2.01E(5) of the Guidelines for the Administration of the Criminal Justice Act and Related Statutes, vol. 7, *Guide to Judiciary Policies and Procedures*. These revisions reflect the restructuring of the Immigration and Naturalization Service and resulting changes in statutory terminology regarding immigration proceedings.

COMMITTEE ACTIVITIES

The Committee on Defender Services reported that, after discussing the impact of remote detention facilities on the Defender Services program, it decided to request the assistance of the Committee on Judicial Security in conveying concerns to the U.S. Marshals Service and the Office of the Federal Detention Trustee regarding contracts for the housing of pretrial detainees. In

addition, the Defender Services Committee approved pursuing a contract to survey judges, Criminal Justice Act (CJA) panel attorneys, and federal defenders about program effectiveness and quality of representation. The Committee voted to support compensation, at the non-capital CJA panel attorney hourly rate, for the panel attorney members of the Defender Services Advisory Group, for the time they spend attending Administrative Office advisory or working group meetings and Committee meetings.

COMMITTEE ON FEDERAL-STATE JURISDICTION

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reviewed provisions in proposed legislation to amend the Prison Litigation Reform Act and to limit the enforceability of certain arbitration agreements, as well as proposed changes to administrative procedures for review of claims for Social Security disability benefits. It also received a report on issues of concern to state courts, particularly court security and judicial independence, and discussed ways it could be more active in pursuing federal-state judicial relations. The Committee was briefed on the preliminary analysis of a study of capital habeas corpus proceedings being undertaken by the Administrative Office and the Federal Judicial Center and discussed proposed Department of Justice regulations related to the certification of states under chapter 154 of title 28, United States Code, which establishes time limits for federal judicial review of capital habeas petitions.

COMMITTEE ON FINANCIAL DISCLOSURE

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported on its efforts to obtain an extension of the judiciary's redaction authority for financial disclosure reports (Congress has recently extended it through December 31, 2011), and that it continues to work with the Administrative Office to encourage Congress to enact permanent redaction authority for the judiciary. The Committee began development of a system for the electronic filing and management of financial disclosure reports. As of December 31, 2007, the Committee had received 4,288 financial disclosure reports and certifications for calendar year 2006, including 1,361 reports and certifications from Supreme Court justices, Article

III judges, and judicial officers of special courts; 377 reports from bankruptcy judges; 569 reports from magistrate judges; and 1,981 reports from judicial employees.

COMMITTEE ON INFORMATION TECHNOLOGY

COMMITTEE ACTIVITIES

The Committee on Information Technology reported that with respect to implementation of the Report on Network Privacy and Security (JCUS-SEP 05, p. 27), it endorsed a policy statement establishing a framework for the national information technology program, along with baseline security and privacy recommendations. It also reported that the effort to identify and implement cost-effective service delivery models has come to a successful conclusion with the consolidation of servers for several national systems, which will result in cost savings or avoidances totaling millions of dollars over the next five years. The Committee made decisions on fiscal year 2008 Edwin L. Nelson Local Initiatives Program grants and determined that grants should have a two-year limit. In addition, the Committee reported that it will work with the Committee on Space and Facilities to develop a long-range plan to address the judiciary's communication infrastructure.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that 98 intercircuit assignments were undertaken by 68 Article III judges from July 1, 2007 to December 31, 2007. During calendar year 2007, 189 intercircuit assignments were processed by the Committee and approved by the Chief Justice, an increase of more than 26 percent over the last five years. The Committee continued to disseminate information about intercircuit assignments, and it aided courts requesting assistance by identifying and obtaining judges willing to take assignments.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported on its involvement in rule of law and judicial reform activities throughout the world, highlighting those in Africa, Asia and the Pacific Basin, Canada, Central Asia, Europe, Latin America, the Middle East, and the Russian Federation. The Committee received reports from the U.S. State Department's Office of the Coordinator of Assistance to Europe and Eurasia, the Director of the U.S. Agency for International Development's Democracy and Governance Office, and the Director of the U.S. Department of Justice's Overseas Prosecutorial Training and Development Office. The Committee also received a special report from the founding dean and chancellor of the new Peking University School of Transnational Law in Beijing, China.

COMMITTEE ON THE JUDICIAL BRANCH

JUDICIAL SURVIVORS' ANNUITIES SYSTEM

Open Season. At the request of the Committee on the Judicial Branch, the Administrative Office initiated a study of the Judicial Survivors' Annuities System (JSAS) to determine whether JSAS is equitable in its coverage and cost when compared to other survivor benefit programs. After considering this study, the Committee recommended that the Judicial Conference seek legislation that would authorize a one-time open season for judges who previously opted not to enroll in JSAS, with the following conditions: (a) such enrollees, while in active or senior status, would be required to pay 2.75 percent of future pay (instead of the 2.2 percent for current enrollees) to maintain the current employer contribution of 1.48 percent, and (b) these new enrollees would be permitted to make a deposit equaling approximately 2.75 percent of salary, plus 3 percent annual, compounded interest, for the last 18 months of prior service, to receive the credit for prior judicial service required for immediate coverage and protection of the enrollees' survivors. The Conference adopted the Committee's recommendation.

Restoration of Survivors' Annuities. Currently, a spouse's JSAS annuity rights are forfeited if he or she remarries before attaining age 55. A bill pending in the 110th Congress would amend 28 U.S.C. § 376(h)(2) to restore a judicial survivor's spousal annuity upon the termination or dissolution of a subsequent remarriage by annulment, death, or divorce and would also

provide for a lump sum retroactive payment dating back to termination of the survivor's annuity. On recommendation of the Committee, which noted that survivor benefits for other federal employees provide for restoration of benefits beginning on the date the remarriage ended, and not the date benefits terminated, the Conference agreed to seek legislation that would permit the resumption of periodic payments of JSAS survivor benefits following termination of a judicial survivor's remarriage, but would limit any lump-sum retroactive payments to the time beginning on the date the survivor's remarriage ended by death, divorce or annulment and ending on the date on which periodic annuity payments resumed.

JUDGES' TRAVEL REGULATIONS

Same-Day Travel. The Committee recommended, and the Judicial Conference approved, an amendment to section E.4 of the Travel Regulations for United States Justices and Judges, *Guide to Judiciary Policies and Procedures*, vol. 3, ch. C-5, ex. A, to clarify and specify the nature and amount of a judge's entitlement to reimbursement for the expenses of meals and incidentals incurred in same-day travel.

Tips to Parking Attendants. On recommendation of the Committee, the Conference approved an amendment to section F.2. of the judges' travel regulations specifically to authorize reimbursement of judges for the cost of tips to parking attendants.

Inter-District Meetings. The Conference also agreed to a recommendation of the Committee to amend section B.3 of the judges' travel regulations to add a new subsection giving chief judges in states with multiple districts the discretion to hold one inter-district meeting annually. Judges who attend such a meeting may be reimbursed for their transportation and subsistence expenses.

COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that, consistent with the priorities of the Chief Justice and the Judicial Conference, it continues to devote substantial attention to judicial salary restoration. The Committee is working closely with the Chief Justice's Ad Hoc Committee on Judicial Salaries to secure enactment of judges' pay restoration legislation. The Committee also reported on matters related to judicial benefits and on its

efforts to improve public knowledge about the role of the federal courts and the importance of an independent judiciary.

COMMITTEE ON JUDICIAL CONDUCT AND DISABILITY

RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS

In September 2006, the Judicial Conduct and Disability Act Study Committee, known as the Breyer Committee, established by Chief Justice William H. Rehnquist, issued a report and recommendations regarding implementation of the Judicial Conduct and Disability Act. Among its responses to that report, in March 2007, the Judicial Conference directed the Committee on Judicial Conduct and Disability to develop comprehensive guidelines and rules as needed to implement the Judicial Conduct and Disability Act consistently in all federal courts. At this session, the Committee proposed, and the Conference approved under 28 U.S.C. § 358, Rules for Judicial-Conduct and Judicial-Disability Proceedings, which are binding and operate uniformly, nationwide, superseding any conflicting judicial council rules. The rules were subjected to extensive review and comment from judges, court staff, and the general public prior to their adoption.

COMMITTEE ACTIVITIES

The Committee on Judicial Conduct and Disability reported that it issued two decisions in January 2008 on petitions for review of circuit council conduct and disability orders. It currently has a matter under advisement upon certification from a circuit council.

COMMITTEE ON JUDICIAL RESOURCES

COMPENSATORY TIME

In March 1996, the Judicial Conference adopted a compensatory time policy for court employees, which, though optional as to whether courts allow compensatory time, mandates that certain elements be included in the policies of those court units that do (JCUS-MAR 96, p. 28). At this session, on recommendation of the Committee on Judicial Resources, the Conference

adopted three changes to the policy in order to provide courts with more flexibility in the use of compensatory time. These changes (a) allow courts to provide compensatory time when employees are required to travel outside of their normal work schedules; (b) reduce the minimum time increment for compensatory time from one hour to 15 minutes; and (c) extend the period for using compensatory time from six months to one year. The compensatory time policy can be found in vol. 1, ch. 10, subchap. 1550.2 of the *Guide to Judiciary Policies and Procedures*.

SICK LEAVE CREDIT FOR FERS EMPLOYEES

Nearly all federal employees are covered by one of two statutory retirement systems – the Federal Employees Retirement System (FERS) or the Civil Service Retirement System (CSRS). CSRS employees, unlike FERS employees, receive service credit if they retire with unused sick leave balances. The Committee noted that this benefit provides an incentive to CSRS employees to use their sick leave prudently and results in less absenteeism and greater productivity. In response to a recent expression of interest on the part of some members of Congress in amending FERS to allow some form of sick leave credit, the Committee recommended that the Conference express to the congressional sponsors and the Office of Personnel Management the support of the judiciary for changes to improve the crediting of unused sick leave for employees who retire under FERS. The Conference adopted the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that it strongly supports taking a conservative approach to fiscal year 2008 and 2009 budget issues and continuing to promote cost-containment initiatives. It unanimously agreed that, if judicial salary restoration were approved by Congress in 2008, no change to the current interim executive compensation policy would be necessary since the policy adequately provides for additional locality pay to judiciary executives, especially in high-cost areas. The Committee did, however, request that a study of executive compensation be conducted and that the results be presented at its December 2008 meeting. The Committee also asked its ad hoc diversity subcommittee to review the judiciary's Model Employment Dispute Resolution (EDR) Plan, as well as court EDR plans, to provide proposals for dealing with variances between courts' EDR plan

coverage and the Model EDR Plan, and to determine whether revisions to the Model EDR Plan are needed.

COMMITTEE ON JUDICIAL SECURITY

COMMITTEE ACTIVITIES

The Committee on Judicial Security reported that it authorized the United States Marshals Service (USMS) to initiate a pilot program at seven sites in furtherance of the action taken by the Conference in March 2007 to “support the efforts of the [USMS], through administrative and/or legislative remedies, to assume the security functions currently performed by the Federal Protective Service in courthouses, as appropriate, and the associated funding” (JCUS-MAR 07, p. 26). The pilot program will test the feasibility of having all perimeter security guarding and equipment and systems monitoring under the authority and control of the district U.S. marshal, in order to provide courts with more efficient and operationally effective perimeter security. The Committee also considered the use of electronic communications devices in courthouses and made recommendations to the Committee on Court Administration and Case Management on updating guidance on this subject, and it approved new credentials for circuit executives.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

APPOINTMENT REGULATIONS

The Committee on the Administration of the Magistrate Judges System recommended that the Judicial Conference amend section 3.03(b) of the Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Appointment and Reappointment of United States Magistrate Judges to provide that a court or merit selection panel may publicize the names of applicants for magistrate judge positions, with the applicants’ written permission, for the purpose of soliciting comments from the bar and the public. The Conference adopted the Committee’s recommendation.

CHANGES IN MAGISTRATE JUDGE POSITIONS

After consideration of the report of the Committee on the Administration of the Magistrate Judges System and the recommendations of the Director of the Administrative Office, the respective district courts, and the judicial councils of the circuits, the Judicial Conference approved the following changes in positions, salaries, locations, and arrangements for full-time and part-time magistrate judge positions. Changes with a budgetary impact are to be effective when appropriated funds are available.

FIRST CIRCUIT

District of Maine

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

SECOND CIRCUIT

Western District of New York

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

SEVENTH CIRCUIT

Southern District of Illinois

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

Western District of Wisconsin

Made no change in the number, location, or arrangements of the magistrate judge positions in the district.

TENTH CIRCUIT

District of Wyoming

1. Increased the salary of the part-time magistrate judge position at Casper from Level 6 (\$13,073 per annum) to Level 4 (\$39,227 per annum).
2. Increased the salary of the part-time magistrate judge position at Green River from Level 7 (\$6,534 per annum) to Level 6 (\$13,073 per annum).
3. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Magistrate Judges System reported that pursuant to the September 2004 Judicial Conference policy regarding the review of magistrate judge position vacancies (JCUS-SEP 04, p. 26), during the period between the Committee's June 2007 and December 2007 meetings, the Committee chair approved filling nine magistrate judge position vacancies, and, at its December 2007 meeting, the full Committee determined that four magistrate judge position vacancies should be filled. The Committee discussed a problem identified in the FBI background investigation procedure required for all magistrate judge selectees and voted to advise the FBI to include in its investigation instructions a statement that nothing in the instructions should be construed as requiring the selectee to provide names of prosecutors, law enforcement personnel, or others in particular positions, even where the selectee knows no such individuals. The Committee voted not to recommend a change in the regulation that limits credit for law clerk service to two years in determining the five-year active practice of law requirement for selection as a magistrate judge.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure reported that it approved for publication proposed amendments to Appellate Rule 29; Bankruptcy Rules 1007, 1019, 4004, and 7001; and Criminal Rules 5, 12.3,

and 21. The amendments are expected to be published for comment in August 2008. The Advisory Committees on Appellate, Bankruptcy, Civil, and Criminal Rules are reviewing comments to 91 rules amendments published in August 2007, which are intended to simplify and reduce inconsistencies in the computation of time periods under the procedural rules and would extend virtually all short time deadlines under the rules to account for elimination of weekends and holidays in computing relevant time periods.

COMMITTEE ON SPACE AND FACILITIES

ASSET MANAGEMENT PLANNING

In March 2006, the Judicial Conference approved, in concept, asset management planning (AMP) as an objective methodology to enhance the judiciary's long-range facilities planning process and as the new methodology for scoring and placing courthouse projects on a five-year courthouse project plan (JCUS-MAR 06, p. 25). Asset management planning identifies the costs and benefits of alternative space housing strategies to determine the best strategy to meet a district's or circuit's current and future operational needs. At this session the Committee recommended that the Conference approve the nine key features of the AMP methodology and delegate to the Committee the authority to establish and amend the business rules that will govern the AMP methodology. The Conference adopted the Committee's recommendation.

BUILDING MANAGEMENT DELEGATION PROGRAM

In September 2005, the Judicial Conference determined to end the judiciary's participation in a building management delegation program under which two district courts had assumed from the General Services Administration (GSA) management responsibilities for certain court facilities (JCUS-SEP 05, p. 41). At this session, the Conference, on recommendation of the Committee, agreed to rescind its decision to terminate the judiciary's participation in GSA's building delegation program only for the Hugo L. Black Courthouse in Birmingham, Alabama, with the understanding that (a) annual costs incurred by the judiciary will not exceed those appraised operation costs estimated by GSA; and (b) in the event of a catastrophic event or natural disaster warranting repair to the building, the management of the building will

be returned to GSA if funding cannot be obtained by the judiciary to repair the facility.

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

On July 19, 2006, the House Committee on Transportation and Infrastructure passed a resolution that, among other things, requires the judiciary to provide GSA with a list of each exception to the *U.S. Courts Design Guide* relating to a courthouse construction project that would result in additional costs, along with a justification for the exception and a cost estimate, for GSA to submit to Congress, along with its recommendation as to whether the relevant House and Senate committees should approve the exception. Since the judiciary and GSA have not always agreed on what constitutes an exception to the *Design Guide*, the AO and GSA have worked together to identify a mutually agreeable list of exceptions, both for projects already on the Five-Year Courthouse Project Plan (plus an ongoing Los Angeles project) and for future projects. With regard to nine projects that fall into the former category, the Committee reviewed a list of exceptions identified by GSA (and in one case by the Administrative Office) and approved the list with objections noted as to those items on which the judiciary and GSA still disagree. The Committee recommended that the Judicial Conference approve the list and the objections noted to certain of those exceptions, with the understanding that the judiciary will continue to discuss these objections with GSA. The Conference adopted the Committee's recommendation.

FIVE-YEAR COURTHOUSE PROJECT PLAN

After taking into consideration the projects that received full funding in the final fiscal year 2008 appropriations bill for GSA, the Committee recommended that the Conference approve a Five-Year Courthouse Project Plan for FYs 2009-2013 that includes in the FY 2009 column of the plan the unfunded projects from 2008 plus the first two projects in terms of score from the 2009 column of the FYs 2008-2012 plan to replace the two projects funded by Congress in FY 2008. The Conference approved the Committee's recommendation.

SPECIAL PROCEEDINGS COURTROOMS

Prior to 2002, the *U.S. Courts Design Guide* permitted special proceedings courtrooms as needed if they were located at district headquarters and in a building with at least four standard courtrooms. In 2002, the Judicial Conference added language that also permitted special proceedings courtrooms for new courthouses planned with fewer than four district judge courtrooms in “states with small, widely dispersed populations” (JCUS-SEP 02, p. 64). Noting that it was difficult for GSA and the Committee to quantify population demographics objectively to determine what constitutes a state with a small, widely dispersed population, the Committee recommended that the Conference rescind its 2002 policy and that the *U.S. Courts Design Guide* policy on providing a special proceedings courtroom read as follows:

A special proceedings courtroom shall be considered an exception if it is provided at a location other than the district headquarters or if there are fewer than four district judge courtrooms (even in a headquarters locations). Provision of more than one such courtroom in any facility is also considered an exception.

The Conference approved the Committee’s recommendation.

COMMITTEE ACTIVITIES

The Committee on Space and Facilities reported that it updated the Conference on the status of the circuit rent budget (CRB) allotment program, noting that fiscal year 2008 is the pilot year for the program. Pursuant to the procedures established for the CRB program, the Committee considered and approved one request for chambers for a replacement judge for the Fifth Circuit Court of Appeals in Houston, Texas. The Committee also updated the Conference on the progress of the rent validation program, specifically the steps the Committee and AO are taking to ensure that the local courts are in a position to maintain the accuracy of the information upon which rent is based.

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

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