

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

**September 17, 2015**

The Judicial Conference of the United States convened in Washington, D.C., on September 17, 2015, 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 Paul J. Barbadoro,  
District of New Hampshire

Second Circuit:

Chief Judge Robert A. Katzmann  
Judge William M. Skretny,  
Western District of New York

Third Circuit:

Chief Judge Theodore A. McKee  
Chief Judge Leonard P. Stark,  
District of Delaware

Fourth Circuit:

Chief Judge William B. Traxler, Jr.  
Judge Deborah K. Chasanow,  
District of Maryland

Fifth Circuit:

Chief Judge Carl E. Stewart  
Chief Judge Louis Guirola, Jr.,  
Southern District of Mississippi

Sixth Circuit:

Chief Judge Ransey Guy Cole, Jr.  
Judge Paul Lewis Maloney,  
Western District of Michigan

Seventh Circuit:

Chief Judge Diane P. Wood  
Chief Judge Rubén Castillo,  
Northern District of Illinois

Eighth Circuit:

Chief Judge William Jay Riley  
Judge Karen E. Schreier,  
District of South Dakota

Ninth Circuit:

Chief Judge Sidney R. Thomas  
Judge Robert S. Lasnik,  
Western District of Washington

Tenth Circuit:

Chief Judge Mary Beck Briscoe  
Judge Dee V. Benson,  
District of Utah

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 Richard W. Roberts,  
District of Columbia

Federal Circuit:

Chief Judge Sharon Prost

Court of International Trade:

Chief Judge Timothy C. Stanceu

The following Judicial Conference committee chairs also attended the Conference session: Circuit Judges Steven M. Colloton, Julia Smith Gibbons, Thomas M. Hardiman, Diarmuid F. O'Scannlain, Reena Raggi, Anthony J. Scirica, D. Brooks Smith, Jeffrey S. Sutton, and Timothy M. Tymkovich; and District Judges Nancy F. Atlas, Catherine C. Blake, David G. Campbell, Gary A. Fenner, Wm. Terrell Hodges, Irene M. Keeley, Royce C. Lamberth, Lawrence L. Piersol, Danny C. Reeves, Richard Seeborg, William K. Sessions III, Rodney W. Sippel, and Richard W. Story. Attending as the bankruptcy judge and magistrate judge observers were Chief Bankruptcy Judge Brenda T. Rhoades and Magistrate Judge Alan J. Baverman. Margaret A. Wiegand of the Third 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; Sheryl L. Walter, General Counsel; Katherine H. Simon, Secretariat Officer, and Helen G. Bornstein, Senior Attorney, Judicial Conference Secretariat; Cordia A. Strom, Legislative Affairs Officer; and David A. Sellers, Public Affairs Officer. District Judge Jeremy D. Fogel, Director, and John S. Cooke, Deputy Director, Federal Judicial Center, and Chief District Judge Patti B. Saris, Chair, and Nicole O. Snyder, Assistant General Counsel, United States Sentencing Commission, were in attendance at the session of the Conference, as was Jeffrey P. Minear, Counselor to the Chief Justice.

Attorney General Loretta E. Lynch addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice. Senator Charles Grassley and Representative Darrell Issa spoke on matters pending in Congress of interest to the Conference.

## **REPORTS**

Administrative Office Director James C. Duff reported to the Judicial Conference on the judicial business of the courts and on matters relating to the

Administrative Office. Chief Judge Patti B. Saris reported on United States Sentencing Commission activities and Judge Jeremy D. Fogel spoke to the Conference about Federal Judicial Center (FJC) programs. Judge Thomas M. Hardiman, Chair of the Committee on Information Technology, presented a special report on information technology security and Judge Jeffrey S. Sutton, Chair of the Committee on Rules of Practice and Procedure, and Judge David G. Campbell, Chair of the Advisory Committee on Civil Rules, presented a special report on upcoming civil rules amendments.

## EXECUTIVE COMMITTEE

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### 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 will end on September 30, 2015:

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

**HONORABLE NANCY F. ATLAS**  
Committee on Judicial Security

**HONORABLE DAVID G. CAMPBELL**  
Advisory Committee on Civil Rules

**HONORABLE DIARMUID F. O'SCANNLAIN**  
Committee on International Judicial Relations

**HONORABLE REENA RAGGI**  
Advisory Committee on Criminal Rules

**HONORABLE RICHARD W. STORY**  
Committee on Federal-State Jurisdiction

**HONORABLE TIMOTHY M. TYMKOVICH**  
Committee on Judicial Resources

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.

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### **UPDATE TO THE *STRATEGIC PLAN* FOR THE *FEDERAL JUDICIARY***

Since its approval by the Judicial Conference in September 2010 (JCUS-SEP 10, pp. 5-6), the *Strategic Plan for the Federal Judiciary* has served as a framework for national policy deliberations. The approach to planning for the Judicial Conference and its committees, also approved by the Judicial Conference in September 2010, calls for a review of the *Strategic Plan* every five years. Starting in the summer of September 2014, Judicial Conference committees were asked to consider progress achieved in implementing the *Strategic Plan*, significant policy changes since 2010, trends affecting the judiciary (particularly the judiciary's uncertain budget outlook), and other challenges facing the judiciary. Committees were then asked to propose updates and revisions to the *Strategic Plan*. In consultation with the Chief Justice, an Ad Hoc Strategic Planning Group was established to review committee proposals for revisions and prepare a draft of an updated and revised plan. In August 2015, the Ad Hoc Strategic Planning Group submitted a proposed updated *Strategic Plan* to the Executive Committee for consideration and recommendation to the Judicial Conference. At this session, on recommendation of the Executive Committee, the Judicial Conference approved the update to the *Strategic Plan for the Federal Judiciary*.

The updated *Strategic Plan* preserves the original plan's expression of the judiciary's mission and core values, and continues to be organized around seven strategic issues: (1) the delivery of justice; (2) the effective and efficient management of resources; (3) the workforce of the future; (4) technology's potential; (5) access to the judicial process; (6) relations with the other branches of government; and (7) the public's understanding, trust, and confidence in federal courts. Most of the changes to the *Strategic Plan* are to

the narrative describing the *Plan's* seven strategic issues and 13 strategies, and to the *Plan's* goals. These narratives now include fewer references to specific projects and initiatives in order to avoid language in the *Strategic Plan* becoming dated too quickly, and to provide maximum flexibility to Judicial Conference committees in their policy deliberations.

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## CONFERENCE REGISTRATION FEES

A 1981 Judicial Conference policy prohibits the holding of circuit judicial conference registration fees paid by conference attendees in the same bank account with other funds paid by conference attendees for conference-related events (JCUS-SEP 81, p. 62). The circuit executives, who administer these funds, have noted that it would be more efficient and easier to manage, reconcile, and disburse these funds if they were held in one account. Separate tracking of the allocation of conference registration and specific event fees would be continued. The Administrative Office's Office of the General Counsel determined that it is not a legal requirement to keep these private, non-appropriated funds in separate accounts. On recommendation of the Executive Committee, the Judicial Conference agreed to modify its 1981 policy regarding the management of non-appropriated circuit judicial conference registration fees to eliminate the restriction against commingling these fees with other non-appropriated funds paid by circuit conference participants.

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## AGGREGATE PAY CAP EXCEPTION FOR 2015

The aggregate pay for any court or federal public defender employee may not exceed the salary of a district judge except to allow receipt of a national judiciary award (JCUS-MAR 10, p. 18; *Guide to Judiciary Policy (Guide)*, Vol. 12, § 660.30(a)). Calendar year 2015 has an unusual biweekly pay cycle of 27 pay periods,<sup>1</sup> which will cause the salaries of some circuit and court unit executives that are at, or close to, the pay limit to exceed that limit. On recommendation of the Committee on Judicial Resources, the Executive Committee, acting on behalf of the Judicial Conference on an expedited basis, approved a one-time exception to the judiciary policy limiting the circuit and

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<sup>1</sup>There are normally 26 biweekly pay periods in a calendar year, but once every 11 years there are 27.

court unit executive salaries to the salary of a district judge to accommodate this unusual pay cycle.

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## MISCELLANEOUS ACTIONS

The Executive Committee —

- In accordance with Rule 2 of the Rules for the Processing of Certificates from Judicial Councils that a Judicial Officer Has Engaged in Conduct that Might Constitute Grounds for Impeachment, *Guide*, Vol. 2, Pt. E, § 420(2), referred *In Re: Judicial Complaints Nos. 11-14-90080, 11-14-90081, 11-14-90096 and 11-14-90101* to the Committee on Judicial Conduct and Disability for processing and the preparation of a report with recommendations back to the Conference.
- Pending congressional action on the judiciary’s appropriations for fiscal year (FY) 2016, approved proposed FY 2016 interim financial plans for the Salaries and Expenses, Defender Services, Court Security, and Fees of Jurors and Commissioners appropriations accounts, and endorsed a strategy for distributing allotments to court units.
- Expressed its unanimous support for the Administrative Office to engage an outside, independent entity to conduct a security review and testing of the judiciary’s information technology systems.
- Asked the Director of the Administrative Office to expand the mission statement of the Administrative Office’s Staffing Resources for Senior Judges Working Group to include the issue of reimbursement of senior judges’ commuting expenses.

## COMMITTEE ON AUDITS AND ADMINISTRATIVE OFFICE ACCOUNTABILITY

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### COMMITTEE ACTIVITIES

The Committee on Audits and Administrative Office Accountability reported that it was briefed on initial feedback from court units that participated in a risk-based audit pilot program, including on the challenges

that several court units encountered in producing requested documentation for the risk-based audits. The Committee was also briefed on an ongoing audit of four judiciary appropriations covering FYs 2013 to 2014, cyclical audits of courts and federal defender organizations, and audits of Chapter 7 and 13 bankruptcy trustees and debtors in the six districts in Alabama and North Carolina served by the bankruptcy administrator program. The Committee discussed a legislative proposal to establish an inspector general for the judicial branch, internal control program enhancements, and studies involving the federal judiciary conducted by the Government Accountability Office.

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

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### **RECALL REGULATIONS**

On recommendation of the Committee on the Administration of the Bankruptcy System, the Judicial Conference amended its ad hoc and extended service recall regulations for bankruptcy judges (*Guide*, Vol. 3, Chs. 9 and 10) to increase their clarity and align them with the recall regulations for magistrate judges. The Conference also delegated to the Bankruptcy Committee the authority to make non-substantive, technical, and conforming changes to the recall regulations.

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### **SELECTION AND APPOINTMENT REGULATIONS**

On recommendation of the Committee, the Conference amended its regulations for the selection and appointment of bankruptcy judges (*Guide*, Vol. 3, Ch. 3) to modernize the language by removing the term “shall” and replacing it with “must” and to add the requirement that the vacancy notice include a statement that the individual selected will be subject to financial disclosure reporting requirements pursuant to the Ethics in Government Act of 1978, 5 U.S.C. app. 4, §§101-111. The Conference also delegated authority to the Bankruptcy Committee to make non-substantive, technical, and conforming changes to the bankruptcy judge selection and appointment regulations.



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**COMMITTEE ACTIVITIES**

The Committee on the Administration of the Bankruptcy System reported its recommendation to the Budget Committee for FY 2016 funding of recalled bankruptcy judges, temporary law clerks, and the bankruptcy administrator program. Additionally, the Committee concurred with the Court Administration and Case Management Committee's decision not to recommend an inflationary increase for bankruptcy fees at this time and to add language to the preamble of the Court of Appeals Miscellaneous Fee Schedule to include selected services provided by the bankruptcy appellate panels (*see infra*, "Fees," p. 12). The Committee informed the Court Administration and Case Management Committee, the Judicial Resources Committee, and other interested parties of its concurrence with the request of the District of Montana to consolidate its district and bankruptcy clerks' offices (*see infra*, "Consolidation of the District and Bankruptcy Court Clerks' Offices in the District of Montana," pp. 11-12).

**COMMITTEE ON THE BUDGET**

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**FISCAL YEAR 2017 BUDGET REQUEST**

After considering the FY 2017 budget requests of the program committees, the Budget Committee recommended to the Judicial Conference a request of \$6,744.6 million in discretionary appropriations, which is 3.6 percent above assumed discretionary appropriations for FY 2016 but \$49.6 million below the funding levels requested by the program committees. The Judicial Conference approved the Budget Committee's budget request for FY 2017, 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.

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**BUDGET CAPS**

In an effort to control costs, the Judicial Conference has adopted caps on growth in the judiciary's budget, including a 4.9 percent average annual cap on growth in space rental costs through FY 2016 (JCUS-SEP 06, p. 10), a 5.2 percent average annual cap on growth in the Salaries and Expenses account through FY 2017 (JCUS-MAR 11, p. 9), a 5.2 percent average annual cap on growth in the Court Security account through FY 2018

(JCUS- MAR 12, p. 8), and a 4.0 percent average annual cap on growth in the Defender Services account through FY 2018, excluding increases in panel attorney rates above inflation (JCUS-MAR 12, p. 8). Noting that the budget caps have been recognized as a cost-containment tool by Congress and that it would be advantageous to maintain the caps at their current levels, the Committee recommended that the Judicial Conference extend the current budget caps for space rental costs and for the Salaries and Expenses, Court Security, and Defender Services accounts for the foreseeable future. The Conference adopted the Committee's recommendation.

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## **COMMITTEE ACTIVITIES**

The Committee on the Budget reported that it discussed the status of the FY 2016 appropriations cycle and its joint congressional outreach efforts with the Committee on the Judicial Branch. The Budget Committee also discussed the current funding, staffing, and caseload issues facing the bankruptcy courts and developed ideas to help assure the viability of the bankruptcy system during this period of declining case filings. The Committee discussed with the Commissioner of the General Services Administration's Public Buildings Service and the chair of the Committee on Space and Facilities progress made on reducing the judiciary's space footprint, as well as the joint Service Validation Initiative between the judiciary and General Services Administration.

## **COMMITTEE ON CODES OF CONDUCT**

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### **COMMITTEE ACTIVITIES**

The Committee on Codes of Conduct reported that since its last report to the Judicial Conference in March 2015, the Committee received 30 new written inquiries and issued 29 written advisory responses. During this period, the average response time for requests was 18 days. In addition, the Committee chair responded to 29 informal inquiries, individual Committee members responded to 167 informal inquiries, and Committee counsel responded to 511 informal inquiries, for a total of 707 informal inquiries.

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

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### **DESTRUCTION OF COURT-ORDERED WIRETAPS**

Title III of the Omnibus Criminal Control and Safe Streets Act of 1968, 18 U.S.C. § 2518, requires federal law enforcement agencies to obtain a court order to intercept wire, oral, and electronic communications and provides for how records related to the interception should be maintained. Judges must seal applications and orders granting or denying wiretaps, as well as the original recordings of the intercepted communications, and must designate who retains custody of these records. The custodian must retain the applications, orders and recordings for ten years and they may not be destroyed thereafter except upon order of the denying or issuing judge. In response to a request from a judge, the Committee on Court Administration and Case Management, after consulting with the Executive Office for U.S. Attorneys and the Committee on Defender Services, recommended proposed guidance for judges on how to process applications for destruction of court-ordered wiretap applications, orders, and recordings, including (1) how to determine the commencement of the ten-year retention period; (2) what criteria to consider when reviewing a motion to destroy a wiretap application, order or recording; (3) who should consider the motion if the denying or issuing judge is no longer on the bench; and (4) what procedures should be used to ensure that the custodian of the record is notified of a court-ordered destruction. The Judicial Conference approved the proposed guidance.

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### **CONSOLIDATION OF THE DISTRICT AND BANKRUPTCY COURT CLERKS' OFFICES IN THE DISTRICT OF MONTANA**

The district and bankruptcy courts in the District of Montana submitted a joint proposal, endorsed by the Ninth Circuit Judicial Council, to consolidate the district and bankruptcy clerks' offices pursuant to 28 U.S.C. § 156(d) and Judicial Conference Procedures for Combining Functions of the Clerks' Offices in the District Courts and Bankruptcy Courts (JCUS-MAR 98, pp.10-11; *Guide*, Vol. 4, Ch. 2). The Committee on Court Administration and Case Management and the Bankruptcy Committee both reviewed the proposal and determined that it met the Conference requirements, including that the consolidation is voluntary and is expected to produce cost savings without decreasing the quality of services to judges, the bar, and the public. On recommendation of the Committee on Court Administration and Case

Management, in consultation with the Bankruptcy Committee, the Judicial Conference approved the proposal to consolidate the district and bankruptcy court clerks' offices in the District of Montana. The proposal will be submitted to Congress as required by 28 U.S.C § 156(d). *See also infra*, pp. 21-22, "Second Type II Chief Deputy Clerk Position for the District of Montana."

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## **FEES**

Central Violations Bureau Fees. In 2005, Congress authorized the Judicial Conference to prescribe a fee for each violation notice processed through the Central Violations Bureau (CVB) (Pub. L. No. 108-447). The fee, which now appears as Item 15 on the District Court Miscellaneous Fee Schedule, was set at \$25 and has not been adjusted since its adoption in 2005. On recommendation of the Committee, the Judicial Conference agreed to increase the CVB processing fee for a petty offense charged on a federal violation notice from \$25 to \$30, effective December 1, 2015.<sup>2</sup>

Bankruptcy Appellate Panel Fees. Bankruptcy appellate panels (BAPs) are three-judge panels authorized by the Bankruptcy Reform Act of 1994 (Pub. L. No. 103-394), to hear appeals of bankruptcy court decisions. There are currently BAPs in the First, Sixth, Eighth, Ninth, and Tenth Circuits. In 1997, the Judicial Conference directed the Administrative Office to issue interim guidance to all BAP clerks to use the Court of Appeals Miscellaneous Fee Schedule in determining which fees to charge for services provided to the public (JCUS-SEP 97, pp. 60-61). To make the BAP fees more transparent and accessible to the public, at this session, on recommendation of the Committee, the Conference agreed to amend the Court of Appeals Miscellaneous Fee Schedule, effective December 1, 2015, to clarify the schedule's application to services provided by the BAPs.

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## **REDEEM ACT**

The proposed Record Expungement Designed to Enhance Employment (REDEEM) Act of 2015, S. 675, 114th Congress, would create procedures for

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<sup>2</sup>Subsequent to the Conference session, the Executive Committee, acting on behalf of the Conference, approved a request from the Committee on Court Administration and Case Management to change the effective date of the fee increase from December 1, 2015, to June 1, 2016, to allow sufficient time to implement the new fee.

individuals to request the permanent sealing (or destruction, if the petitioner is a minor) of the federal records of non-violent, non sex-related felonies, misdemeanors, and petty offenses. Petitioners would not be eligible to obtain relief until completing their terms of imprisonment, probation, or supervised release, and would not be eligible at all if they had committed more than two federal felonies. After reviewing the proposed legislation, the Committee concluded that a number of provisions could impact judicial independence, including by (1) requiring judges to resolve petitions under the bill within six months, (2) not permitting judges to waive hearings *sua sponte* nor to hold hearings if the parties waive them, and (3) limiting the information a judge may consider, despite the bill's broad requirement that judges weigh public safety interests against the "conduct and demonstrated desire of the petitioner to be rehabilitated and positively contribute to the community" and the petitioner's ability to "secure and maintain employment." The Committee also expressed concern over the bill's potential impact on the civil workload of the judiciary without providing additional resources or funding, a concern also expressed by the Committees on Criminal Law and Federal-State Jurisdiction in their review of the bill. To address these concerns, the Committee on Court Administration and Case Management recommended that the Judicial Conference —

- a. Oppose S. 675, the REDEEM Act (Record Expungement Designed to Enhance Employment Act of 2015, S. 675, 114th Cong.), or similar legislation, to the extent that it would limit judicial discretion in the management of cases and adoption of rules and procedures; and,
- b. Urge Congress to narrow significantly the scope of the REDEEM Act, or similar legislation, by specifying which offenders or offenses are eligible for judicial sealing of criminal records.

The Conference adopted the Committee's recommendations.

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## **CIVIL JUSTICE REFORM ACT REPORTING REQUIREMENTS**

In March 1998, the Judicial Conference required that direct appeals to district court from a bankruptcy court pending over six months be included in the statistical reporting system developed to meet the requirements of the Civil Justice Reform Act of 1990 (CJRA) (Pub. L. No. 101-650) (JCUS-MAR 98, p. 11). The pending date from which the six-month clock begins to run was set at 60 days from the date of the docketing of the appeal in the district court. At the time this pending date was established, Federal Rules of Bankruptcy

Procedure allowed for a delay in filing the bankruptcy notice of appeal in district court until the bankruptcy record was complete. The additional 60 days allowed the parties to brief the appeal fully before the matter was considered pending. However, pursuant to recent revisions to the Federal Rules of Bankruptcy Procedure that became effective in December 2014, bankruptcy clerks must now “promptly” docket the bankruptcy notice of appeal in the district court (*see* Bankruptcy Rule 8003). This change results in the pending date occurring before the bankruptcy clerk transmits to the district clerk either the complete record or notice that the record is available electronically. In addition, the time for filing principal appellate briefs and briefs in cross-appeals was extended, making 60 days insufficient to account for the necessary briefs (*see* Bankruptcy Rules 8016 and 8018). On recommendation of the Committee, the Conference amended the reporting requirements so that appeals from a bankruptcy court to a district court pursuant to 28 U.S.C. § 158 are deemed pending 120 days after docketing of the bankruptcy clerk’s transmission of the record or notice that the record is available electronically with the district court.

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## COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported that as part of its efforts to protect cooperation information contained in court filings, the Committee reviewed preliminary results from a survey conducted by the Federal Judicial Center regarding harm experienced by government cooperators as a result of availability of such information. The Committee also established a cost-containment subcommittee to lead an initiative to identify and evaluate a variety of fundamental, judiciary-wide cost-containment proposals pertaining to the judiciary’s organizational structure and evaluate these proposals to determine whether they will promote efficiencies and reduce costs. In addition, the Committee asked its jury subcommittee to work with the Administrative Office to review the Juror Qualification Questionnaire and present recommendations for improvements at the Committee’s December 2015 meeting.

## COMMITTEE ON CRIMINAL LAW

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### STATEMENT OF REASONS FORM

Section 994(w)(1)(B) of title 28, United States Code, requires that the statement of reasons for a sentence in a criminal case be stated on a written

statement of reasons form issued by the Judicial Conference and approved by the U.S. Sentencing Commission. On recommendation of the Committee on Criminal Law, the Judicial Conference agreed to issue a revised statement of reasons form, subject to approval of the form by the U.S. Sentencing Commission. The revisions are primarily intended to provide the Sentencing Commission with additional information about why courts impose sentences outside the guideline range. Clarifying and organizational changes were also made.

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## **NATIONAL CRIMINAL JUSTICE COMMISSION ACT**

The proposed National Criminal Justice Commission Act of 2015, H.R. 2330 and S. 1119, 114th Congress, would establish a commission to conduct a comprehensive 18-month study of federal, state, local, and tribal criminal justice systems. The commission would be made up of 14 members appointed by the executive and legislative branches. Although the bills do not prohibit the appointment of a federal judge, they do not explicitly provide for such an appointment. Noting the potential impact that the commission's findings and recommendations could have on the administration of the federal criminal justice system and on the federal courts, the Committee recommended that the Judicial Conference support the inclusion of federal appellate, district, or magistrate judges on any congressionally authorized body whose mission includes reviewing the administration of the federal criminal justice system. The Conference adopted the Committee's recommendation.

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## **COMMITTEE ACTIVITIES**

The Committee on Criminal Law reported that it reviewed and endorsed the staffing formula for probation and pretrial services offices that was recommended by the Committee on Judicial Resources for Conference approval at this session (*see infra*, "Staffing Formulas for the Probation and Pretrial Services Offices," p. 24) and asked the Judicial Resources Committee to start immediately on a new work measurement study to develop presentence report case weights for all districts. The Committee also asked the Administrative Office to begin developing a statement of work for day reporting centers, which are highly structured non-residential programs that coordinate supervision interventions, monitoring services, and rehabilitative programming under one roof. The Committee recognized the 90th anniversary of the Federal Probation Act, which established a professional probation staff

throughout the federal judiciary, and the 40th anniversary of the Speedy Trial Act, which authorized the creation of pretrial services pilot projects.

## COMMITTEE ON DEFENDER SERVICES

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### THRESHOLD FOR BUDGETING NON-CAPITAL CJA PANEL ATTORNEY CASES

In September 2003, the Judicial Conference agreed to add a new section to the Guidelines for Administering the CJA and Related Statutes to encourage the use of case budgeting techniques in non-capital representations that are likely to be extraordinary in terms of cost. *Guide*, Vol. 7A, § 230.26. Representations in which the attorney hours were expected to exceed 300 hours or total expenditures were expected to exceed \$30,000 for appointed counsel and services other than counsel for an individual Criminal Justice Act (CJA) defendant were identified as ordinarily fitting into this category. At the time this regulation was adopted, the maximum non-capital CJA panel attorney hourly rate was \$90, and 300 attorney hours would be under \$30,000. Noting that at the current rate of \$127 per hour, a greater percentage of representations would be required to undergo case budgeting, the Committee recommended that the Conference replace the \$30,000 threshold with a formula of 300 times the prevailing panel attorney hourly rate, rounded up to the nearest \$1000, to return the percentage of cases eligible for budgeting to approximately the same level it was at when the regulation was originally adopted. The Conference agreed and revised § 230.26.10, to provide as follows (new language underlined, deleted language struck through):

Courts are encouraged to use case budgeting techniques in representations that appear likely to become or have become extraordinary in terms of potential cost (ordinarily, a representation in which attorney hours are expected to exceed 300 hours or total expenditures are expected to exceed ~~\$30,000~~ 300 times the prevailing CJA panel attorney non-capital hourly rate, rounded up to the nearest thousand, for appointed counsel and services other than counsel for an individual CJA defendant).

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### COMMITTEE ACTIVITIES

The Committee on Defender Services reported that it met with Deputy Attorney General Sally Q. Yates to discuss Department of Justice (DOJ)



policies and practices that have a significant impact on defender services program costs. It also asked for DOJ support in efforts to create an “ex officio” defender position on the U.S. Sentencing Commission (*see*, JCUS-MAR 04, p. 11). The Committee received a status update on the comprehensive, impartial review of the CJA program and was updated on the results of national surveys of judges, CJA panel attorneys, and federal defenders, which are used to assess the quality and effectiveness of the defender services program.

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

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### **COMMITTEE ACTIVITIES**

The Committee on Federal-State Jurisdiction reported that it continued its review of immigration reform legislation introduced in the House of Representatives in the 114th Congress, focusing its attention on provisions that would limit or preclude judicial review. The Committee also discussed a proposal by the Section of Litigation of the American Bar Association to amend the diversity jurisdiction statute, 28 U.S.C. § 1332, to redefine the citizenship of unincorporated associations. Under the proposal, those entities would “be deemed citizens of their states of organization and the states where they maintain principal places of business.” In addition, the Committee was briefed on the efforts of the Subcommittee on Civic Engagement of the Committee on the Judicial Branch, including outreach to state courts that are engaged in similar efforts.

## **COMMITTEE ON FINANCIAL DISCLOSURE**

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### **COMMITTEE ACTIVITIES**

The Committee on Financial Disclosure reported that it reviewed options for modernizing the financial disclosure electronic filing system, approved initiatives to clarify the reporting requirements for part-time and recalled magistrate judges and recalled bankruptcy judges, and instituted a procedure for notifying filers if an entry on a report that is related to outside income, honoraria, or gifts appears not to be in compliance with the applicable legal authorities. In addition, the Committee reviewed and approved a procedure for responding to requests for waiver of the reproduction fees charged to obtain financial disclosure reports.

As of June 17, 2015, the Committee had received 3,605 financial disclosure reports and certifications for calendar year 2014 (out of a total of 4,234 required to file), including 1,143 annual reports and certifications from Supreme Court justices and Article III judges; 296 annual reports from bankruptcy judges; 484 annual reports from magistrate judges; 1,550 annual reports from judicial employees; and 132 reports from nominees and initial and final filers.

## COMMITTEE ON INFORMATION TECHNOLOGY

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### *LONG RANGE PLAN FOR INFORMATION TECHNOLOGY.*

Pursuant to 28 U.S.C. § 612 and on recommendation of the Committee on Information Technology, the Judicial Conference approved the fiscal year 2016 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.

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### COMMITTEE ACTIVITIES

The Committee on Information Technology reported that it discussed technology security incidents that recently had been in the news, noting that many cyber breaches can be prevented by consistently implementing basic, low-cost steps such as these: keeping software up-to-date with security patches; limiting administrative rights to modify information technology systems, applications, and devices; and using complex passwords. The Committee clarified security policy, noting the responsibility of users to protect their credentials. It also endorsed a proposed strategy to move to a judiciary-managed cloud solution for its unified communications infrastructure. In addition, it concluded that a second authentication factor (such as a token or session passcode) should be implemented as part of the solution for remote authentication.

## **COMMITTEE ON INTERCIRCUIT ASSIGNMENTS**

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### **COMMITTEE ACTIVITIES**

The Committee on Intercircuit Assignments reported that 86 intercircuit assignments were undertaken by 67 Article III judges from January 1, 2015, to June 30, 2015. During this time, the Committee continued to disseminate to circuit and district chief judges information about the intercircuit assignment process and aided courts requesting assistance by identifying and obtaining judges willing to take assignments.

## **COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS**

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### **COMMITTEE ACTIVITIES**

The Committee on International Judicial Relations reported on its involvement in international rule of law and judicial reform, highlighting activities in Africa, Europe and Eurasia, Latin America, the Middle East, and South and Central Asia. Briefing reports about international rule of law activities were provided by the United States Departments of State, Justice, and Commerce, the United States Agency for International Development, the United States Patent and Trademark Office, the Open World Program in the legislative branch, the Ninth Circuit Pacific Islands Committee, the United Nations Counter-Terrorism Executive Directorate, the Federal Judicial Center, the Administrative Office, and U.S. court administrators. The Committee also reported on hosting foreign delegations of jurists and judicial personnel for briefings at the Administrative Office.

## **COMMITTEE ON THE JUDICIAL BRANCH**

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### **JUDGES' RELOCATION REGULATIONS**

On recommendation of the Committee on the Judicial Branch, the Judicial Conference adopted clarifying amendments to the Relocation Allowances for Justices and Judges, *Guide*, Vol. 19, Ch. 3, which describes when judges may be reimbursed for relocation. The changes are intended to simplify the language, update erroneous citations, and ensure compliance with General Services Administration regulations that govern relocation.

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## **COMMITTEE ACTIVITIES**

The Committee on the Judicial Branch reported that it formed a new Congressional Outreach Subcommittee with the goals of coordinating the Committee’s outreach and liaison activities, making recommendations to the Committee on relations with the legislative branch, and focusing on key legislative initiatives that might affect the judiciary. The Committee also met with former House of Representatives Majority Leader Richard Gephardt who emphasized the importance of communication between judges and members of Congress and encouraged judges to meet with their legislators.

## **COMMITTEE ON JUDICIAL CONDUCT AND DISABILITY**

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

In March 2008, the Judicial Conference promulgated the Rules for Judicial-Conduct and Judicial-Disability Proceedings (JC&D Rules) (JCUS-MAR 08, p. 21). Since that time, the Committee on Judicial Conduct and Disability has monitored the experience of the circuit judicial councils regarding the implementation and application of the JC&D Rules and identified areas where amendments might be necessary. Potential amendments were also identified as a result of an April 2014 congressional hearing on the judicial conduct and disability system. After providing opportunity for public comment on proposed amendments and receiving input from judges and their staffs, the Committee recommended, and the Judicial Conference approved, amended Rules for Judicial-Conduct and Judicial-Disability Proceedings. Among other things, the amendments include two new grounds for cognizable misconduct: (1) “retaliating against complainants, witnesses, or others for their participation in this complaint process;” and (2) “refusing, without good cause shown, to cooperate in the investigation of a complaint under these rules.”

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## **COMMITTEE ACTIVITIES**

The Committee on Judicial Conduct and Disability reported that it considered complaint-related matters under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364. The Committee and its staff have continued to address inquiries regarding the Act and the Rules for Judicial-Conduct and

Judicial-Disability Proceedings and to give other assistance as needed to chief judges, circuit judicial councils, and their staff.

## **COMMITTEE ON JUDICIAL RESOURCES**

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### **COURT LAW CLERKS**

The court law clerk program was initially established in March 2011 as a three-year test to evaluate whether providing additional law clerks in district courts with extremely heavy caseloads would expedite case resolution (JCUS-MAR 11, p. 23). Courts selected to participate had to meet several criteria evidencing high workload, including having greater than 300 case filings per elbow law clerk (assuming two elbow law clerks per chambers). In March 2014, based on initial indications of success, the Conference extended the test for an additional three years and expanded the number of participating courts from two to seven (by lowering the threshold case filings per elbow law clerk from 300 to 250) to gather additional data (JCUS-MAR 14, p. 21). The second phase of the test program is scheduled to end in September 2017 (JCUS-MAR 15, p. 20).

In response to requests from additional courts for assistance with pressing staffing needs, the Administrative Office explored whether other criteria might be used to identify courts for participation in a third phase of the court law clerk test program. It determined that a criteria of 500 weighted cases per elbow law clerk in lieu of 250 unweighted cases identified three courts with significant workload challenges. On recommendation of the Judicial Resources Committee, the Conference approved the establishment of a third phase of the program for a period of three years, to commence October 1, 2015, to include authorization of 3.5 court law clerks for the District of Delaware (inclusive of the court law clerk Delaware is already receiving as part of Phase 2 of the test program), 5.5 court law clerks for the Eastern District of Texas, and up to 3 court law clerks for the Southern District of West Virginia.

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### **SECOND TYPE II CHIEF DEPUTY CLERK POSITION FOR THE DISTRICT OF MONTANA**

At this session, the Judicial Conference approved a proposal to consolidate the district and bankruptcy court clerks' offices in the District of Montana, which will be submitted to Congress as required by

28 U.S.C § 156(d) (*see supra*, pp. 11-12, “Consolidation of the District and Bankruptcy Court Clerks’ Offices in the District of Montana”). As part of that proposal, the Ninth Circuit Judicial Council and the District of Montana have requested a second Judiciary Salary Plan (JSP)-16 Type II chief deputy clerk both to address the new demands of a consolidated environment and other unique challenges in the district. Because the District of Montana has fewer than ten authorized judgeships, even as a consolidated court, Judicial Conference approval is required (*see* JCUS-SEP 04, p. 23). Noting that a second JSP-16 Type II chief deputy clerk position is necessary to the successful consolidation of the district and bankruptcy clerks’ offices under the proposal and that consolidation will achieve cost savings, the Committee recommended, and the Judicial Conference approved, a second JSP-16 Type II chief deputy clerk position for the District of Montana, to be funded with the court’s decentralized funds, assuming consolidation of the district and bankruptcy court clerks’ offices in this district.

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## **EXECUTIVE GRADES**

The Committee conducted a comprehensive review of the target grades for court unit executive positions in the courts of appeals, including for clerks of court, senior staff attorneys, chief circuit mediators, and circuit librarians. After obtaining input from other interested committees and from the Administrative Office’s Human Resources Advisory Council, the Committee recommended that the Conference approve the target grade of JSP-18 for the court of appeals clerk of court position, and affirm the target grade of JSP-17 for the chief circuit mediator and senior staff attorney positions and the target grade of JSP-16 for the circuit librarian position. Chief judges have discretion to set grades at a level lower than the target grade. The Conference adopted the Committee’s recommendation.

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## **EXECUTIVE PAY**

Optional Pay Policy. In September 2005, the Judicial Conference approved the application of locality pay to circuit and court unit executive salaries up to the salary of a district judge, to be applied at the request of the chief judge on behalf of the court (JCUS-SEP 05, p. 29). This “optional” pay policy was adopted to provide relief to unit executives, especially those in high cost-of-living areas, who had reached the default pay cap of Executive Schedule Level (EX)-III. Noting that all 13 circuit executives as well as 80 percent of the court unit executives in the judiciary are currently being paid

under this optional pay policy, the Committee recommended, as a matter of equity and fairness, that the optional pay table become the pay table for all circuit and court unit executive positions, effective September 21, 2015. The Conference adopted the Committee's recommendation.

Stratified Pay Caps. In March 2010, the Judicial Conference adopted stratified pay caps for circuit and court unit executives under the optional pay policy should the salary of a district judge increase (other than through anticipated annual ECI-based pay adjustments) (JCUS-MAR 10, p. 19). Following the pay adjustment received by district judges in December 2013, the stratified pay caps have had the effect of suppressing locality pay for some court unit executives in higher-cost areas, which has created an inequity in pay among court unit executives. On recommendation of the Committee, the Judicial Conference agreed to eliminate the stratified pay caps and maintain the lesser of EX-I or the salary of a district judge as the locality pay cap to be applied to circuit and court unit executive pay at all grade levels, effective September 21, 2015.

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## **PAY-SETTING POLICY FOR PROMOTION OF INTERNAL APPLICANTS**

Variable Promotion Percentage Rate. Since March 2010, the Court Personnel System (CPS) promotion policy has provided that court unit executives must establish a single CPS promotion percentage rate between one and six percent to be applied to all promotions in a fiscal year (JCUS-MAR 10, p. 20; *Guide*, Vol. 12, Ch. 6, § 645.40.20). The Committee on Judicial Resources recommended that the Conference amend this policy to allow court units the additional flexibility to determine the appropriate percentage rate from a range of one to six percent for each individual CPS promotion action. Permitting court units to adjust the promotion percentage rate based on the needs at the time of recruitment would provide greater flexibility to meet local business needs and to consider other factors such as the nature of the position, internal equity, and the selectees' qualifications. The Conference adopted the Committee's recommendation.

Full Performance Range. If an external applicant is selected for a vacancy, the CPS pay-setting policy provides the appointing officer with the discretion to set pay anywhere within the full performance range (Steps 26 to 61) where that applicant has unusually high or unique qualifications or there is a special need for the applicant's services. *Guide*, Vol. 12, Ch. 6, § 640. Noting that such authority was not available for internal candidates upon

promotion, the Committee recommended that the Judicial Conference modify the CPS pay-setting-upon-promotion policy for internal applicants to allow courts to set pay anywhere above the first step of the full performance range (Steps 26 to 61) when the employee has unusually high or unique qualifications or there is a special need for an applicant's services. The Conference adopted the Committee's recommendation.

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### **STAFFING FORMULAS FOR PROBATION AND PRETRIAL SERVICES OFFICES**

On recommendation of the Committee on Judicial Resources, in consultation with the Committee on Criminal Law, the Judicial Conference approved new staffing formulas for the probation and pretrial services offices, with a modification for the southwest border districts to address the high volume of cases managed by those districts. The modification for the probation offices in the southwest border districts provides a total of 15 full-time equivalent (FTE) positions, in lieu of using a constant for the presentence report factor within the formulas, allocated as follows: 5.1 FTEs in the Southern District of Texas, 4.1 FTEs in the Western District of Texas, 2.0 FTEs in the District of New Mexico, 2.7 FTEs in the District of Arizona, and 1.1 FTEs in the Southern District of California.

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### **STAFFING FORMULAS FOR FEDERAL DEFENDER ORGANIZATIONS**

The Committee on Judicial Resources, in consultation with the Committee on Defender Services, developed the first staffing formulas for the traditional and capital habeas units of the federal defender organizations (FDOs), which include federal public defender organizations (FPDOs) and community defender organizations (CDOs). After collecting extensive data and obtaining substantial input from the defender services community, the Committee proposed a circuit-based set of formulas for traditional FDOs, with appropriate exceptions for specific metropolitan locations, unique statistical outliers, and most southwest border offices. A single formula was proposed for the capital habeas units. On recommendation of the Committee, the Judicial Conference approved the following:

- a. The staffing formulas for the judiciary's traditional and capital habeas units of the FDOs;



- b. A phased implementation schedule that allocates 100 percent of the aggregate increase in full-time equivalent (FTE) positions supported by the staffing formulas (288.8 FTEs), by the end of FY 2017;
- c. The use of rolling five-year averages for weighted case openings, without severity codes, as determined by the 2014 RAND Corporation study of federal defender case weights and filings;
- d. A two-year phased initial implementation period for any necessary FDO terminations resulting from staffing formula implementation; and
- e. The use of a two-year stabilization period requiring two consecutive years of increase or decrease in five-year weighted case openings to require increases or decreases in FDO staffing levels.

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## **VOLUNTEER SERVICES**

In September 2014, the Judicial Conference approved a comprehensive policy on the use of volunteer services in the courts (JCUS-SEP 14, pp. 22-24). The policy was not applied to FDOs to allow time to consider the unique role volunteers played in those organizations. At this session, after consulting with the Committee on Defender Services, the Committee on Judicial Resources recommended, and the Judicial Conference approved, amending the policy on volunteer services to include volunteers in federal public defender offices as set forth below (new language underlined, deleted language struck through):

- a. A volunteer arrangement in a court or federal public defender organization must focus, either exclusively or primarily, on providing an educational experience for the volunteer. Any functions for which specific statutory authority exists to accept volunteer services (e.g., volunteer probation officers under 18 U.S.C. § 3602(a) or individuals appointed to preside over proceedings under Federal Rule of Appellate Procedure 33) are excluded from this educational experience requirement. Formal pro bono programs in courts of appeals and district courts are ~~also~~ excluded. Volunteer professionals and volunteers paid from an outside source in federal public defender organizations are also excluded.
- b. A volunteer may provide no more than 2,080 hours of voluntary service to the courts and federal public defender organizations. Any functions for which specific statutory authority exists to accept volunteer services

(e.g., volunteer probation officers under 18 U.S.C. § 3602(a) or individuals appointed to preside over proceedings under Federal Rule of Appellate Procedure 33) are excluded from this time limitation. Volunteer professionals and volunteers paid from an outside source in federal public defender organizations are also excluded.

- c. Courts and federal public defender organizations may not accept volunteer services from individuals related to judges or a public official of the court, consistent with the limitation on the employment of certain relatives of a judge in 28 U.S.C. § 458(a)(1) and the limitation on the employment of certain relatives of a public official in 5 U.S.C. § 3110(a)-(c), to avoid possible perceptions of favoritism.
- d. Existing conflict of interest rules and other related ethics guidance apply to volunteers and courts and federal public defender organizations when accepting services from volunteers.

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## COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that it submitted to the Committee on the Budget a FY 2017 budget request for programs under the Judicial Resources Committee’s jurisdiction that was equivalent to a 2.0 percent increase over the FY 2016 baseline and that would result in 11,720 full-time equivalent positions for court staff under its jurisdiction. The Committee adopted a schedule for upcoming work measurement studies and received reports on the Online System for Clerkship Application and Review (OSCAR) program and the Federal Judicial Center’s district court case weighting study. The Committee agreed to consider proposed new case weights for district courts at its December 2015 meeting.

## COMMITTEE ON JUDICIAL SECURITY

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### COMMITTEE ACTIVITIES

The Committee on Judicial Security reported that it discussed steps needed to improve and update the Physical Access Control Systems (PACS) in courthouses nationwide. The Committee also discussed the process by which the General Services Administration conducts background checks for contract workers who access restricted judiciary space. Finally, the Committee met with L. Eric Patterson, Director of the Federal Protective Service, who shared

his goals for the agency, which included developing stronger relationships and lines of communications with the federal judiciary.

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

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### **RECALL REGULATIONS**

On recommendation of the Committee, the Judicial Conference amended the magistrate judge ad hoc and extended service recall regulations, *Guide*, Vol. 3, Chs. 11 and 12, to increase their clarity and make them more consistent with the recall regulations for bankruptcy judges, where appropriate. The Conference also delegated to the Magistrate Judges Committee the authority to make non-substantive, technical, and conforming changes to the magistrate judge recall regulations.

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### **SELECTION AND APPOINTMENT REGULATIONS**

On recommendation of the Committee on the Administration of the Magistrate Judges System, the Judicial Conference amended its regulations establishing standards and procedures for the selection and appointment of magistrate judges (*Guide*, Vol. 3, Ch. 4, § 420) to, among other things, remove reference to a statutory conflict that has since been resolved, make clear that applicants must personally submit their applications, and provide that courts must include information in the public notice for appointment of a new magistrate judge that magistrate judges are subject to financial disclosure filing requirements pursuant to the Ethics in Government Act of 1978. The Conference also amended the sample public notice and delegated to the Committee the authority to make non-substantive, technical, and conforming changes to the magistrate judge selection and appointment regulations.

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

After considering the recommendations of the Committee on the Administration of the Magistrate Judges System and the views of the Administrative Office, the district courts, and the judicial councils of the circuits, the Judicial Conference agreed to authorize (a) the conversion of the part-time magistrate judge position at Wichita Falls in the Northern District of

Texas to a full-time magistrate judge position designated as Wichita Falls or Fort Worth, upon retirement of the part-time magistrate judge at Wichita Falls; and (b) an additional full-time magistrate judge position at Denver in the District of Colorado.

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## **ACCELERATED FUNDING**

On recommendation of the Committee, the Conference agreed to designate for accelerated funding, effective April 1, 2016, the new full-time magistrate judge positions at Wichita Falls or Fort Worth in the Northern District of Texas and at Denver in the District of Colorado.

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## **COMMITTEE ACTIVITIES**

The Committee reported that after consideration of 11 cyclical district-wide magistrate judge survey reports conducted by the Administrative Office, it determined not to recommend any changes in the number, locations, salaries, or arrangements of the magistrate judge positions in those district courts. Pursuant to Judicial Conference policy regarding the review of magistrate judge position vacancies (JCUS-SEP 04, p. 26), for the period between its December 2014 and June 2015 meetings, the Committee, through its chair, approved filling 24 full-time magistrate judge position vacancies and two part-time magistrate judge position vacancies in 24 courts. At its June 2015 meeting, the full Committee considered and approved requests to fill two magistrate judge position vacancies. The Committee also considered requests from ten courts for the recall or extension of recall of ten retired magistrate judges.

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

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### **FEDERAL RULES OF APPELLATE PROCEDURE**

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Appellate Rules 4 (Appeal as of Right—When Taken), 5 (Appeal by Permission), 21 (Writs of Mandamus and Prohibition, and Other Extraordinary Writs), 25 (Filing and Service), 26 (Computing and Extending Time), 27 (Motions), 28 (Briefs), 28.1 (Cross-Appeals), 29 (Brief of an Amicus Curiae), 32 (Form of Briefs, Appendices and Other Papers), 35 (En Banc Determination), and 40 (Petition for Panel

Rehearing), and to Forms 1 (Notice of Appeal to a Court of Appeals From a Judgment or Order of a District Court), 5 (Notice of Appeal to a Court of Appeals From a Judgment or Order of a District Court or a Bankruptcy Appellate Panel), and 6 (Certificate of Compliance With Rule 32(a)), and a proposed new Form 7 (Declaration of Inmate Filing), together with Committee Notes explaining their purpose and intent. The Conference approved the proposed amendments and new form and agreed to transmit them 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.

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## **FEDERAL RULES OF BANKRUPTCY PROCEDURE**

Rules. The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Bankruptcy Rules 1010 (Service of Involuntary Petition and Summons; Petition for Recognition of a Foreign Nonmain Proceeding), 1011 (Responsive Pleading or Motion in Involuntary and Cross Border Cases), 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), 3002.1 (Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence), and 9006(f) (Computing and Extending Time; Time for Motion Papers), and a proposed new Rule 1012 (Responsive Pleading in Cross-Border Cases), together with Committee Notes explaining their purpose and intent. The Conference approved the proposed amendments and new rule and agreed to transmit them 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.

Forms. The Committee submitted to the Conference proposed revisions to Official Bankruptcy Forms 1 (Voluntary Petition), 2 (Declaration under Penalty of Perjury on Behalf of a Corporation or Partnership), 3A (Application for Individuals to Pay the Filing Fee in Installments), 3B (Application to Have the Chapter 7 Filing Fee Waived), 4 (List of Creditors Holding 20 Largest Unsecured Claims), 5 (Involuntary Petition), 6 Summary (Summary of Schedules), 6A (Schedule A-Real Property), 6B (Schedule B-Personal Property), 6C (Schedule C-Property Claimed as Exempt), 6D (Schedule D-Creditors Holding Secured Claims), 6E (Schedule E-Creditors Holding Unsecured Priority Claims), 6F (Schedule F-Creditors Holding Unsecured Nonpriority Claims), 6G (Schedule G-Executory Contracts and Unexpired Leases), 6H (Schedule H-Codebtors), 6I (Schedule I: Your Income), 6J

(Schedule J: Your Expenses), 6 Declaration (Declaration Concerning Debtor's Schedules), 7 (Statement of Financial Affairs), 8 (Chapter 7 Individual Debtor's Statement of Intention), 9A (Chapter 7 Individual or Joint Debtor No Asset Case), 9B (Chapter 7 Corporation/Partnership No Asset Case), 9C (Chapter 7 Individual or Joint Debtor Asset Case), 9D (Chapter 7 Corporation/Partnership Asset Case), 9E (Chapter 11 Individual or Joint Debtor Case), 9E (Alt.)(Chapter 11 Individual or Joint Debtor Case), 9F (Chapter 11 Corporation/Partnership Case), 9F (Alt.)(Chapter 11 Corporation/Partnership Case), 9G (Chapter 12 Individual or Joint Debtor Family Farmer or Family Fisherman), 9H (Chapter 12 Corporation/Partnership Family Farmer or Family Fisherman), 9I (Chapter 13 Case), 10 (Proof of Claim), 10A (Mortgage Proof of Claim Attachment), 10S-1 Notice of Mortgage Payment Change), 10S-2 (Notice of Postpetition Mortgage Fees, Expenses, and Charges), 12 (Order and Notice for Hearing on Disclosure Statement), 13 (Order Approving Disclosure Statement and Fixing Time for Filing Acceptances or Rejections of Plan, Combined with Notice Thereof), 14 (Class [ / ] Ballot for Accepting or Rejecting Plan of Reorganization), 15 (Order Confirming Plan), 16A (Caption (Full)), 16B (Caption (Short Title)), 16D (Caption for Use in Adversary Proceeding), 17A (Notice of Appeal and Statement of Election), 17B (Optional Appellee Statement of Election to Proceed in District Court), 17C (Certificate of Compliance with Rule 8015(a)(7)(B) or 8016(d)(2)), 18 (Discharge of Debtor), 19 (Declaration and Signature of Non-Attorney Bankruptcy Petition Preparer), 21 (Statement of Social-Security Number(s) or Individual Taxpayer-Identification Number(s) (ITIN(s)), 22A-1 (Chapter 7 Statement of your Current Monthly Income), 22A-1 Supp (Statement of Exemption from Presumption of Abuse Under §707(b)(2)), 22A-2 (Chapter 7 Means Test Calculation), 22B (Statement of Current Monthly Income), 22C-1 (Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period), 22C-2 (Chapter 13 Calculation of Your Disposable Income), 23 (Debtor's Certification of Completion of Postpetition Instructional Course Concerning Personal Financial Management), 24 (Certification to Court of Appeals by All Parties), and 27 (Reaffirmation Agreement Cover Sheet), as renumbered in the accompanying Modernized Official Forms Numbering Conversion Chart, and the abrogation of Official Forms 11A (General Power of Attorney) and 11B (Special Power of Attorney).

The Committee recommended that the revisions and abrogation take effect on December 1, 2015, and that they govern in all proceedings in bankruptcy cases thereafter commenced and, insofar as just and practicable, all proceedings then pending, except that the following forms in effect on November 30, 2015, remain Official Forms until December 1, 2017, in the United States Bankruptcy Courts for the Central District of California, the

District of New Jersey, and the District of New Mexico, only for use by pro se debtors who initiate a chapter 7 case by using the court’s Electronic Self-Representation system: Official Form 1, Official Forms 6Sum, 6A-J and declaration, Official Form 7; Official Form 8; and Official Forms 22A-1, 22A-1Supp, and 22A-2. The Conference adopted the Committee’s recommendations.

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## **FEDERAL RULES OF CIVIL PROCEDURE**

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Civil Rules 4 (Summons), 6 (Computing and Extending Time; Time for Motion Papers), and 82 (Jurisdiction and Venue Unaffected), together with Committee Notes explaining their purpose and intent. The Conference approved the proposed amendments and agreed to transmit them 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.

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## **FEDERAL RULES OF CRIMINAL PROCEDURE**

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Criminal Rules 4 (Arrest Warrant or Summons on a Complaint), 41 (Search and Seizure), and 45 (Computing and Extending Time), together with Committee Notes explaining their purpose and intent. The Conference approved the proposed amendments and agreed to transmit them 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.

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## **COMMITTEE ACTIVITIES**

The Committee on Rules of Practice and Procedure reported that it approved for publication for public comment proposed amendments to Bankruptcy Rule 1006(b)(1), the rule governing payment of the bankruptcy filing fee in installments, and Evidence Rule 902, the rule on self-authentication. Also approved for publication for public comment is a proposal to abrogate Evidence Rule 803(16), the hearsay exception for “ancient documents.” The rules were published on August 14, 2015, along with a previously approved proposed amendment to Bankruptcy Rule 1001, the

bankruptcy counterpart to Civil Rule 1. The comment period closes on February 16, 2016.

## COMMITTEE ON SPACE AND FACILITIES

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### ***FIVE-YEAR COURTHOUSE PROJECT PLAN***

Each year the Judicial Conference approves a *Five-Year Courthouse Project Plan* that lists the judiciary's courthouse construction priorities for the upcoming fiscal year and four out-years and transmits it to Congress, the General Services Administration (GSA) and the Office of Management and Budget as part of the judiciary's capital planning process. The methodology used by the judiciary for placing projects on the *Five-Year Plan* has been closely scrutinized by Congress and the Government Accountability Office (GAO), and several recommendations have been made for its improvement. To better manage stakeholder expectations, provide GSA with sufficient certainty to proceed with capital planning, and respond to congressional inquiries and GAO recommendations, the Committee recommended, and the Judicial Conference approved, a change in the name and format of, and the methodology used to develop, the courthouse construction plan, and approved the resulting *Federal Judiciary Courthouse Project Priorities (CPP)*. Under the new format, Part I of the *CPP* consists of current-year courthouse construction priorities that are included in the annual budget submission. The priority of a project on Part I is maintained until it is fully funded. All out-year projects are placed on Part II of the *CPP*, and prioritization of these projects will be updated annually based on a projects urgency evaluation score developed as part of the asset management planning process.

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

As a cost-containment measure, the Western District of North Carolina has been operating a regional urinalysis testing lab in leased space that is used by the probation offices in the Western, Middle and Eastern Districts of North Carolina, and will be used in the near future, or is being considered for use, by other districts in the region. The Western District of North Carolina requested an exception to the *U.S. Courts Design Guide* standard for probation office urinalysis testing labs, which limits such labs to 200 square feet, to construct a regional urinalysis testing lab of 1,214 square feet in the proposed new Charlotte, North Carolina, federal courthouse annex project. On



recommendation of the Committee, the Judicial Conference approved the exception.

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## COMMITTEE ACTIVITIES

The Committee on Space and Facilities reported that it was updated on the judiciary's space reduction efforts and that while over a third of the target has been achieved, a considerable amount of space still must be reduced. The Committee encouraged circuits to contact Administrative Office staff and the Committee if assistance is needed. The Committee was also presented with a final report on the Service Validation Initiative, a joint effort of the federal judiciary and the GSA to improve the quality of services that GSA provides to the courts. The Committee and GSA are pleased with the unprecedented collaboration between the two branches of government that led to the final report, but recognize that widespread communication about the Initiative and careful implementation of its recommendations are critical to its success.

## 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