

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

**March 17, 2009**

The Judicial Conference of the United States convened in Washington, D.C., on March 17, 2009, 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 Sandra L. Lynch  
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 Harvey Bartle III,  
Eastern District of Pennsylvania

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:

Judge Sidney R. Thomas<sup>1</sup>  
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

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<sup>1</sup>Designated by the Chief Justice.

District of Columbia Circuit:

Chief Judge David Bryan Sentelle  
Chief Judge Royce C. Lamberth,  
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 Bobby R. Baldock, Julia Smith Gibbons, Roger L. Gregory, Michael S. Kanne, M. Margaret McKeown, Carl E. Stewart, Richard C. Tallman, and John Walker, Jr., and District Judges Joseph F. Bataillon, Julie E. Carnes, Dennis M. Cavanaugh, Rosemary M. Collyer, Claire V. Eagan, Janet C. Hall, Robert L. Hinkle, D. Brock Hornby, Mark R. Kravitz, Barbara M.G. Lynn, Lee H. Rosenthal, Charles R. Simpson III, George Z. Singal, Laura Taylor Swain, and John R. Tunheim. Bankruptcy Judge David S. Kennedy and Magistrate Judge Robert B. Collings were also in attendance. Karen Greve Milton of the Second 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, Counselor to the Chief Justice. Scott Harris, Supreme Court Counsel, and the 2008-2009 Supreme Court Fellows also observed the Conference proceedings.

Attorney General Eric Holder addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice. Senators Patrick Leahy, Arlen Specter, and Jeff Sessions and Representatives Lamar S. Smith, Henry C. Johnson,

Jr., and Howard Coble 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 Julia Smith Gibbons, Chair of the Committee on the Budget, presented a report on judiciary appropriations and other budget matters.

## **EXECUTIVE COMMITTEE**

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### **CONFERENCE-APPROVED LEGISLATIVE PROPOSALS**

At the beginning of each biennial Congress, the committees of the Judicial Conference are asked to review all of the Conference-endorsed legislative proposals within their respective jurisdictions that have not been enacted to determine whether the judiciary should pursue or defer action on those proposals in the new Congress. At its February 2009 meeting, the Executive Committee reviewed the one outstanding legislative proposal within its own jurisdiction: establishment of a Judicial Conference Foundation to receive and expend private contributions in support of official programs (JCUS-MAR 95, p. 6). The Committee determined that there were existing mechanisms for accepting contributions to benefit the federal judicial system and there appeared to be no reason at this time for the Judicial Conference to have a separate foundation. On recommendation of the Committee, the Conference rescinded its March 1995 decision to pursue legislation to create such a foundation.

The Executive Committee also reviewed the determinations of other committees as to which legislative proposals within their jurisdictions should be pursued or deferred in the 111<sup>th</sup> Congress and decided to ask the Court Administration and Case Management Committee to revisit that committee's decision that the judiciary not pursue at this time a \$10 increase in the daily juror attendance fee, which has not been raised since 1990.

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## **BANKRUPTCY JUDGESHIPS**

Vacancies. In accordance with 28 U.S.C. § 152(b)(3), the Judicial Conference conducts a biennial review of all judicial districts to assess the continuing need for authorized bankruptcy judgeships. By December 31 of each even-numbered year, the Conference must report to Congress whether any authorized bankruptcy judgeship position should be eliminated when a vacancy exists by reason of resignation, retirement, removal or death. Based on the results of the 2008 biennial review, the Committee on the Administration of the Bankruptcy System recommended that the Judicial Conference (a) recommend to Congress that no statutorily approved bankruptcy judgeship be eliminated; and (b) advise the Second, Third, Eighth, and Ninth Circuit Judicial Councils, as appropriate, that they not fill bankruptcy judgeship vacancies in the Districts of New York (Eastern), Pennsylvania (Eastern), South Dakota, Iowa (Northern), Alaska, California (Northern), California (Central), and Oregon that may occur because of death, resignation, retirement, or removal, unless there is a demonstrated need to do so, particularly if the weighted caseload per authorized judgeship, calculated without such vacant judgeship, is less than 1,000 weighted filings per judgeship. In order to meet the statutory deadline for 2008, the Executive Committee agreed to act on an expedited basis on behalf of the Conference to approve the Bankruptcy Committee's recommendations.

Additional Judgeships. The Judicial Conference also conducts a biennial survey to evaluate requests for additional bankruptcy judgeships and transmits its recommendations to Congress, which establishes the number of bankruptcy judgeships in each judicial district (28 U.S.C. § 152(b)(2)). Having completed the 2008 biennial survey in all but a handful of courts, the Bankruptcy Committee asked the Executive Committee to act on behalf of the Conference on an expedited basis to approve and transmit recommendations for additional bankruptcy judgeships to Congress. The Bankruptcy Committee recommended, and the Executive Committee approved, seeking legislation to (a) convert 22 existing temporary bankruptcy judgeships to permanent status and extend the time period for one temporary judgeship for an additional five years, and (b) authorize nine additional bankruptcy judgeships in the following districts (the numbers in parentheses are the number of judgeships recommended): Eastern and Western Districts of Arkansas (1), Middle District of Florida (1), Northern District of Georgia (2), Eastern District of Michigan (3), Northern District of Mississippi (1), and District of Nevada (1).

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## MISCELLANEOUS ACTIONS

The Executive Committee —

- Approved on behalf of the Conference a recommendation of the Court Administration and Case Management Committee to extend a pilot program on electronic access to digital audio recordings by one year, through December 2009, so that data from up to five additional courts could be included;
- On recommendation of the Committee on Rules of Practice and Procedure, approved on behalf of the Conference two items to take effect on December 19, 2008 to implement the National Guard and Reservists Debt Relief Act of 2008, Pub. L. No. 110-438: (a) revisions to Official Bankruptcy Form 22A and (b) distribution to the district courts of proposed Interim Bankruptcy Rule 1007-I, with a recommendation that it be adopted through a local rule or standing order;
- Approved technical adjustments to the fiscal year 2010 budget request;
- Approved final fiscal year 2009 financial plans for the Salaries and Expenses, Defender Services, Court Security, and Fees of Jurors and Commissioners accounts;
- On recommendation of the Committee on Federal-State Jurisdiction and on behalf of the Conference, approved a resolution commemorating the 60th anniversary of the Conference of Chief Justices (CCJ) so that the resolution could be presented to the CCJ at its midyear meeting in January 2009;
- On recommendation of the Space and Facilities Committee, approved on behalf of the Conference a request from the Judicial Council of the District of Columbia Circuit for circuit rent budget Component B funding for replacement of existing building systems in the E. Barrett Prettyman Courthouse so that funding for the courthouse renovations project could be included in the General Services Administration Capital Construction Program for fiscal year 2011;
- In light of an increased weighted caseload in the Eastern District of Louisiana, agreed on behalf of the Conference and at the

recommendation of the Committee on Judicial Resources to rescind the Conference's March 2007 recommendation (JCUS-MAR 07, pp. 22-23) that a judgeship vacancy in that district not be filled;

- On recommendation of the Committee on the Administration of the Magistrate Judges System and on behalf of the Conference, authorized the addition of two full-time magistrate judge positions, one each for the Southern and Western Districts of Texas, and the conversion from part-time to full-time status of a magistrate judge position in the Northern District of California, along with accelerated funding for these positions, to address urgent needs in those districts;
- Approved several modifications to the sections of *The Judicial Conference of the United States and its Committees* addressing the use by Judicial Conference committees of subcommittees and approved a guide on the use of subcommittees for distribution to Conference committee chairs; and
- Approved on behalf of the Conference a resolution commemorating the fiftieth anniversary of the Judicial Conference's Committee on the Budget.

## COMMITTEE ON THE ADMINISTRATIVE OFFICE

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### COMMITTEE ACTIVITIES

The Committee on the Administrative Office reported that it reviewed and expressed support for various internal control and audit-related activities, including successful follow-up actions to address audit findings and plans to increase the frequency of audits of national accounts and programs if sufficient funding is available. In addition, it discussed a proposed strategic direction for the AO and ways the Committee could assist the AO in achieving its objectives. The Committee also proposed actions regarding wiretap reporting requirements.

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

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### **BANKRUPTCY ADMINISTRATOR PROGRAM**

Pursuant to statute, the Judicial Conference established bankruptcy administrators in the six judicial districts in Alabama and North Carolina as independent, non-judicial officers within the judicial branch to perform essentially the same trustee and estate administration oversight tasks as those performed by United States trustees in all other districts. There are some duties bankruptcy administrators cannot perform, however, because they do not have the same statutory authority as the United States trustees. To address this discrepancy, in March 1995, the Judicial Conference agreed to seek legislation that would authorize bankruptcy administrators to appoint trustees, examiners, and committees; fix compensation and percentage fees for standing trustees; and serve as trustees, when necessary (JCUS-MAR 95, pp. 11-12). The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 has since granted additional duties and powers to the United States trustees, not all of which were also granted to bankruptcy administrators. At this session, the Committee on the Administration of the Bankruptcy System recommended that, along with the authorities already being pursued, the Judicial Conference seek legislation that would authorize, as appropriate, the additional duties and powers for bankruptcy administrators conferred on the United States trustees in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. The Conference adopted the Committee's recommendation.

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### **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 from the First Circuit Judicial Council to redesignate the official duty station of Chief Bankruptcy Judge Henry J. Boroff from Worcester to Springfield in the District of Massachusetts and to delete Springfield as an additional place of holding court in that district.

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### **COMMITTEE ACTIVITIES**

The Committee on the Administration of the Bankruptcy System reported that it asked the Executive Committee to take emergency action on



behalf of the Judicial Conference to seek legislation regarding additional bankruptcy judgeships (*see supra* “Bankruptcy Judgeships,” p. 5). In addition, the Bankruptcy Committee recommended to the Committee on the Judicial Branch that legislation be sought to amend the Article III judges’ retirement program to allow credit for up to five years service as a magistrate judge or bankruptcy judge to meet the retirement program’s age and service requirements (*see also* “Committee Activities,” p. 31). The Committee also received updates on the work of its subcommittees on automation, estate administration, and long-range planning and status reports on the activities of the Advisory Committee on Bankruptcy Rules, the Administrative Office’s Bankruptcy Judges Advisory Group, and the Federal Judicial Center.

## **COMMITTEE ON THE BUDGET**

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### **COMMITTEE ACTIVITIES**

The Committee on the Budget reported that it continues to be concerned about the long-term financial health of the judiciary and spent considerable time discussing internal and external actions that will impact future budgets. The Committee plans to begin consideration of revisions to the Salaries and Expenses budget cap at its July 2009 meeting, given the changed fiscal climate, and will continue to encourage the program committees of the Judicial Conference to examine ways to contain costs. Other items that were discussed included the defender services budget, a proposed tenant alterations allotment formula, and the judiciary's long-range planning process.

## **COMMITTEE ON CODES OF CONDUCT**

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### **CODE OF CONDUCT FOR UNITED STATES JUDGES**

On recommendation of the Committee on Codes of Conduct, the Judicial Conference adopted a revised Code of Conduct for United States Judges, to be effective July 1, 2009. The revisions are intended to significantly improve and update the ethical guidance contained in the Code.

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## COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Judicial Conference in September 2008, the Committee received 44 new written inquiries and issued 40 written advisory responses. During this period, the average response time for requests was 16 days. In addition, the Committee chair received and responded to 93 informal inquiries from colleagues, and individual Committee members responded to 160 such inquiries.

## COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

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### USE OF INTERNET MATERIALS IN OPINIONS

Concerned that internet-based materials cited in judicial opinions could easily be changed or lost if not preserved, and that hyperlinks to commercial databases in opinions might create an appearance of preference for a particular service provider, the Committee on Court Administration and Case Management recommended that the Conference approve suggested practices for courts on the use of internet citations in judicial opinions. On recommendation of the Committee, the Judicial Conference approved the following:

- a. That all internet materials cited in final opinions be considered for preservation. Each judge, however, should retain the discretion to decide whether the specific cited resource should be captured and preserved.
- b. That the Administrative Office work with the Committee on Court Administration and Case Management to develop guidelines to assist judges in making the determination of which citations to preserve. The guidelines will discuss considerations for citation to internet resources, criteria for evaluating whether to capture cited internet resources, the process of capturing and maintaining cited internet resources, and the use of hyperlinks to commercial databases in final opinions.
- c. That chambers staff be involved in the process of preserving internet resources. This will ensure that cited internet resources are captured

and preserved at the time they are viewed and relied upon by the judge. While each chambers should determine the best method of adjusting its workflow to allow it to efficiently preserve the information it deems important, the suggested guidelines regarding the process of capturing and maintaining internet materials should be used to assist them in this process.

- d. That cited and preserved internet resources be made available on a non-fee basis, as is done with final opinions in PACER and on court websites.
- e. That the judiciary avoid including in final opinions working hyperlinks that lead directly to materials contained within commercial vendor databases to prevent a stated or implied endorsement or preferential treatment. To the extent that a court determines that such hyperlinks are to be used in opinions, it is recommended that an appropriate disclaimer be provided.

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## SEALED CASES

In order to provide the public with information regarding the existence of sealed district court cases, the Committee recommended that the Conference approve the inclusion, on CM/ECF-generated reports of cases, of the case number and generic name (e.g., “Sealed versus Sealed”) for each sealed case, and that individual courts determine the additional information about sealed cases (such as initials of the assigned judge, date of filing, or number of days the case has been pending) that should be made available to the public. The Conference adopted the Committee’s recommendation.

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## TRANSCRIPTS OF *VOIR DIRE* PROCEEDINGS

Noting that transcripts of *voir dire* proceedings often include personal, sensitive, or even embarrassing information, the Committee recommended that the Conference adopt guidance to the courts, to be used in both civil and criminal cases, on how information is elicited from prospective jurors during *voir dire*, when a *voir dire* transcript should be created, and if created, what kind of public access to the transcript should be provided. The Committee recommended that the guidance should —

- a. Ask courts to examine the manner in which they conduct *voir dire* proceedings in civil and criminal cases, and suggest that judges (1) inform jurors that they have the right to approach the bench to share personal information in an on-the-record *in camera* conference with the attorneys; and (2) make efforts to limit references on the record to potential jurors' names by assigning and using numbers for each juror;
- b. Remind courts of the existing judiciary policy that *voir dire* transcripts not be created unless specifically requested (*Guide to Judiciary Policies and Procedures*, Volume 6, Chapter 17, Section 17.5.3.a);
- c. Ask judges to balance, once a transcript is created, the right to public access to transcripts with the jurors' right to privacy – consistent with applicable circuit case law – and, only if appropriate, to seal the transcript; and
- d. Suggest that when sealing, judges consider whether to seal (1) the transcripts of the entire *voir dire* proceeding, which would be docketed separately from the rest of the trial transcript; or (2) the transcripts of the bench conferences with potential jurors, docketed separately from the rest of the transcripts of *voir dire*. The guidance should inform the courts, however, that this last option would require additional work for court reporters in creating and docketing a separate transcript of the bench conferences held during *voir dire*.

The Conference approved the Committee's recommendation.

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## RECORDS DISPOSITION SCHEDULES

Disposition of court records is controlled by records disposition schedules established jointly by the Judicial Conference and the National Archives and Records Administration (NARA) (28 U.S.C. § 457). As part of the judiciary's cost-containment initiative, the Committee on Court Administration and Case Management undertook a review of the records disposition schedules to determine how to reduce the fees the judiciary pays to NARA for storing records at regional Federal Records Centers (FRCs), which are interim storage facilities. Under current records disposition schedules, closed case files are generally held between 20 and 40 years at FRCs before they are either destroyed (if they are classified as temporary) or transferred to the National Archives (if they are classified as permanent), where no fees are

charged. Based on its review, and after receiving input from the Administrative Offices's appellate, bankruptcy and district clerks advisory groups, the Committee recommended that the Judicial Conference take the following actions to reduce or avoid storage time at the FRCs:

- a. Approve revisions to the records disposition schedules (to be endorsed by NARA) to provide that —
  - (1) courts of appeals permanent records be stored at the courthouse for up to one year after the case mandate has issued, or longer, as space permits, and then be transferred to the National Archives, bypassing storage time at the FRCs;
  - (2) temporary bankruptcy court records that currently have a 20-year FRC retention period be destroyed 15 years after case closing;
  - (3) bankruptcy court permanent records be stored at the courthouse for up to one year, or longer, as space permits, and then transferred to the National Archives, bypassing storage time at the FRCs;
  - (4) district court temporary records be destroyed 15 years after case closing; and
  - (5) district court permanent records be stored at the courthouse for up to one year, or longer, as space permits, and then transferred to the FRC, with transfer to the National Archives 15 years after case closing; and
- b. Through the Administrative Office, initiate action, as soon as these recommended changes have been approved, to apply the new disposition schedules to both permanent records currently at the FRCs, moving them to the National Archives, and temporary records currently stored at the FRCs.

The Conference adopted the Committee's recommendations.

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## **ATTORNEY ADMISSIONS**

On recommendation of the Committee, the Conference approved a policy requiring all courts to adopt the following two safeguards for verifying bar admission of attorneys seeking to be admitted to the court:

- a. An admission form that gathers sufficient information to allow the court to verify the state bar admission status of an applicant; and
- b. A procedure for verifying that the information on the forms is correct.

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## **COURT OF FEDERAL CLAIMS MISCELLANEOUS FEE SCHEDULE**

The Conference adopted a recommendation of the Committee to amend the Miscellaneous Fee Schedule for the Court of Federal Claims to include a fee of \$26 for the reproduction and sale of digital audio recordings. Such a fee is already included in the fee schedules for the appellate, district, and bankruptcy courts. The following paragraph will be added to the Court's fee schedule:

- (9) 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.

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## **COURTROOM SHARING**

In September 2008, the Judicial Conference directed the Court Administration and Case Management Committee, in consultation with the Committee on Space and Facilities, to develop appropriate regulations for the *U.S. Courts Design Guide* regarding the assignment of courtrooms for senior judges to reflect a policy that provides one courtroom for every two senior judges, but that includes a standard, objective, and narrowly tailored exemption policy for some senior judges with high caseloads (JCUS-SEP 08, p. 10). At this session, with the concurrence of the Space and Facilities Committee, the Court Administration and Case Management Committee

recommended, and the Conference adopted, the following courtroom sharing policy for senior judges:

**SHARING POLICY FOR SENIOR JUDGES IN  
NEW COURTHOUSE AND COURTROOM CONSTRUCTION**

In 2008, the Judicial Conference revised its courtroom allocation planning assumptions for senior judges. The policy provides one courtroom for every two senior district judges in new courtroom construction projects. In the event this sharing arrangement would cause substantial difficulty in the effective and efficient disposition of cases, however, a court, as a whole, with the approval of its circuit judicial council, may seek an individual exemption to this sharing policy from the Judicial Conference's Space and Facilities Committee. Such exemptions should be considered the exception and not the rule.

To be considered for an exemption, a court must first show a per-active-judge caseload that, absent special circumstances, meets, if not exceeds, the standard established by the Judicial Conference for the consideration of the creation of a new judgeship.\* Thereafter, a court should demonstrate that deviation from the basic sharing policy of one courtroom for two senior judges is necessary, based on the following:

- a. An assessment of the number and type of courtroom events anticipated to be handled by the senior judge that would indicate that sharing a courtroom would pose a significant burden on the effective and efficient management of that judge's docket.
- b. The estimated number of years the senior judge for whom an exemption is sought would need a courtroom after taking senior status, along with a description of how the district has historically utilized senior judges.
- c. An assessment of the current complement of courtrooms and their projected use in the facility and throughout the district, to reaffirm the necessity of constructing an additional courtroom.

- d. Whether a special proceedings, visiting judge, or other courtroom is available for the senior judge's use in the new or existing facility.

\* This standard is currently 430 weighted filings per authorized district judgeship assuming the addition of a judgeship. In courts with fewer than five authorized judgeships, the standard is 500 weighted filings per existing authorized district judgeship.

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## COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported that it considered the future of electronic case management systems in bankruptcy and district courts and indicated its strong support for the development of new systems. It also considered a number of issues relating to case management, including assistance to congested courts, streamlining case management procedures in capital habeas corpus cases, multidistrict litigation case management, and Civil Justice Reform Act report modifications. In addition, the Committee discussed the increased number of cases with national security-related issues in the federal courts and will work with the Department of Justice, as well as judges who have handled these cases, to develop case management guidance for the courts.

## COMMITTEE ON CRIMINAL LAW

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### STACKING OF FIREARMS COUNTS

Section 924(c) of title 18, United States Code, provides for additional mandatory minimum penalties of 5 to 10 years for the use or carrying of a firearm during the commission of a crime of violence or a drug trafficking offense (and 10 to 30 years for certain types of firearms). It also provides for an enhanced penalty of 25 years, or even life imprisonment in some circumstances, for a second or subsequent conviction under the same section. However, the statute does not specify whether the enhanced penalty is triggered by conviction of a second count in the same indictment (i.e., stacking of counts), or only if the prior conviction preceded commission of the second offense, as is true for some statutes. In the case of *Deal v. United States*, 508 U.S. 129 (1993), the Supreme Court determined that two § 924(c) counts in



one indictment can trigger the second or subsequent conviction portion of the statute, resulting in a substantially longer sentence. In light of the Conference's long-standing position that mandatory minimum sentences can produce results contrary to the interests of justice, and that stacking counts compounds that risk, the Committee on Criminal Law recommended that the Conference seek an amendment to 18 U.S.C. § 924(c) to preclude the stacking of counts and make clear that additional penalties apply only when, prior to the commission of such offense, one or more convictions of such person have become final. The Conference adopted the Committee's recommendation.

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## **COMMITTEE ACTIVITIES**

The Committee on Criminal Law reported that it endorsed the use of biometric authentication technology (i.e., fingerprint readers) for automated kiosks at which standardized data will be collected from defendants and offenders reporting to their probation or pretrial services officers. The Committee also discussed the status of guidelines to assist chief probation and pretrial services officers who wish to contract or expend funds for certain reentry services as authorized by the Second Chance Act of 2007 (Pub. L. No. 110-199) and the Judicial Administration and Technical Amendments Act of 2008 (Pub. L. No. 110-406). In addition, the Committee was briefed on the results of a Federal Judicial Center study of reentry programs within the federal judiciary, and considered the relationship between reentry programs and evidence-based practices.

## **COMMITTEE ON DEFENDER SERVICES**

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### **CASE COMPENSATION MAXIMUMS FOR SERVICE PROVIDERS OTHER THAN COUNSEL**

In March 1993, the Judicial Conference approved seeking legislation that would authorize the Conference to set case compensation maximums for Criminal Justice Act (CJA) panel attorneys and investigative, expert, and other service providers (JCUS-MAR 93, p. 27). In March 1995, the Conference reaffirmed its support for this position but also authorized seeking alternative legislative options for securing periodic adjustments of case maximums, including legislation authorizing the Conference to make immediate and periodic adjustments to the statutory maximums in proportion to CJA attorney compensation rate increases (JCUS-MAR 95, pp. 18-19). At this session, the

Committee recommended that the March 1995 position be revised to expand the options for measures by which case maximums for service providers other than counsel may be calculated. The Conference agreed to revise the position to state that immediate and automatic adjustments to the service provider maximums can be made by reference to measures such as increases to the attorney compensation rates, cumulative Employment Cost Index adjustments, or similar objective standard.

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## **COMMITTEE ACTIVITIES**

The Committee on Defender Services reported that it received a status report on the efforts of an ad hoc working group (which includes a liaison from the Committee) to address issues related to the housing of pretrial detainees in facilities located at significant distances from courthouses. In addition, in order to more effectively address workload associated with automated litigation support for federal defender organizations and Criminal Justice Act panel attorneys, the Committee authorized (subject to the availability of funding) the creation of two positions to supplement the efforts of the program's national litigation support administrator. The Committee also considered Defender Services-related legislative initiatives that it believes the judiciary should pursue in the 111<sup>th</sup> Congress.

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

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### **JURISDICTIONAL IMPROVEMENTS PROJECT**

In September 2003, the Judicial Conference agreed to seek legislation amending 28 U.S.C. § 1446(a) to replace the specific reference to Rule 11 of the Federal Rules of Civil Procedure with a generic reference to the rules governing pleadings and motions in civil actions in federal courts to avoid confusion should the numerical order of the rules ever be changed (JCUS-SEP 03, pp. 22-23). Noting that the recent restyling of the Civil Rules maintained the continuity of the numbers and that future revisions would likely respect the integrity of the numbering as well, the Committee recommended that the Conference rescind this position, and the Conference agreed.

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## **COMMITTEE ACTIVITIES**

The Committee on Federal-State Jurisdiction reported that it received a briefing from the Federal Judicial Center regarding prisoner litigation and discussed legislation introduced in the 110<sup>th</sup> Congress that would have amended provisions of the Prison Litigation Reform Act. The Committee also discussed ways the federal and state courts could improve coordination between the two court systems related to capital habeas corpus litigation. The Committee continued its discussion of efforts to begin a dialogue with local state-federal judicial councils to share information on issues of mutual interest. The Committee also discussed comments on the draft Federal Courts Jurisdiction and Venue Clarification Act that had been received from legal organizations and law professors.

## **COMMITTEE ON FINANCIAL DISCLOSURE**

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### **COMMITTEE ACTIVITIES**

The Committee on Financial Disclosure reported that it continues to enhance the financial disclosure report (FDR) software, and currently is overseeing development of a system for electronic filing and records management of financial disclosure reports. Analysis of the calendar year 2007 financial disclosure reports reflects that use of the new self-audit function in the FDR software improved the quality of the reports and reduced the volume of correspondence between the Committee and filers. As of January 5, 2009, the Committee had received 4,348 financial disclosure reports and certifications for calendar year 2007, including 1,329 reports and certifications from Supreme Court justices, Article III judges, and judicial officers of special courts; 366 reports from bankruptcy judges; 572 reports from magistrate judges; and 2,081 from judicial employees.

## **COMMITTEE ON INFORMATION TECHNOLOGY**

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### **COMMITTEE ACTIVITIES**

The Committee on Information Technology reported that it received information regarding, and expressed support for, plans to develop the next generation of the Case Management/Electronic Case Files (CM/ECF) systems

and urged that this initiative, as well as improvements to various public access systems, and continued courtroom technology allotments be kept in mind as future budget requests are developed. With respect to the Edwin L. Nelson Local Initiatives Program, the Committee made decisions on fiscal year 2009 grants, and discussed ongoing efforts to redesign the Ed's Place website so that judges, judicial assistants, clerks, and other non-technical staff could obtain information more easily on locally developed applications that meet their needs. The Committee also reviewed a draft set of guidelines that could serve as a basis for facilitating a more collaborative approach to shared application development and support in the judiciary, and discussed potential projects that could be used to test the concept.

## **COMMITTEE ON INTERCIRCUIT ASSIGNMENTS**

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### **COMMITTEE ACTIVITIES**

The Committee on Intercircuit Assignments reported that 97 intercircuit assignments were undertaken by 71 Article III judges from July 1, 2008 to December 31, 2008. During the full calendar year 2008, 176 intercircuit assignments were processed by the Committee and approved by the Chief Justice. To increase awareness and facilitate the use of visiting judges, the Committee continued to disseminate information about intercircuit assignments 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 rule of law and judicial reform activities throughout the world. The Committee also discussed its continued participation in the rule of law component of the Library of Congress' Open World Program for jurists from Russia, Ukraine, Azerbaijan, Georgia, Kyrgyzstan, Moldova, Tajikistan and Turkmenistan. In addition, the Committee reported on hosting foreign delegations of jurists and judicial personnel in relation to briefings at the Administrative Office of the United States Courts, activities with agencies in the executive branch, and other rule of law programs taking place in the United States.

## **COMMITTEE ON THE JUDICIAL BRANCH**

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### **JUDGES' TRAVEL REGULATIONS**

On recommendation of the Committee on the Judicial Branch, the Judicial Conference amended sections H.2.b. and H.2.c. of the Travel Regulations for United States Justices and Judges to clarify the circumstances under which judges are eligible for evacuation, safe haven, and other special allowances.

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### **COMMITTEE ACTIVITIES**

The Committee on the Judicial Branch reported that it continues to give high priority to securing automatic and annual cost-of-living salary adjustments for judges. The Committee also continues to devote considerable attention to benefits matters and to examining ways of improving communications with the political branches. In addition, the Committee continues to monitor the implementation of the Judicial Conference policy on privately reimbursed seminars.

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

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### **COMMITTEE ACTIVITIES**

The Committee on Judicial Conduct and Disability reported that it has chosen a methodology, and is now finalizing a plan, for screening of complaint-related orders to systematize its review of activity under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364. Furthermore, under the Committee's direction, two data-management measures, necessitated by last year's adoption of Rules for Judicial-Conduct and Judicial-Disability Proceedings, have been implemented: an electronic repository of the complaint-related documents that courts must now submit and new software for reporting statistics on complaints under the Act. The Committee continues to monitor action on Breyer Committee recommendations, oversee the preparation of various informational products, arrange for informational presentations to be given at programs for judges, and consider issues and inquiries regarding the Judicial Conduct and Disability Act and the Rules.

## COMMITTEE ON JUDICIAL RESOURCES

### ADDITIONAL ARTICLE III JUDGESHIPS

Additional Judgeships. The Committee on Judicial Resources considered requests and justifications for additional judgeships in the courts of appeals and the district courts as part of its 2009 biennial judgeship survey process. Based on its review, and after considering the views of the courts and the circuit councils, the Committee recommended that the Judicial Conference authorize transmittal to Congress of the following request: for the courts of appeals, the addition of nine permanent and three temporary judgeships, and for the district courts, the addition of 38 permanent and 13 temporary judgeships plus conversion to permanent status of five existing temporary judgeships and extension of one existing temporary judgeship for an additional five years. After discussion, the Conference adopted the Committee’s recommendations, agreeing to transmit the following request to Congress (“P” denotes permanent; “T” denotes temporary; “T/P” denotes conversion of temporary to permanent; “T/E” denotes extension of temporary):

#### COURTS OF APPEALS

First Circuit	1P
Second Circuit	2P
Third Circuit	1P, 1T
Sixth Circuit	1P
Eighth Circuit	1T
Ninth Circuit	4P, 1T

#### DISTRICT COURTS

New York (Eastern)	1P, 1T
New York (Southern)	1P, 1T
New York (Western)	1P
New Jersey	1P
South Carolina	1P
Virginia (Eastern)	1T
Texas (Eastern)	1P, 1 T/P
Texas (Southern)	2P
Texas (Western)	4P
Ohio (Northern)	1T/E
Indiana (Southern)	1P

Iowa (Northern)	1T
Minnesota	1P, 1T
Missouri (Eastern)	1T/P
Nebraska	1T
Arizona	1P, 1T, 1T/P
California (Northern)	4P, 1T
California (Eastern)	4P, 1T
California (Central)	4P, 1T
Idaho	1T
Oregon	1P
Washington (Western)	1P
Colorado	1P
Kansas*	1T/P
New Mexico	1P, 1T/P
Alabama (Middle)	1T
Florida (Middle)	4P, 1T
Florida (Southern)	3P

\* If the temporary judgeship lapses before it is converted, Congress would be asked for one additional permanent judgeship.

Judgeship Vacancies. As part of the biennial survey of judgeship needs, workloads in district and appellate courts with low weighted caseloads are reviewed for the purpose of determining whether to recommend to the President and Senate that an existing or future judgeship vacancy not be filled. On recommendation of the Committee, the Conference agreed to advise the President and the Senate that the existing judgeship vacancy in the District of Wyoming and the next judgeship vacancy occurring in the District of Massachusetts not be filled based on the consistently low weighted caseloads in these districts.

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**JUDICIARY SALARY PLAN**  
**INITIAL PAY SETTING**

The initial pay-setting rules for Court Personnel System (CPS) employees permit a court to set pay at any step within the full performance range of the appropriate classification level, at the discretion of the court, when an applicant has unusually high or unique qualifications and/or because of a special need of the court for the applicant's services. This flexibility can be applied to all candidates except for applicants from the federal judiciary,

who qualify only after a 90-day break in service. The initial pay-setting rules for non-chambers Judiciary Salary Plan (JSP) employees<sup>2</sup> and federal public defender organization graded positions are more complicated and place more constraints on the discretion of the court. On recommendation of the Committee, the Judicial Conference approved applying the CPS rules for initial pay setting, including the 90-day-break-in-service rule for federal judiciary applicants, to non-chambers JSP positions (excluding pro se, death penalty, and bankruptcy appellate panel law clerks) and graded federal defender organization employees, in lieu of the current salary matching rules. Pro se, death penalty, and bankruptcy appellate panel law clerks will continue to be subject to the current JSP salary matching rules.

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## **LAW CLERK QUALIFICATION REQUIREMENTS**

The current qualification standard for a law clerk to a federal judge permits granting credit for the time spent in a bar examination preparatory course, up to a maximum of six weeks, toward the one year of legal work experience that is needed to qualify for the JSP-12 grade level. Noting that a law clerk who successfully passes the bar examination through independent preparation is penalized and that there is no clear rationale for considering bar preparation as creditable experience in the practice of law, the Committee recommended that the Conference discontinue the practice of counting time spent in a bar examination preparatory course toward the legal work experience requirement for the JSP-12 grade level for law clerks. The Conference adopted the Committee's recommendation, to go into effect on August 31, 2009.

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## **UNIT EXECUTIVE/DEPUTY DESIGNEE POSITION**

In order to provide for overlap between incoming and outgoing unit executives and Type II deputies and thereby support the orderly transition of responsibilities, the Judicial Conference adopted a recommendation of the Committee to establish designee positions in the JSP subject to the following conditions:

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<sup>2</sup>These employees include unit executives, Type II deputies, court staff law clerks, and court interpreters.



- a. A designee position may be utilized for the selectee for either a unit executive or a Type II deputy position;
- b. A designee position is not applicable to, or available for, candidates who are being promoted within their current court units;
- c. A designee position should be established using decentralized funds. However, a unit may request supplemental funding for a period of up to 30 days for a designee position, if local funds are unavailable to fund the full period desired; and
- d. A designee position may be established for a maximum period of three months regardless of the source of funding.

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## **EMPLOYMENT OF RELATIVES**

In September 2007, the Judicial Conference amended the judiciary policy on step increases for CPS employees from one based primarily on longevity to one that, beginning October 2010, will permit step increases to be granted at the discretion of the supervisor (JCUS-SEP 07, p. 25). Noting that 5 U.S.C. § 3110(b) prohibits a public official from advancing or advocating a relative for advancement, the Committee recommended that the Conference also amend its policy regarding employment of relatives in courts and federal public defender organizations to provide the following with regard to CPS positions:

- a. Unit executives, managers, and supervisors may not approve a discretionary step increase or render a performance evaluation for any employee who is a relative of that unit executive, manager, or supervisor (applying the definition of "relative" in 5 U.S.C. § 3110(a)(3)); and
- b. For any prospective employment or organizational changes or actions, courts may not place or retain an employee in a position within the supervisory chain of a supervisor, manager, or unit executive who is a relative of the employee.

The Conference adopted the Committee's recommendations.

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## **RETIRED LAW ENFORCEMENT OFFICER RE-EMPLOYMENT**

Under Judicial Conference policy, a retired law enforcement officer may be appointed as a re-employed annuitant for a period of up to 18 months when it is clearly demonstrated that such re-employment is justified (JCUS-MAR 59, p. 295; JCUS-MAR 79, pp. 15-16). To address a rising trend to re-employ retired law enforcement officers for multiple 18-month periods, the Judicial Conference adopted a recommendation of the Committee to amend its policy regarding re-employment of annuitants to (a) make explicit that a retired law enforcement officer may be re-employed for only a single period for a maximum of 18 months, and (b) provide that all such re-employments must meet one of the following two criteria: (1) well-qualified candidates other than the retired law enforcement officer are not available (as evidenced by the results of a vacancy announcement); or (2) the experience, knowledge, or competencies of the retired law enforcement officer are critical to the court's ability to respond to an emergency.

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## **TELEWORK OFFICIAL DUTY STATION**

Under current policy set forth in the *Guide to Judiciary Policies and Procedures*, Vol. 1, Ch. 10, Subch. 1610.1, the court, chambers, court unit, or federal public defender organization is the official duty station for teleworking employees. The Committee recommended the policy be amended to provide that the official duty station of a teleworking employee would be the court/defender organization location only where the employee was required to report to that location at least once per week on a regular and recurring basis. The telework site would be the official duty station for employees who are not so required. The Committee recommended other changes to the telework policy, including those related to reimbursement for travel from the telework site to the employing court and relocations. After discussion, the Conference recommitted the recommendations to the Committee for further consideration.

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## **AWARD PROGRAMS**

Noting that some courts are looking for ways to recognize employee accomplishments without resorting to costly cash awards, the Committee recommended that the Conference amend its employee recognition program

policy with regard to providing or paying for meals at awards programs. The Conference adopted the Committee's recommendation to amend the policy as follows:

A court may use appropriated funds —

- a. For food and beverages (excluding alcohol) for an award ceremony as long as such expenditures are for the purpose of enhancing an award program and limited to reasonable amounts, not to exceed the dinner component of the meal and incidental expense allowance (under the Federal Travel Regulations) for the ceremony location, per employee attending the event;
- b. To provide a meal to an employee as an informal recognition award, either alone or in conjunction with other informal or formal recognition; and
- c. To pay the meal expenses of award nominees and their supervisors who are invited to attend award ceremonies sponsored by entities outside the judiciary.

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## **FITNESS/WELLNESS PROMOTION INCENTIVES**

Under 5 U.S.C. § 7901, government agencies may establish a health services program to promote and maintain the physical and mental fitness of employees. Many courts and federal defender organizations have sponsored fitness and wellness educational programs, such as smoking cessation, weight management, stress management, nutrition, walking clubs, and fitness activity challenges. Citing to potential beneficial effects of health promotion programs in the workplace, including enhanced employee productivity and reduced absenteeism, the Committee recommended that courts and federal defender organizations be authorized to use decentralized funds for the purchase of fitness/wellness-related items (limited to the Internal Revenue Service definition of *de minimis* fringe benefits) for employees who agree to participate or have participated in fitness/wellness activities, as allowed under 5 U.S.C. § 7901. The Conference adopted the Committee's recommendation.

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## **HUMAN RESOURCES MANAGEMENT INFORMATION SYSTEM**

The Human Resources Management Information System (HRMIS) has several applications that have recently been deployed or are in the process of being deployed that provide “self-service” tools for courts and federal public defender organization employees, making personnel records that had previously been available only in paper also available online. The Committee recommended that paper copies of personnel documents that are available online no longer be provided to courts, noting that universal use of online tools will generate significant cost savings. The Judicial Conference agreed that, effective six months after the HRMIS Electronic Official Personnel Folder (eOPF) application is fully deployed, paper copies of all documents filed in the eOPF, as well as leave and earnings statements, Payroll Certifying Officer reports, Notices of Health Premiums Due, Step Increase Certifications, Notifications of Leave Without Pay, and Personal Services for the National Courts reports, and any similar documents that are available online, will no longer be provided to courts, including active and senior judges, and federal public defender organizations.

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## **JUDGE-ORDERED TRANSCRIPTS**

Section 753(b) of title 28, United States Code, sets forth the duties and responsibilities of official court reporters, including the responsibility to provide certified transcripts without charge to a requesting judge. With regard to transcript requests from parties, section 753(f) provides that court reporters may charge and collect fees from parties ordering transcripts at rates prescribed by the court, subject to the approval of the Judicial Conference. The Conference has set maximum transcript rates based in part on whether the transcript is an original (currently \$3.65 per page for ordinary delivery, i.e., delivery within 30 days) or a copy (\$.90 per page for ordinary delivery). Questions have been raised as to whether the original or copy fee applies when a party requests a transcript that was originally produced at the request of a judge. Noting that providing a transcript to a judge is considered part of a reporter’s official duties for which the reporter is paid an annual salary, the Committee agreed that only one original transcript can be produced and that all subsequent orders for the same transcript are copies for which the lower fee would apply. On recommendation of the Committee, the Conference amended its transcript fee policy to make explicit that official court reporters

may charge only copy fees for transcripts provided to parties when the original transcript was produced at the request of a judge.

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## **COURT REPORTER TOUR OF DUTY**

In September 1987, the Judicial Conference adopted a policy that required a court that places some of its reporters on a regular tour of duty (i.e., established work hours) to place all reporters in the same location on regular tours of duty. The policy allowed courts for good and sufficient reasons, when approved by their judicial councils, to exempt any reporters on staff at the time of adoption of the policy (JCUS-SEP 87, p. 63). The Southern District of Iowa, which had already exempted one of its three court reporters in Des Moines as provided for in the policy, requested an additional exemption for a second reporter, the third reporter being on a regular tour of duty. The court has indicated that the exemption would be applied to the incumbent reporter only. On recommendation of the Committee, the Conference approved the exemption for the Southern District of Iowa at its Des Moines location from the Conference's September 1987 policy.

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## **LAW CLERK STUDENT LOANS**

On recommendation of the Committee, the Judicial Conference rescinded its March 2001 position to seek legislation deferring repayment of both principal and interest on federally insured educational loans for full-time chambers law clerks during clerkships, for a period not to exceed three years of service (JCUS-MAR 01, pp. 26-27). The underlying statute providing for deferral of student loan interest has been substantially amended to eliminate occupation-specific deferrals.

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## **COMMITTEE ACTIVITIES**

The Committee on Judicial Resources reported that it was provided with a detailed briefing on the results of an executive compensation study and will receive an analysis of the pros and cons of the recommendations in the report from a working group of judges and unit executives established to assist the Committee in evaluating the report. The Committee deferred action again on a revised pay structure for court reporters, and asked the Administrative Office to provide additional information, including a single recommended proposal. The Committee chair emphasized that increased diversity of the

judiciary's workforce is one of the most important issues confronting the Committee, and its ad hoc subcommittee on diversity presented an overview of its efforts since the last Committee meeting.

## **COMMITTEE ON JUDICIAL SECURITY**

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### **COMMITTEE ACTIVITIES**

The Committee on Judicial Security reported that it had in-depth discussions regarding its role in overseeing the formulation and execution of the court security budget. The Committee also discussed its concerns regarding the amount of personal information about judges that is posted on courts' official external websites. The Committee will offer guidance to courts and judges on posting biographical information on court-specific websites.

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

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### **WAIVER OF MAGISTRATE JUDGE APPLICANT REQUIREMENT**

On recommendation of the Committee on the Administration of the Magistrate Judges System, the Judicial Conference agreed to grant a request from the Western District of Wisconsin for a waiver of the two-year limit on credit for law clerk service that may be used toward the five-year active practice of law requirement for magistrate judge applicants under section 1.01(b)(4) 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. The waiver will allow the incumbent clerk of court in that district to serve as the clerk of court/magistrate judge.

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### **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 relevant circuits, the Judicial Conference determined to —

- a. Discontinue the clerk of court/magistrate judge position at Shreveport in the Western District of Louisiana effective March 15, 2009, the date of the incumbent’s retirement, and make no other change in the number, locations, or arrangements of the magistrate judge positions in that district.
- b. Make no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the following courts: Eastern District of North Carolina, Eastern District of Virginia, Eastern District of Arkansas, District of Montana, District of Nevada, Northern District of Oklahoma, and Southern District of Alabama.

*See also supra*, “Miscellaneous Actions,” p. 7.

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## COMMITTEE ACTIVITIES

The Committee on the Administration of the Magistrate Judges System reported that because of an immediate need for three new full-time magistrate judge positions in the Southern and Western Districts of Texas and the Northern District of California, the Executive Committee acted on behalf of the Judicial Conference on an expedited basis to authorize those positions as well as accelerated funding, effective immediately (*see supra*, “Miscellaneous Actions,” p. 7). 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 2008 and December 2008 meetings the Committee chair approved filling six full-time magistrate judge position vacancies. At its December 2008 meeting, the full Committee approved filling four magistrate judge position vacancies. The Committee also agreed to reiterate its support for pursuing a proposal to provide Article III retirement credit for service as a magistrate judge or bankruptcy judge (*see also* “Committee Activities,” p. 9).

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

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### **COMMITTEE ACTIVITIES**

The Committee on Rules of Practice and Procedure reported that it approved for publication a proposed amendment to Bankruptcy Rule 6003 and proposed style amendments to Evidence Rules 501-706, although publication of the proposed restyled Evidence Rules will be deferred until the entire set of Federal Rules of Evidence has been restyled. The Advisory Committees on Appellate, Bankruptcy, Civil, Criminal, and Evidence Rules are reviewing comments from the public submitted on amendments proposed in August 2008 to their respective sets of rules. The proposals include amendments to Civil Rule 26 on the discovery of expert witnesses and Civil Rule 56 on summary judgment. The Advisory Committee on Civil Rules held three public hearings on those proposed amendments and heard testimony from over 50 witnesses.

## **COMMITTEE ON SPACE AND FACILITIES**

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### **FIVE-YEAR COURTHOUSE PROJECT PLAN FOR FYs 2010-2014**

On recommendation of the Committee on Space and Facilities, the Judicial Conference approved the Five-Year Courthouse Project Plan for FYs 2010-2014, which, with one exception, moves the projects from the previous five-year plan up by one year. The exception is the deletion of the Cedar Rapids, Iowa project, which was declared a judicial space emergency in 2008 as a result of significant flood damage, and has already been funded by Congress.

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### **TENANT ALTERATIONS FORMULA**

The Committee on Space and Facilities, in consultation with the Budget Committee, recommended, and the Judicial Conference approved, a tenant alterations formula that uses rentable square footage (weighted at 50 percent) and authorized staff (weighted at 50 percent) to determine tenant alterations requirements. This formula is intended to provide a more accurate representation of the courts' tenant alterations requirements.



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## **CIRCUIT RENT BUDGET PROGRAM - COMPONENT B PROJECTS**

The circuit rent budget program, which was approved by the Judicial Conference in September 2007 (JCUS-SEP 07, pp. 36-37), divides the judiciary's rent requirements into three components (A, B, and C). "Component B" projects, which include all newly constructed courthouses or annexes, build-to-suit lease projects, requests for GSA feasibility studies, and prospectus-level repair and alteration projects, generally require Judicial Conference approval.<sup>3</sup> At this session, the Conference took the following actions with regard to Component B projects.

Feasibility Studies. After conducting an urgency evaluation of the 33 projects that were subject to the 2004 two-year moratorium on courtroom construction (JCUS-SEP 04, pp. 34-35), the Committee recommended that the Conference approve GSA feasibility studies for the following four projects, which were identified as the most urgent: Philadelphia, Pennsylvania; St. Thomas, U.S. Virgin Islands; Des Moines, Iowa; and Chattanooga, Tennessee. The Conference approved the Committee's recommendation.

Build-to-Suit Lease Project. On recommendation of the Committee, the Judicial Conference approved a lease-construct courthouse for Clarksburg, West Virginia, subject to the conditions set forth below, at a rental cost not to exceed the rent cap to be established by the Space and Facilities Committee —

- a. The district must commit in writing that the replacement judge for the current active district judge in Clarksburg, who is expected to take senior status in 2009, will be assigned to the Clarksburg division;
- b. The space program will provide for two courtrooms and three chambers;

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<sup>3</sup>Necessary chambers and courtrooms for judges taking senior status, replacement judges, and new judgeships are also "Component B" projects, but require only Committee approval.

- c. The court recognizes that the USMS will in all likelihood face difficulty in obtaining the funds to build out detention cells in the project;
- d. No circuit rent budget Component B funding will be provided for an interim space solution in the existing building in the time before the lease-construct project is delivered; and
- e. The lease-construct procurement will adhere to the new process to be piloted in Lancaster, Pennsylvania.

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### COMMITTEE ACTIVITIES

The Committee on Space and Facilities reported that it discussed the status of development of a repair and alterations appendix to the *U.S. Courts Design Guide* to be used to provide greater clarity in renovation projects. A draft of the appendix will be presented to the Committee at its June 2009 meeting. The Committee also discussed lease-construct courthouses and how changes in the method used by GSA to procure these buildings could prove beneficial to the judiciary.

### 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