

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

September 15, 2009

The Judicial Conference of the United States convened in Washington, D.C., on September 15, 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
Chief Judge Mary M. Lisi,
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 William B. Traxler, Jr.
Chief Judge James P. Jones,
Western District of Virginia

Fifth Circuit:

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

Sixth Circuit:

Chief Judge Alice M. Batchelder
Judge Solomon Oliver, Jr.,
Northern 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 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 Joel F. Dubina
Judge Myron H. Thompson,
Middle District of Alabama

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, M. Margaret McKeown, Carl E. Stewart, Richard C. Tallman, and John Walker, Jr., and District Judges Joseph F. Bataillon, Dennis M. Cavanaugh, Claire V. Eagan, Janet C. Hall, Robert L. Hinkle, D. Brock Hornby, Mark R. Kravitz, Barbara M.G. Lynn, J. Frederick Motz, 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, and Karen 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, Director, and John S. Cooke, Deputy Director, Federal Judicial Center, and District Judge Ricardo H. Hinojosa, Acting Chair, and Kenneth P. Cohen, 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. The 2009-2010 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, Jeff Sessions, and Sheldon Whitehouse and Representatives John Conyers, Jr., and Lamar S. Smith spoke on matters pending in Congress of interest to the Conference.

REPORTS

Mr. Duff reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office (AO). Judge Rothstein spoke to the Conference about Federal Judicial Center (FJC) programs, and Judge Hinojosa reported on United States Sentencing Commission activities. Judge Gibbons, Chair of the Committee on the Budget, presented a report on judiciary appropriations and other budget matters.

EXECUTIVE COMMITTEE

RESOLUTION

The Judicial Conference approved a recommendation of the Executive Committee to adopt the following resolution recognizing the substantial contributions made by the Judicial Conference committee chairs whose terms of service end in 2009:

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

HONORABLE ROGER L. GREGORY
Committee on the Administrative Office

HONORABLE JOHN R. TUNHEIM
Committee on Court Administration and Case Management

HONORABLE DENNIS M. CAVANAUGH
Committee on the Administration of the Magistrate Judges System

HONORABLE CARL E. STEWART
Advisory Committee on Appellate Rules

HONORABLE JOSEPH F. BATAILLON
Committee on Space and Facilities

Appointed as committee chairs by the Chief Justice of the United States, these outstanding jurists have played a vital role in the administration of the federal court system. These judges served with distinction as leaders of their Judicial Conference committees while, at the same time, continuing to perform their duties as judges in their own courts. They have set a standard of skilled leadership and earned our deep respect and sincere gratitude for their innumerable contributions. We acknowledge with appreciation their commitment and dedicated service to the Judicial Conference and to the entire federal judiciary.

UNITED STATES SENTENCING COMMISSION

The Executive Committee recommended, and the Judicial Conference approved by mail ballot, the following names of judges for presentation to the President for appointment, subject to the advice and consent of the Senate, to fill current and upcoming vacancies on the United States Sentencing Commission: Charles R. Breyer, Northern District of California; Claire V. Eagan, Northern District of Oklahoma; Ricardo S. Martinez, Western District of Washington; Lawrence L. Piersol, District of South Dakota; Patti D. Saris, District of Massachusetts; and Lawrence S. Stengel, Eastern District of Pennsylvania.

MISCELLANEOUS ACTIONS

The Executive Committee —

- On recommendation of the Committee on Court Administration and Case Management and the Committee on Information Technology and on behalf of the Conference, approved an annual report to Congress on court compliance with section 205 of the E-Government Act of 2002, authorized transmittal of that report to Congress as specified in the Act, and, because all courts are now in compliance with section 205, agreed that this would be the final report made to Congress under section 205;
- Pending final congressional action on the judiciary's appropriations for the next fiscal year, approved fiscal year 2010 interim financial plans for the Salaries and Expenses, Defender Services, Court Security, and

Fees of Jurors and Commissioners accounts, and endorsed a strategy for distributing court allotments among the court programs;

- Declined a request for an exception to Section B.3.a.(4) of the Travel Regulations for United States Justices and Judges to allow reimbursement of travel expenses for a magistrate judge from the Southern District of Florida to travel to Amsterdam, the Netherlands, to preside over depositions in a multidistrict litigation proceeding pending before him;
- On recommendation of the Committee on Court Administration and Case Management, approved on behalf of the Conference a request from the Judicial Panel on Multidistrict Litigation that electronic public access (EPA) fees established pursuant to 28 U.S.C. § 1932 be waived temporarily so that the Panel can provide electronic public access to docket sheets and other information of the Panel while a system for collecting EPA fees is being developed;
- Approved on behalf of the Conference the pursuit of four additional bankruptcy judgeships, one each in the Southern District of West Virginia, Northern District of Florida, Western District of North Carolina, and Eastern District of California, and the extension of one temporary judgeship in the Middle District of North Carolina, which, when added to those judgeships approved earlier in 2009 (JCUS-MAR 09, p. 5), results in a total request to Congress for 13 additional bankruptcy judgeships, 22 conversions from temporary to permanent, and two extensions of temporary bankruptcy judgeships;
- On recommendation of the Committee on the Administration of the Magistrate Judges System, approved on behalf of the Conference, two additional magistrate judge positions (along with associated funding) for the Eastern District of California, one at Sacramento and one at Fresno, to address the unrelenting growth in the district's prisoner caseload; and
- Modified the jurisdictional statement of the Committee on the Administrative Office and renamed it the Committee on Audits and Administrative Office Accountability in order to focus its oversight responsibilities on the significant areas of audit, review, and investigative assistance.

COMMITTEE ON THE ADMINISTRATIVE OFFICE

COMMITTEE ACTIVITIES

The Committee on the Administrative Office reported that it was briefed on key activities of the AO and actions related to the AO's strategic plan, including the redesign of the *Guide to Judiciary Policies and Procedures*, court/AO staff-exchange initiatives, and the status of pandemic and emergency planning for the judiciary and the AO. The Committee was briefed on audit, review, and investigation activities and discussed the Committee's role regarding the AO's strategic objective to provide increased support for management review, audit, and internal control programs. After reviewing nominations submitted by judges, court managers, and AO managers, the Committee selected two AO employees to receive the Leonidas Ralph Mecham Award for Exemplary Service to the Courts.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

OFFICIAL DUTY STATION

At the request of the Ninth Circuit Judicial Council and on recommendation of the Committee on the Administration of the Bankruptcy System, the Judicial Conference agreed to transfer the official duty station for the vacant bankruptcy judgeship position in the Eastern District of California from Bakersfield to Sacramento. This change will allow for a more even distribution of the judicial workload among the district's three divisions.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Bankruptcy System reported that it asked the Executive Committee to take expedited action on behalf of the Judicial Conference to seek four additional bankruptcy judgeships (*see supra*, "Miscellaneous Actions," pp. 5-6). The Committee also recommended to the Committee on Court Administration and Case Management that it (1) defer a request for consolidation of the district and bankruptcy clerks' offices in the Southern District of Illinois (*see infra*, "Committee Activities," pp. 12-13); (2) forward to the Conference proposed

amendments to the Bankruptcy Court Miscellaneous Fee Schedule (*see infra*, “Miscellaneous Fees,” pp. 11-12); and (3) adopt proposed procedural revisions to the bankruptcy noticing guidelines, with certain edits. Pursuant to a March 2009 decision of the Conference to seek legislation authorizing bankruptcy administrators to perform similar duties and powers, as appropriate, to those conferred on the United States trustees by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (JCUS-MAR 09, p. 8), the Committee endorsed specific powers and duties that should be included in such legislation.

COMMITTEE ON THE BUDGET

FISCAL YEAR 2011 BUDGET REQUEST

After careful consideration of the funding levels proposed by the program committees, the Committee on the Budget recommended to the Judicial Conference a fiscal year 2011 budget request to Congress that is 5.9 percent above assumed appropriations for fiscal year 2010. This request is consistent with the budget caps approved by the Judicial Conference for the various accounts within the judiciary’s budget. The Conference approved the budget request subject to amendments necessary as a result of (a) new legislation, (b) actions of the Judicial Conference, or (c) any other reason the Executive Committee considers necessary and appropriate.

COMMITTEE ACTIVITIES

The Committee on the Budget reported that it endorsed a funding mechanism to provide annual funding to probation and pretrial services offices to support court-ordered services authorized by the Second Chance Act of 2007 (Pub. L. No. 110-199) and requested a cost-benefit analysis by the Criminal Law Committee of the use of these funds after three years. The Committee also expressed support for a recommendation of the Criminal Law Committee to assess the efficacy and cost-effectiveness of reentry court programs (*see infra*, “Reentry Court Programs,” p. 13). In addition, recognizing the ongoing efforts of the Judicial Resources Committee to update the staffing formulas used to calculate court support staffing requirements, the Budget Committee committed to working with both that committee and the Criminal Law Committee to develop formulas that are fair and incorporate the

workload needs of the courts but that also consider efficiencies associated with information technology improvements, best practices, and other cost-containment initiatives.

COMMITTEE ON CODES OF CONDUCT

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Judicial Conference in March 2009, the Committee received 33 new written inquiries and issued 34 written advisory responses. During this period, the average response time for requests was 18 days. In addition, the Committee chair received and responded to 99 informal inquiries from colleagues, and individual Committee members responded to 86 such inquiries.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

COURTROOM SHARING

After comprehensive study of courtroom use in the district courts, in September 2008, the Conference adopted several policy changes with regard to courtroom use to be applied to new courthouse construction and to construction of additional courtrooms in existing buildings (JCUS-SEP 08, pp. 10-11). Among those actions taken was a direction to the Court Administration and Case Management Committee – in consultation with the Committee on Space and Facilities and the Committee on the Administration of the Magistrate Judges System – to develop appropriate regulations for the *U.S. Courts Design Guide* to implement a courtroom sharing policy for magistrate judges. The Conference asked that the policy balance the need to maintain flexibility in the district courts to utilize magistrate judge resources to meet local needs with the ability to standardize space planning on a national basis, and to ensure the efficient use of courtrooms without sacrificing the availability of immediate access to a courtroom. At this session, this Committee, in consultation with the appropriate committees, recommended, and the Conference agreed to adopt, the following policy concerning courtrooms for magistrate judges:

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

New courtrooms for magistrate judges will be provided as follows:

- a. In courthouses with one or two magistrate judges, one courtroom will be provided for each magistrate judge.
- b. In courthouses with three or more magistrate judges, one courtroom will be provided for every two magistrate judges. In addition, one courtroom will be provided for magistrate judge criminal duty proceedings. In courthouses where the application of this formula will result in a fraction (i.e., those with an odd number of magistrate judges), the number of courtrooms allocated will remain at the next lower whole number.

Exemption Policy

In the event this sharing arrangement would cause substantial difficulty in the effective and efficient disposition of cases, 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 that the magistrate judge's courtroom is in use over 75 percent of the work day for case-related purposes. Thereafter, a court should demonstrate that deviation from the basic sharing policy is necessary, based on the following:

- a. An assessment of the number and type of courtroom events anticipated to be handled by the magistrate judge that would indicate that sharing a courtroom would pose a significant burden on the secure, effective and efficient management of that judge's docket.

- b. An assessment of how the district has historically utilized its magistrate judges, supported by actual courtroom use data.
- 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 magistrate judge's use in the new or existing facility.

ATTORNEY ADMISSION FUNDS

A court's attorney admission funds may be used when appropriated funds may not legally be used and the expenditure will "inure to the benefit of the members of the bench and the bar in the administration of justice." On recommendation of the Committee, the Conference modified its Guidelines for Attorney Admission Funds Maintained by the Courts of the United States, *Guide to Judiciary Policies and Procedures*, vol. 1, ch. 7, part M, to permit the use of such funds to pay for meals and refreshments for judges and judiciary employees when attending, at their duty stations, in a non-official capacity, an event that benefits the bench and the bar in the administration of justice.

MISCELLANEOUS FEES

Bankruptcy Court Miscellaneous Fee Schedule. In March 2008, the Judicial Conference amended the Bankruptcy Court Miscellaneous Fee Schedule to clarify items and make stylistic changes to comport with current editorial standards (JCUS-MAR 08, pp. 8-12). No substantive amendments were considered. As the courts have implemented the new schedule, several additional amendments have been suggested to correct unintentional omissions and to further clarify the schedule. At this session, on recommendation of the Committee, the Conference amended the following items: (a) Item 4, to clarify that the fee applies only to filing amendments to the debtor's schedules of creditors, and not to other schedules; (b) Items 6 and 14, to conform the language in these sections, both of which provide that these

fees should be paid by the estate when a trustee or debtor-in-possession is the filer; (c) Item 11, to reincorporate an exception to the reopening fee based on administrative error, which had been unintentionally omitted in previous schedules; (d) Item 14, to clarify that interlocutory appeals are included under this item; (e) Item 15, to correct a statutory reference that establishes a filing fee for Chapter 15 cases; and (f) Item 18, to include the phrase “motion filed by the debtor,” which had been unintentionally omitted.

United States Court of Federal Claims Fee Schedule. At the request of the Court of Federal Claims, the Committee recommended, and the Conference approved, amendments to that court’s fee schedule to make it consistent with the District Court Miscellaneous Fee Schedule. Item 1 was amended to increase the Court of Federal Claims’ filing fee for civil actions from \$250 to \$350 to match the district court filing fee, and two fees were added to match similar charges in the district courts: Item 10, a \$39 fee for filing or indexing a document not in a case for which a filing fee has been paid, and Item 11, a \$45 fee for retrieval of a record from a remote location.

CIVIL JUSTICE REFORM ACT REPORTS

The Committee considered a recommendation from the Institute for the Advancement of the American Legal System that Civil Justice Reform Act (CJRA) reports be made available free of charge on the judiciary’s public website. Noting that access to CJRA reports benefits the public and satisfies the intent of Congress in enacting the CJRA, and that the fees generated by distributing CJRA reports for a fee through PACER are minimal, the Committee recommended that all Civil Justice Reform Act reports created after September 30, 2009, be made available to the public without charge on the judiciary’s public website, www.uscourts.gov. The Conference adopted the Committee’s recommendation.

COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported that it considered, among other things, the development of the next generation of the judiciary’s Case Management/Electronic Case Files (CM/ECF) system, issues relating to the courts’ compliance with the E-Government Act, and revisions to the Civil Litigation Management Manual. The Committee also considered and, after consultation with the Bankruptcy

Committee, rejected a proposal from the Seventh Circuit Judicial Council to consolidate the district and bankruptcy courts of the Southern District of Illinois, noting that the proposal, if resubmitted, should include the participation of an active judge of that district's bankruptcy court.

COMMITTEE ON CRIMINAL LAW

REENTRY COURT PROGRAMS

Increasing numbers of federal courts are implementing or have expressed an interest in initiating reentry programs for federal offenders modeled on state problem-solving "courts" (e.g., drug courts and diversion courts). The Committee noted that there are numerous variations in such programs and insufficient research on which techniques have proven successful. In light of its commitment to the use of evidence-based practices, the Committee on Criminal Law recommended that the Judicial Conference endorse the commissioning of a study to assess the efficacy and cost-effectiveness of reentry court programs, and ask the Committee to consider the results of this study in recommending any appropriate model programs. The Conference adopted the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Criminal Law reported that it reviewed expenditure guidelines designed to help implement the AO Director's contracting and expenditure authority established 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, and forwarded them to the Director for approval. In addition, pursuant to the authority delegated to the Committee by the Conference to make "technical, conforming, and noncontroversial amendments to monographs" (JCUS-MAR 06, p. 15), the Criminal Law Committee approved updates to Monograph 110, *Judicial Officers Reference to Alternatives to Detention and Conditions of Release*. The Committee also discussed the status of actuarial risk-needs instruments being developed by the AO for use in pretrial and post-conviction supervision.

COMMITTEE ON DEFENDER SERVICES

COMMITTEE ACTIVITIES

The Committee on Defender Services reported that it reviewed the results of recent professional surveys of federal judges and panel attorneys, showing, among other things, that many courts have been experiencing difficulties locating available, qualified panel attorneys for non-capital Criminal Justice Act (CJA) appointments. The Committee was also informed of the status of three ongoing Defender Services information technology projects: the Electronic CJA Voucher Processing System, the National CJA Voucher Training Program, and the Federal Defender Case Management System. Under its delegated authority from the Judicial Conference (JCUS-MAR 89, pp. 16-17), the Committee approved FY 2010 budgets and grants for federal defender organizations.

COMMITTEE ON FEDERAL-STATE JURISDICTION

DIVERSITY JURISDICTION

In response to a request from the Executive Committee that Conference committees consider the continued viability of older legislative positions that have not been pursued in Congress for some time, the Committee on Federal-State Jurisdiction considered, among other positions, the Conference's longstanding support for the abolition of general diversity jurisdiction (JCUS-MAR 77, pp. 8-9; JCUS-SEP 77, p. 52; JCUS-MAR 78, pp. 7-8; JCUS-SEP 79, p. 66; JCUS-MAR 86, p. 17).¹ Noting that many of the circumstances that served as the underpinning for the position no longer prevail and that abolition of diversity jurisdiction may not reflect a consensus of the federal judiciary today, the Committee recommended that the position be rescinded. The Conference approved the recommendation.

¹The Conference has adopted several other positions that would narrow access to federal diversity jurisdiction, without eliminating it entirely. Those positions are not addressed here.

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported on continued efforts to engage in dialogue with local state-federal judicial councils on matters of mutual interest. The Committee also reviewed the Hague Convention on Choice of Court Agreements, which would make choice of forum agreements in international civil and commercial contracts more readily enforceable in signatory countries. The Committee also discussed provisions in proposed whistleblower protection legislation that would eliminate the exclusive jurisdiction of the Court of Appeals for the Federal Circuit to review final decisions of the Merit Systems Protection Board in whistleblower cases, and would create a new private right of action for de novo review of whistleblower claims in the federal district courts.

COMMITTEE ON FINANCIAL DISCLOSURE

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported that it is overseeing the development of a system for the electronic filing and management of financial disclosure reports. Analysis of the calendar year 2008 financial disclosure reports reflects that use of the self-audit function in the financial disclosure report software continues to improve the quality of the reports and reduce the volume of correspondence between the Committee and filers. As of July 7, 2009, the Committee had received 3,963 financial disclosure reports and certifications for calendar year 2008, including 1,199 reports and certifications from Supreme Court justices, Article III judges, and judicial officers of special courts; 334 reports from bankruptcy judges; 521 reports from magistrate judges; and 1,909 reports from judicial employees.

COMMITTEE ON INFORMATION TECHNOLOGY

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 2010 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.

COMMITTEE ACTIVITIES

The Committee on Information Technology reported that it discussed plans to develop the next generation of the Case Management/Electronic Case Files system, focusing on an effort to define a recommended software architectural structure and a development methodology to ensure the next generation will be integrated, flexible, and modular in nature. The Committee also received an update on, and reaffirmed support for, development of a more collaborative approach to shared application development and support in the judiciary. In addition, the Committee received information about and expressed its support for efforts under way to streamline contracting for both wireless cellular management services and information technology security services.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that 144 intercircuit assignments were undertaken by 95 Article III judges from January 1, 2009 to June 30, 2009. The Committee also reported on its Special Work Assistance Taskforce (SWAT) approach to intercircuit assignments. In light of the success of the SWAT approach in the Middle District of Florida and the Southern District of New York, the Committee agreed to continue to find creative ways to utilize intercircuit assignments to assist overburdened courts. In addition, the Committee continued to disseminate information about intercircuit assignments and aid courts requesting assistance by identifying and obtaining judges willing to take assignments.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported on its involvement in rule of law and judicial reform throughout the world, highlighting activities in Africa, Asia, Latin America and the Caribbean, Europe, and Eurasia, as well as briefings at the Administrative Office for foreign delegations of jurists and judicial personnel. The Committee further reported on 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 about rule of law activities involving the Federal Judicial Center, the U.S. State Department, the U.S. Agency for International Development, and the U.S. Department of Justice.

COMMITTEE ON THE JUDICIAL BRANCH

JUDGES' TRAVEL REGULATIONS

Renting/Maintaining an Abode at a Temporary Duty Location. Section E.2.g. of the Travel Regulations for United States Justices and Judges, *Guide to Judiciary Policies and Procedures*, vol. 3, ch. C-5, ex. A, provides alternative methods for judges on official travel to claim the actual expense of maintaining an abode at a temporary duty location. On recommendation of the Committee on the Judicial Branch, the Conference amended the provision regarding reimbursement, where official business is the principal reason for maintaining the abode, to provide that (a) costs should be calculated based on the monthly, rather than the annual cost; and (b) in lieu of the actual prorated cost of lodging, a judge could elect to claim a per diem allowance, provided it is the lesser of the two amounts.

Meals at Authorized Judicial Meetings. On recommendation of the Committee, the Judicial Conference approved an amendment to section E.2.f. of the judges' travel regulations to apply limits to judges' reimbursement for meals incident to an authorized judicial meeting held at the official duty station as follows (new language is underlined):

f. *Reimbursement for subsistence expenses incident to an authorized judicial meeting held at a judge's official duty station*—A judge who attends an authorized judicial meeting held in the city where the judge's official duty station is located may, if such expenses would be reimbursable in connection with a meeting held in another location, be reimbursed for the actual cost of meals incidental to the meeting, provided that the judge's attendance at the meal function is necessary to full participation in essential formal discussions, lectures or speeches concerning the business of the meeting. The expense of meals incident to authorized judicial meetings held at the official duty station should be reasonable and should reflect the nature of the function. In general, the aggregate cost of such meals should not exceed \$100 per day; however, in those instances where a judge attends a circuit judicial conference at the official duty station, the judge may claim reimbursement for the actual cost of meals up to \$150 per day. By referring to this section on any voucher claiming such meals, the judge certifies compliance with these criteria.

Note: From an Internal Revenue Service perspective, for meals to qualify as a reimbursable business expense, they must be ordinary and necessary and not lavish and/or extravagant.

Same-Day Travel. The Committee recommended, and the Conference approved, an amendment to section E.4.d. of the judges' travel regulations to substitute the General Services Administration's locality Meals and Incidental Expenses reimbursement rate for the flat-rate previously authorized in March 2008 (JCUS-MAR 08, p. 20) for meals and incidental expenses incurred in same-day travel.

Additional Leg Room. To accommodate judges with special physical needs, the Committee recommended that the Conference amend section D.2.a.(1) of the judges' travel regulations to authorize judges, under certain conditions, to upgrade to seats with additional legroom. The Conference adopted the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that it continues to focus its priority attention on securing automatic and annual cost-of-living salary adjustments for judges. The Committee also gave substantial attention to judicial benefits matters. Education of the public, especially the news media, on the judiciary and the role of judges in society remains a priority of the Committee. In addition, the Committee continues to monitor the implementation of the Judicial Conference policy on privately reimbursed seminars.

COMMITTEE ON JUDICIAL CONDUCT AND DISABILITY

COMMITTEE ACTIVITIES

The Committee on Judicial Conduct and Disability reported that it has under advisement two petitions for review of circuit judicial council orders on complaints under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364. The Committee is also studying procedural and policy issues brought to light by early experience under the Conference's 2008 Rules for Judicial-Conduct and Judicial-Disability Proceedings. While continuing to address courts' inquiries regarding the Act and the Rules, the Committee is developing an infrastructure to support the Committee's expanded monitoring function and is preparing informational products to help judges perform their roles in the complaint process.

COMMITTEE ON JUDICIAL RESOURCES

STAFFING FORMULAS

New Formulas. Based on rigorous work measurement studies conducted by the Administrative Office, the Committee on Judicial Resources recommended, and the Judicial Conference approved, new staffing formulas for the offices of district clerks, appellate clerks, bankruptcy appellate panel clerks, and staff attorneys and for the bankruptcy administrator program, for implementation beginning in fiscal year 2010.

The Conference also adopted the Committee’s recommendation for a new formula for pro se law clerks for implementation in fiscal year 2010. That formula uses only prisoner cases to create formula factors; however, to protect small courts with minimal but important pro se law clerk workload and to avoid termination of any on-board pro se law clerks, the formula provides a 1.0 full-time equivalent minimum to those districts earning any pro se law clerk credit under the formula. The Conference also agreed to “grandfather” current pro se law clerks in their present positions on a court-by-court basis until the number of on-board pro se law clerks equals the number authorized by the staffing formula. Encumbered positions will not be available for backfill after the departure of the incumbent, unless supported by application of the formula.

Formula Adjustment. The Judicial Conference approved a new staffing formula for bankruptcy clerks’ offices in September 2008 (JCUS-SEP 08, p. 24). Based on an initial analysis of the impact of the new formula on staffing levels in those offices, concern was expressed that the new formula might have a disproportionate impact on smaller courts that could not take advantage of economies of scale. To address this concern, the Committee recommended a sliding scale, no-cost adjustment that fine-tunes the formula to take into account local circumstances. The Conference approved the adjustment for use until the next update of the basic formula.

WORK MEASUREMENT METHODOLOGY

The current work measurement methodology used to develop staffing formulas for court units produces “full requirements” for those units, i.e., the staff size necessary to perform, without overtime or omission, the work assigned to the respective office, based on a consensus-built hierarchy of tasks and procedures, performed by workers with average experience, training, efficiency, and effectiveness. The Committee recommended that the Conference endorse the current process of developing full staff requirements through consensus-developed, empirically derived, and transparently coordinated work measurement formulas, and the Conference agreed.

COURT REPORTER COMPENSATION

In September 2007, as part of a cost-containment initiative, and after conducting a comprehensive court compensation study, the Judicial

Conference agreed to alter the pay progression policy for Court Personnel System employees to decrease the emphasis on the longevity component. Court reporter salaries were omitted from this change with the understanding that court reporter salaries would be considered at a later date. At this session, with the goal of pursuing cost containment while at the same time ensuring that court reporters are treated fairly, the Committee recommended that the Judicial Conference approve retention of longevity pay for all currently employed official court reporters, and elimination of longevity pay for future official court reporters, beginning on October 11, 2009. The Conference adopted the Committee's recommendation.

COURT INTERPRETER POSITIONS

Using established criteria, the Committee recommended, and the Conference approved, one additional Spanish staff court interpreter position beginning in fiscal year 2011 for the Southern District of Florida, based on the Spanish language interpreting workload in that court.

VOLUNTARY SEPARATION

On recommendation of the Committee, the Judicial Conference agreed to make permanent the current Voluntary Separation Incentive Payment (buyout) and Voluntary Early Retirement Authority programs beginning in fiscal year 2010. The decision to implement either of these programs each fiscal year within the judiciary will be at the discretion of the Director of the Administrative Office based upon business needs and in accordance with existing Conference policy. The purpose of these programs is to provide courts and federal public defender organizations maximum flexibility in addressing reorganization and downsizing needs to achieve strategic goals and enhance mission effectiveness.

COMPENSATORY TIME

In order to encourage employees to use accrued compensatory time promptly, the judiciary's policy has been to require that court employees use compensatory time before using any accrued annual leave (*Guide to Judiciary Policies and Procedures*, vol.1, ch.10, subch.1550.2). In situations where an employee has "use or lose" annual leave, this requirement can result in the

employee having to forfeit annual leave. To address this issue, on recommendation of the Committee, the Conference agreed to amend the policy to permit exceptions on a case-by-case basis, as approved by the chief judge or unit executive, as appropriate, or his/her designee.

PAY SETTING

The Salary Matching/Advanced In-Step Appointment Policy, *Guide to Judiciary Policies and Procedures*, vol. 1, ch. 10, subch. 1338.2, excludes the use of salary matching and advanced-in-step appointment authorities in the case of employees of the courts or federal public defender organizations transferring within the judiciary (or for certain employees transferring to the judiciary from other branches of the federal government) unless there has been a break in service of at least 90 days. To address concerns that this policy works to the detriment of employees who are working under time-limited or part-time employment, the Committee recommended that the Conference amend the 90-day break-in-service requirement contained in the Judiciary Salary Plan salary matching and Court Personnel System advanced in-step rules to exempt candidates for court and federal public defender organization graded positions whose employment with the federal government during the 12 months preceding the new appointment has been (a) under a temporary (including temporary-indefinite) or term appointment or (b) a part-time appointment and the employee is moving to a full-time appointment. The Conference adopted this recommendation and also agreed that, consistent with the current policy that precludes salary matching for chambers law clerk positions, such positions would not be affected by this change.

BAR EXAMINATION PREPARATORY COURSE

In March 2009, the Conference approved discontinuation of the practice of crediting the time spent in a bar examination preparatory course toward the legal work experience required to qualify for the JSP-12 grade level for law clerks (JCUS-MAR 09, p. 24). At this session, noting the absence of a clear rationale for crediting bar examination preparatory course time as legal work experience, the Committee recommended discontinuation, effective October 11, 2009, of the practice of crediting such time toward the legal work experience needed to be placed at a higher grade/classification level for staff attorneys, circuit mediators, court attorneys, and any other

professional legal position classified under the Judiciary Salary Plan or Court Personnel System. The Conference approved the recommendation.

HUMAN RESOURCES LEGISLATION

On recommendation of the Committee, the Conference agreed to express to Congress the judiciary's support for the concepts contained in bills pending in the 111th Congress that would (a) amend the Internal Revenue Code of 1986 as it pertains to long-term care insurance (in a manner that would allow the judiciary to take pre-tax deductions for long-term care premiums), and (b) amend title 5, United States Code, to allow former employees who return to government to re-deposit their Federal Employees Retirement System contributions.

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that in response to a request from the Executive Committee chair "to ensure that cost containment remains a high priority" in the judiciary, it asked the Administrative Office to develop additional cost-containment proposals for consideration by the Judicial Resources Committee at its December 2009 meeting. The Committee also discussed draft executive compensation policy proposals reviewed by the Executive Compensation Working Group. The Committee asked the Administrative Office to refine and clarify the proposals and present them to the Committee for further consideration at its December 2009 meeting. The Committee unanimously agreed to approve a one-year moratorium on adopting and implementing new staffing formulas for probation and pretrial services offices in order to allow the Administrative Office to conduct a new work measurement study and develop weighted staffing formulas.

COMMITTEE ON JUDICIAL SECURITY

COURTROOM SECURITY SURVEILLANCE CAMERAS

Security surveillance cameras are currently in use in courtrooms throughout the country. They are programmed to record automatically movement occurring within the viewing range of the camera, allowing court security personnel to monitor remotely the well of the courtroom and the

judge's point of egress. On recommendation of the Committee on Judicial Security, the Conference agreed to take the following actions with regard to security recordings produced by these cameras:

- a. Approve for transmission to the U.S. Marshals Service (USMS) a proposed memorandum of understanding (MOU) that provides policy and procedural guidance for the creation, retention, use, and disposal of courtroom video recordings, and establishes that—
 - (1) Video (not audio) recordings of transmissions of courtroom proceedings for security purposes shall be made on a continuous and uninterrupted basis;
 - (2) The judiciary retains, and obtains by assignment from the USMS, full and sole ownership and control over all aspects of the courtroom video recordings;
 - (3) The chief judge of the district in which the recording is made is vested with the authority to release a courtroom video recording for security purposes; and
 - (4) In the event of a security incident, immediate release of a courtroom video recording for law enforcement purposes may be determined to be necessary by the district U.S. marshal, or his or her designee, with the approval of the chief judge, if feasible;
- b. Delegate to the Committee the authority to make technical and non-controversial amendments to the MOU as necessary (before or after its execution by the USMS) consistent with the basic policies set forth in the Committee's report to this Conference session; and
- c. Support the development and transmission to the National Archives and Records Administration of a records disposition schedule for the routine courtroom surveillance recordings as set forth in the MOU.

COMMITTEE ACTIVITIES

The Committee on Judicial Security reported that it had in-depth discussions with the USMS regarding court security officer (CSO) contract

solicitations. The Committee would like the USMS to incorporate additional safeguards in its contracting process to help avoid doing business with another financially unstable company such as USProtect, a former CSO provider that was forced into involuntary bankruptcy in March 2008. In addition, the Committee, in concert with the AO, has completed the production of Project 365: Security Starts With You, a digital video disk that will be provided to all judges, and is suitable for viewing by judges' family members and staff.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

SELECTION AND APPOINTMENT REGULATIONS

In recognition of the importance of promoting diversity within the magistrate judges system, the Committee on the Administration of the Magistrate Judges System recommended that the Conference amend the Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Appointment and Reappointment of United States Magistrate Judges to—

- a. add the following language to section 2.01:

To encourage applications from all qualified individuals, the court is encouraged to transmit the public notice to state and local bar associations and interest groups that focus on women and minorities. The court should also consider utilizing national publications and the judiciary's J-Net Job Vacancies site; and

- b. add a new subsection 3.02(e), as follows:

To further efforts to achieve diversity in all aspects of the magistrate judge selection process, the court is encouraged to appoint a diverse merit selection panel.

The Conference adopted the Committee's recommendations.

PER DIEM FOR RECALLS OVER ONE MONTH

In March 2000, the Judicial Conference amended the ad hoc and extended service recall regulations for retired magistrate judges to impose caps of 75 percent and 60 percent of maximum per diem travel reimbursement on out-of-district full-time recalls for terms of over one month and three months, respectively. In practice, however, these limits can leave magistrate judges with inadequate reimbursement for travel and subsistence expenses, and the procedure for waiver has proven to be cumbersome and time-consuming. To address these issues, the Committee recommended, and the Conference agreed to adopt, amendments to sections 13(a) and (b) of the ad hoc and extended service recall regulations to remove the per diem limits, provided, however, that the Director may impose reasonable limits on the reimbursement of these expenses.

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 district courts, and the judicial councils of the circuits, the Judicial Conference approved the following changes in the number, salaries, locations, and arrangements of full-time and part-time magistrate judge positions. Changes with a budgetary impact are to be effective when appropriated funds are available.

FIRST CIRCUIT

District of New Hampshire

1. Authorized a clerk/magistrate judge position at Concord; and
2. Made no change in the location or arrangement of the existing magistrate judge position in the district.

SECOND CIRCUIT

Northern District of New York

Increased the salary of the part-time magistrate judge position at Plattsburgh from Level 5 (\$26,881 per annum) to Level 4 (\$40,325 per annum).

THIRD CIRCUIT

District of New Jersey

1. Authorized an additional full-time magistrate judge position at Newark; and
2. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

FOURTH CIRCUIT

District of South Carolina

1. Authorized an additional full-time magistrate judge position at Florence;
2. Discontinued the part-time magistrate judge position at Aiken upon the expiration of the term of the current incumbent on March 31, 2011; and
3. Made no other change in the number, locations, or arrangements of the magistrate judge positions in the district.

FIFTH CIRCUIT

Southern District of Mississippi

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

SIXTH CIRCUIT

Eastern District of Kentucky

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

Western District of Kentucky

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

Northern District of Ohio

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

SEVENTH CIRCUIT

Northern District of Illinois

1. Authorized an additional full-time magistrate judge position at Chicago; and
2. Made no other change in the number, locations, or arrangements of the magistrate judge positions in the district.

Central District of Illinois

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

Northern District of Indiana

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

EIGHTH CIRCUIT

Southern District of Iowa

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

NINTH CIRCUIT

Southern District of California

1. Authorized an additional full-time magistrate judge position at San Diego; and
2. Made no other change in the number, locations, or arrangements of the magistrate judge positions in the district.

District Court for the Northern Mariana Islands

Authorized a clerk/magistrate judge position at Saipan.

TENTH CIRCUIT

District of New Mexico

1. Increased the salary of the part-time magistrate judge position at Roswell from Level 5 (\$26,881 per annum) to Level 3 (\$53,767 per annum); and
2. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

District of Utah

1. Increased the salary of the part-time magistrate judge position at St. George from Level 4 (\$40,325 per annum) to Level 2 (\$67,210 per annum); and
2. Made no other change in the number, locations, or arrangements of the magistrate judge positions in the district.

See also supra, “Miscellaneous Actions,” pp. 5-6, for two new full-time magistrate judge positions, one each at Sacramento and Fresno in the Eastern District of California, approved on an expedited basis by the Executive Committee on behalf of the Conference.

ACCELERATED FUNDING

On recommendation of the Committee, the Judicial Conference agreed to designate for accelerated funding effective April 1, 2010 the new full-time magistrate judge positions at Newark in the District of New Jersey, Florence in the District of South Carolina, and Chicago in the Northern District of Illinois, and to designate for accelerated funding effective October 1, 2009 the new full-time magistrate judge position at San Diego in the Southern District of California. *See also supra*, “Miscellaneous Actions,” pp. 5-6, for accelerated funding approved on an expedited basis by the Executive Committee, on behalf of the Conference, for positions in Sacramento and Fresno in the Eastern District of California.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Magistrate Judges System reported that it discussed the development of a magistrate judge courtroom sharing policy and communicated its views to the Committee on Court Administration and Case Management. The Committee also reported that pursuant to the September 2004 Judicial Conference policy regarding the review of magistrate judge position vacancies (JCUS-SEP 04, p. 26), during the period between the Committee’s December 2008 and June 2009 meetings, the Committee chair approved filling one part-time and seven full-time magistrate judge position vacancies. At its June 2009 meeting, the Committee approved filling three additional magistrate judge position vacancies.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

FEDERAL RULES OF APPELLATE PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Appellate Rules 1 (Scope of Rules; Title), 4 (Appeal as of Right — When Taken), and 29 (Brief of an

Amicus Curiae), and to Form 4 (Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis), together with committee notes explaining their purpose and intent. The Judicial Conference approved the proposed rules and form amendments and authorized their transmittal to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Bankruptcy Rules 1007 (Lists, Schedules, Statements, and Other Documents; Time Limits), 1014 (Dismissal and Change of Venue), 1015 (Consolidation or Joint Administration of Cases Pending in Same Court), 1018 (Contested Involuntary Petitions; Contested Petitions Commencing Ancillary Cases; Proceedings to Vacate Order for Relief; Applicability of Rules in Part VII Governing Adversary Proceedings), 1019 (Conversion of a Chapter 11 Reorganization Case, Chapter 12 Family Farmer's Debt Adjustment Case, or Chapter 13 Individual's Debt Adjustment Case to a Chapter 7 Liquidation Case), 4001 (Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements), 4004 (Grant or Denial of Discharge), 5009 (Closing Chapter 7 Liquidation, Chapter 12 Family Farmer's Debt Adjustment, and Chapter 13 Individual's Debt Adjustment Cases), 7001 (Scope of Rules of Part VII), and 9001 (General Definitions), and new Rule 5012 (Agreements Concerning Coordination of Proceedings in Chapter 15 Cases), together with committee notes explaining their purpose and intent. The Judicial Conference approved the proposed rules amendments and new rule and authorized their transmission to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

The Committee also submitted to the Judicial Conference proposed revisions to Exhibit D to Official Form 1 (Voluntary Petition) and Official Form 23 (Debtor's Certification of Completion of Postpetition Instructional Course Concerning Personal Finance Management). The Judicial Conference approved the revised forms to take effect on December 1, 2009.

FEDERAL RULES OF CIVIL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Civil Rules 8 (General Rules of Pleading), 26 (Duty to Disclose; General Provisions Governing Discovery), and 56 (Summary Judgment) and Illustrative Form 52 (Report of the Parties' Planning Meeting), together with committee notes explaining their purpose and intent. The Judicial Conference approved the proposed rules and form amendments and authorized their transmittal to the Supreme Court with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

FEDERAL RULES OF CRIMINAL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Criminal Rules 12.3 (Notice of a Public-Authority Defense), 15 (Depositions), 21 (Transfer for Trial), and 32.1 (Revoking or Modifying Probation or Supervised Release), together with committee notes explaining their purpose and intent. The Judicial Conference approved the proposed amendments and authorized their transmittal to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

FEDERAL RULES OF EVIDENCE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference a proposed amendment to Evidence Rule 804 (Hearsay Exceptions; Declarant Unavailable), together with a committee note explaining the amendment's purpose and intent. The Judicial Conference approved the proposed amendment and authorized its transmittal to the Supreme Court for its consideration with a recommendation that it be adopted by the Court and transmitted to Congress in accordance with the law.

STANDING ORDER/LOCAL RULES

On recommendation of the Committee, the Conference approved Guidelines for Distinguishing Between Matters Appropriate for Standing

Orders and Matters Appropriate for Local Rules and for Posting Standing Orders on a Court's Web Site, and agreed that the guidelines be transmitted to the courts, along with an explanatory report.

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure reported that it approved publishing for public comment proposed amendments to Bankruptcy Rules 2003, 2019, 3001, 4004, and 6003, new Bankruptcy Rules 1004.2 and 3002.1, and proposed amendments to Bankruptcy Official Forms 22A, 22B, and 22C; proposed amendments to Criminal Rules 1, 3, 4, 6, 9, 32.1, 40, 41, 43, and 49 and new Criminal Rule 4.1; and Restyled Evidence Rules 101-1103. The restyling of the Evidence Rules is the fourth in a series of comprehensive style revisions to simplify, clarify, and make more uniform all of the federal rules of practice, procedure, and evidence. The comment period expires on February 16, 2010.

COMMITTEE ON SPACE AND FACILITIES

U.S. COURTS DESIGN GUIDE: RENOVATION AND ALTERATION APPENDIX

The Committee on Space and Facilities recommended, and the Judicial Conference approved, a Renovation and Alteration Appendix to the *U.S. Courts Design Guide*. The Appendix is intended to address the unique challenges and opportunities that arise when a court makes major renovations or alterations to an existing building. Since the Appendix supersedes a chapter on courtroom renovation and alteration endorsed by the Conference in March 2004 (JCUS-MAR 04, pp. 28-29), the Conference rescinded its March 2004 position.

BALLISTIC GLAZING

In March 2000, the Conference amended the *U.S. Courts Design Guide* to provide that for new construction or major renovation projects, the ballistic-resistant glazing standard for windows in all courtrooms and chambers, regardless of where they are located in the courthouse, should be UL Standard 752, Level IV (which is classified as a bullet-resistant product

capable of stopping one shot from a .30 caliber rifle), unless the U.S. Marshals Service determined that ballistic-resistant glazing was not needed. Based on new information gleaned on this topic from the security industry, the USMS, and other security experts, the Committee recommended that the Conference amend the ballistic-glazing requirement contained in the *U.S. Courts Design Guide* to read as follows:

Ballistic-resistant glazing, UL Standard 752, Level IV, may be considered for a judge's private office within the chambers suite after full disclosure has been made to the court of the relevant risks, inconsistencies, costs, and alternatives including, but not limited to, the following:

- a. The risk, and inconsistency with applicable blast criteria, arising from the fact that ballistic-resistant glazing may turn into a lethal projectile in the event of a blast;
- b. The risk that emergency workers may find it difficult to break through ballistic-resistant glazing during rescue efforts;
- c. The necessity of factoring the costs associated with structural reinforcements and materials supporting ballistic-resistant glazing into the overall cost estimate;
- d. The fact that ballistic-resistant glazing may appear different from standard windows and thereby create a security risk by identifying a target;
- e. The likelihood that windows with ballistic-resistant glazing will not be operable except for maintenance purposes;
- f. The finding by security experts that keeping a target from view, using window-coverings, architectural features or other low-cost measures is often the most effective deterrent to a targeted on-site attack; and
- g. The decision to install ballistic-resistant glazing is subject to funding availability.

The Conference adopted the Committee's recommendation.

FIVE-YEAR COURTHOUSE PROJECT PLAN

On recommendation of the Committee, the Judicial Conference approved the Five-Year Courthouse Project Plan for FYs 2011-2015, which moves the projects from the previous five-year plan back by one year and removes the Austin, Texas project, which was funded in 2009.

U.S. COURTS DESIGN GUIDE EXCEPTION

The District of Maryland moved its Central Violations Bureau (CVB) docket to the courthouse located in Greenbelt, Maryland when its lease agreement with the State of Maryland expired. Because of the unique nature of the CVB docket, the Committee recommended, and the Conference agreed to approve, an exception to the *U.S. Courts Design Guide* to allow construction of a magistrate judge courtroom of 2,440 square feet at the Greenbelt, Maryland courthouse.

COMMITTEE ACTIVITIES

The Committee on Space and Facilities reported that the budget request for the space and facilities program for fiscal year 2011 was \$1.16 billion. The Committee also reported that it concurred in the recommendation of the Committee on Court Administration and Case Management regarding a courtroom sharing policy for magistrate judges (*see supra*, “Courtroom Sharing,” pp. 9-11). The Committee also approved an appeal process for long-range facilities plans prepared under the Asset Management Planning (AMP) process, as well as an amendment to the AMP Business Rules regarding how courtrooms and chambers should be provided for roving judges, i.e., judges who have more than one duty station.

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