

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

September 15, 2020

The Judicial Conference of the United States convened by teleconference on September 15, 2020, 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 participated:

First Circuit:

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

Second Circuit:

Chief Judge Debra Ann Livingston
Chief Judge Stefan R. Underhill,
District of Connecticut

Third Circuit:

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

Fourth Circuit:

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

Fifth Circuit:

Chief Judge Priscilla Richman Owen
Chief Judge S. Maurice Hicks, Jr.,
Western District of Louisiana

Sixth Circuit:

Chief Judge Ransey Guy Cole, Jr.
Judge Michael H. Watson,
Southern District of Ohio

Seventh Circuit:

Chief Judge Diane S. Sykes
Chief Judge Rebecca R. Pallmeyer,
Northern District of Illinois

Eighth Circuit:

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

Ninth Circuit:

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

Tenth Circuit:

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

Eleventh Circuit:

Chief Judge William H. Pryor, Jr.
Chief Judge L. Scott Coogler,
Northern District of Alabama

District of Columbia Circuit:

Chief Judge Srikanth Srinivasan
Chief Judge Beryl A. Howell,
District of Columbia

Federal Circuit:

Chief Judge Sharon Prost

Court of International Trade:

Chief Judge Timothy Stanceu

Also participating in this session of the Conference were Judge David W. McKeague, chair of the Judicial Conference Committee on Judicial Security, and Chief Bankruptcy Judge Jeffery P. Hopkins and Magistrate Judge Nannette A. Baker, as the bankruptcy judge and magistrate judge observers, respectively.

Participating from the Administrative Office of the United States Courts were James C. Duff, Director; Lee Ann Bennett, Deputy Director; Sheryl L. Walter, General Counsel; Katherine H. Simon, Secretariat Officer, and WonKee Moon, Supervisory Attorney Advisor, Judicial Conference Secretariat; David T. Best, Legislative Affairs Officer; and David A. Sellers, Public Affairs Officer. John S. Cooke, Director of the Federal Judicial Center, as well as Judge Charles R. Breyer, Commissioner, and Kenneth P. Cohen, Staff Director, United States Sentencing Commission, also participated, as did Jeffrey P. Minear, Counselor to the Chief Justice, and Ethan V. Torrey, Supreme Court Legal Counsel.

Deputy Attorney General Jeffrey A. Rosen addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice. Representative Martha Roby spoke on matters pending in Congress of interest to the Conference.

REPORTS

Mr. Duff reported to the Judicial Conference on the judicial business of the courts and on matters relating to the Administrative Office. Mr. Cooke spoke to the Conference about Federal Judicial Center programs, and Judge Breyer reported on United States Sentencing Commission activities.

EXECUTIVE COMMITTEE

EMERGENCY ACTIONS TAKEN IN RESPONSE TO COVID-19

The Executive Committee, acting on behalf of the Judicial Conference on an expedited basis, approved by email ballot the following Conference committee recommendations to address the impact of the Coronavirus Disease 2019 (COVID-19) pandemic on the federal judiciary.

EXTENSION OF REPORTING DEADLINES

Civil Justice Reform Act Report. The Civil Justice Reform Act of 1990 (CJRA), 28 U.S.C. § 476, requires the Director of the Administrative Office to prepare a semiannual report that discloses for each district and magistrate judge the number of motions pending more than six months, bench trials submitted more than six months, and civil cases pending more than three years. The Judicial Conference has established semiannual reporting periods as the six-month periods ending on September 30 and March 31 of each year (*see* JCUS-SEP 91, p. 45; JCUS-SEP 18, pp. 17-18). The Committee on Court Administration and Case Management noted that as COVID-19 has spread, many district courts have taken emergency steps to protect public health and safety by closing courthouses and operating remotely, which have disrupted court operations. Additionally, because COVID-19 impacted the ability to hold hearings, many district and magistrate judges had to prioritize criminal matters over civil matters, and as a result did not have the time or resources to decide motions and cases that would be reportable at the close of the March 31, 2020 CJRA period. The Committee on Court Administration and Case Management accordingly recommended that the Executive Committee act on behalf of the Judicial Conference on an expedited basis to extend the March 31, 2020 CJRA reporting period to June 1, 2020, to account for disruptions to court operations and judicial administration caused by the COVID-19 pandemic. The Executive Committee approved the recommendation.

The Court Administration and Case Management Committee later recommended that the Executive Committee again act on behalf of the Judicial Conference on an expedited basis to similarly extend the September 30, 2020 CJRA reporting period to November 30, 2020, to account for disruptions to court operations and judicial administration caused by the COVID-19 pandemic. The Committee noted that many judges would face a backlog of civil motions and trials as courthouses reopen. In addition, once courts begin to hold in-person proceedings, staggered staffing, difficulties assembling juries, limitations on the number of proceedings that

may be scheduled, as well as the need to prioritize criminal proceedings, may pose challenges for judges in working through backlogged matters once courthouses reopen. The Executive Committee again approved the Committee's recommendation.

Governance and Education Travel Report. In 1999, the Judicial Conference approved amendments to the Travel Regulations for United States Justices and Judges that require judges to report time spent traveling to perform judicial duties that are unrelated to their cases and for which they receive reimbursement for the travel. (JCUS-SEP 99, p. 66; *Guide to Judiciary Policy*, Vol. 19, Ch. 2, § 270.) These reports (known as the Governance and Education Travel Report) must be filed with their respective chief judge by May 15 of each year and chief judges must report their own information and send the reports of their courts to the Administrative Office by June 1 of each year. *Id.* On recommendation of the Committee on the Judicial Branch, the Executive Committee, acting on an expedited basis on behalf of the Judicial Conference, extended the 2020 reporting deadline for the Governance and Education Travel Report for all judges from May 15, 2020 to October 15, 2020, and the deadline for chief judges from June 1, 2020 to November 1, 2020, to account for disruptions to court operations and judicial administration caused by the COVID-19 pandemic.

USE OF TELEPHONE CONFERENCING TO PROVIDE PUBLIC AND MEDIA ACCESS TO COURT PROCEEDINGS

In 1994, the Judicial Conference established a policy generally prohibiting the broadcasting of proceedings in federal trial courts (JCUS-SEP 94, pp. 46-47; *Guide to Judiciary Policy*, Vol. 10, Ch. 4). The Committee on Court Administration and Case Management noted that some members of the public and media had been precluded from observing court proceedings as courts have been forced by the spread of COVID-19 to close or severely restrict entry, and that multiple courts had asked whether judges may use telephone conference technology to provide access to court proceedings. It therefore recommended that the Executive Committee act on an expedited basis on behalf of the Judicial Conference to approve a temporary exception to the September 1994 policy, to allow a judge to authorize the use of telephone conference technology to provide the public and the media audio access to court proceedings while public access to federal courthouses generally, or with respect to a particular district, is restricted due to health and safety concerns during the COVID-19 pandemic. This authorization would expire upon a finding by the Judicial Conference that the emergency conditions due to the emergency declared by the President with respect to COVID-19 are no longer materially affecting the functioning of the federal courts generally or a particular district (*see infra*, pp. 19 and 34-35). The Executive Committee approved the recommendation.

ADMINISTRATION OF THE CRIMINAL JUSTICE SYSTEM

Obligation of the U.S. Probation System to Assist Inmates on Prerelease Custody. Three different statutory provisions govern the duty of the U.S. probation system to supervise inmates in the custody of the Bureau of Prisons (BOP): if an individual is released to home confinement under 18 U.S.C. § 3624(c), the probation system must offer assistance “to the extent practicable”; if an individual is released pursuant to the BOP’s risk and needs assessment system under 18 U.S.C. § 3624(g), the probation system must offer assistance “to the greatest extent practicable”; and if an individual is released pursuant to the BOP’s elderly home confinement program under 34 U.S.C. § 60541(g), the probation system must offer “such assistance . . . as the Attorney General may request.” The Committee on Criminal Law noted that amending the more compulsory language of 18 U.S.C. § 3624(g) and 34 U.S.C. § 60541(g) to track the more permissive language of 18 U.S.C. § 3624(c) would clarify and harmonize the various obligations of the U.S. probation system to assist inmates on prelease custody, would better preserve the probation system’s limited resources to supervise prelease inmates, and would help ensure that any arrangement to supervise prerelease inmates is jointly agreed to by the BOP and the probation system. It accordingly recommended, and the Executive Committee, acting on an expedited basis on behalf of the Judicial Conference, approved, seeking legislation to amend 18 U.S.C. § 3624(g) and 34 U.S.C. § 60541(g) to track the requirement in 18 U.S.C. § 3624(c) for the U.S. probation system to provide assistance to inmates on prerelease custody only “to the extent practicable.”

Early Termination of Supervised Release. Under 18 U.S.C. § 3583(e)(1), a court may terminate a defendant’s term of supervised release at any time after the defendant has served one year of supervised release, if warranted by the defendant’s conduct and the interest of justice. In 2013, noting that there are cases where early termination would be appropriate prior to one year and based on factors independent of the offender’s conduct (for example where defendants are physically incapacitated, dying, or aged to the point that they are no longer a risk to the community and cannot meaningfully engage in the supervision process), and that it makes little policy or financial sense to keep such cases under supervision, the Criminal Law Committee recommended, and the Judicial Conference approved, seeking legislation that permits the early termination of supervision terms, without regard to the limitations in 18 U.S.C. § 3583(e)(1), for an inmate who is compassionately released from prison under section 3582(c) of that title (JCUS-SEP 13, p. 18).

The Criminal Law Committee noted that defendants who have spent an extended period of time in other forms of prerelease custody through home confinement (under 18 U.S.C. § 3624(c)), BOP’s elderly home confinement program

(under 34 U.S.C. § 60541(g)), or pursuant to BOP's risk and needs assessment system (under 18 U.S.C. § 3624(g)) must still wait one year under 18 U.S.C. § 3583(e)(1) before becoming eligible for early termination of supervised release, which can result in unnecessary supervision of persons who no longer require such supervision (and may in some cases even be counter-productive and reduce a person's chance of success). The Committee additionally observed that reducing unnecessary supervision would alleviate workload demands on probation officers and allow them to focus on higher priority cases. It therefore recommended, and the Executive Committee, acting on an expedited basis on behalf of the Judicial Conference, approved, expanding the Conference's September 2013 position to persons who have served a period of prerelease custody under either 34 U.S.C. § 60541(g), 18 U.S.C. § 3624(c), or 18 U.S.C. § 3624(g), as follows (new language underlined):

Seek legislation that permits the early termination of supervision terms, without regard to the limitations in 18 U.S.C. § 3583(e)(1), for an inmate who is released from prison under sections 3582(c)₂, 3624(c), or 3624(g) of that title or under 34 U.S.C. § 60541(g).

Access to BOP Medical Records for Compassionate Release Motions. The First Step Act of 2018, Pub. L. 115-391, amended 18 U.S.C. § 3582(c)(1)(A) to permit a defendant to make a motion for compassionate release directly to a court (rather than through the BOP) after the defendant has fully exhausted all administrative rights to appeal a failure of the BOP to bring a motion on the defendant's behalf, or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier. Noting that these expanded procedures as well as the pandemic have increased requests for compassionate release made to the BOP and the courts, which in turn has led to a lag in obtaining inmate medical records from the BOP to assess whether an inmate may qualify for compassionate release based on medical needs, the Criminal Law Committee recommended that the Executive Committee act on an expedited basis on behalf of the Judicial Conference to seek legislation amending 18 U.S.C. § 3582(c)(1)(A) to add that if a motion for reduction of the imprisonment term includes as a basis for relief that the defendant's medical condition warrants a reduction, the BOP shall promptly produce the defendant's BOP medical records to the court, the probation office, the attorney for the government, and the attorney for the inmate. If additional time is required by the BOP to produce such records, they shall be produced in a time frame ordered by the court. The Executive Committee approved the recommendation.

Filing of Compassionate Release Motions. The Executive Committee considered a recommendation of the Committee on Defender Services to act on an expedited basis on behalf of the Judicial Conference to approve seeking two legislative

proposals related to compassionate release motions. As discussed above, 18 U.S.C. § 3582(c)(1)(A) precludes a defendant from filing a compassionate release motion with a court until 30 days after the warden's receipt of the defendant's request or exhaustion of the defendant's administrative rights to appeal a decision of the BOP not to bring a motion on the defendant's behalf, whichever is earlier (*see supra*, p. 7). The Defender Services Committee noted that the 30-day lapse requirement has prevented district courts from timely reviewing the petitions of vulnerable inmates who claim serious harm to their health during the COVID-19 pandemic, and furthermore that some defendants are unable under certain circumstances to even file a request with the BOP or to exhaust its administrative process in the first place (for example, because inmates in transit often do not have a designated facility or warden to whom they can submit a request, or because some wardens are not accepting or answering requests during the COVID-19 pandemic).

The Committee also noted that neither 18 U.S.C. § 3582 nor the Criminal Justice Act (CJA), 18 U.S.C. § 3006A, explicitly provides for the appointment and payment of counsel under the CJA for indigent defendants who seek compassionate release, and that the absence of clear language on this issue has resulted in regional differences in whether courts appoint counsel as a discretionary matter under the CJA to assist defendants with the submission of compassionate release petitions. The Committee observed that amending section 3582 to explicitly permit the appointment of counsel for this purpose would eliminate such differences and assist defendants and courts by facilitating the presentation of well-prepared and well-reasoned motions and by weeding out unmeritorious petitions and accelerating meritorious ones.

Noting that a substantial increase in compassionate release motions had begun well before the pandemic, with the passage of the First Step Act of 2018, the Defender Services Committee recommended that both of its proposed amendments be made permanent, but recognized that if necessary, each amendment could be limited to the duration of the pandemic. The Defender Services Committee accordingly recommended that the Executive Committee act on an expedited basis on behalf of the Conference to:

- (1) Seek legislation amending 18 U.S.C. § 3582 to:
 - (a) Allow a defendant, once he or she has filed a request for compassionate release relief with the BOP, to file a motion for compassionate release directly in the district court before 30 days have lapsed if the exhaustion of administrative remedies would be futile or the 30-day lapse would cause serious harm to the defendant's health; and

- (b) Permit the appointment and payment of CJA counsel under 18 U.S.C. § 3006A to assist inmates in filing motions for compassionate release in federal court.
- (2) Authorize the Director of the Administrative Office to seek such legislation only on a temporary basis subject to his assessment of political conditions.

The Executive Committee approved the recommendation with several modifications, as follows:

Seek legislation that would be effective during the national emergency declared by the President under the National Emergencies Act (50 U.S.C. § 1601 et seq.) with respect to COVID-19 and end 30 days after the national emergency terminates, amending 18 U.S.C. § 3582 to allow a defendant, once he or she has filed a request for compassionate release relief with the BOP, to file a motion for compassionate release directly in the district court before 30 days have lapsed if the exhaustion of administrative remedies would be futile or the 30-day lapse would cause serious harm to the defendant’s health due to the COVID-19 pandemic.

ADMINISTRATION OF THE BANKRUPTCY SYSTEM

Revised Interim Bankruptcy Rule 1020. Section 113 of the “Coronavirus Aid, Relief, and Economic Security Act” (CARES Act), Pub. L. 116-136, made several temporary changes to the Bankruptcy Code to provide financial assistance during the COVID-19 crisis. These changes required temporary revisions to interim Bankruptcy Rule 1020, a rule for small business chapter 11 reorganization cases that the Executive Committee in December 2019, acting on an expedited basis on behalf of the Judicial Conference, authorized for distribution to the courts for local adoption to facilitate implementation of the Small Business Reorganization Act of 2019 (Pub. L. 116-54) until the Federal Rules of Bankruptcy Procedure could be revised in accordance with the Rules Enabling Act. On recommendation of the Committee on Rules of Practice and Procedure, the Executive Committee, acting on an expedited basis on behalf of the Judicial Conference, authorized the distribution of revised interim Bankruptcy Rule 1020 to the district and bankruptcy courts for adoption, in order to conform to the CARES Act.

Extension of Bankruptcy Statutory Deadlines. The Executive Committee was asked by the Committee on the Administration of the Bankruptcy System to act on behalf of the Judicial Conference on an expedited basis to approve a legislative proposal to provide bankruptcy courts with authority to extend statutory deadlines under title 11 and chapter 6 of title 28 of the United States Code during the COVID-19 national emergency, upon a finding that the emergency conditions materially affect the functioning of a particular bankruptcy court of the United States. The Bankruptcy Committee noted that while some bankruptcy courts had, during the COVID-19 emergency, entered general orders that extend certain statutory deadlines, many bankruptcy judges were concerned about the scope and legality of their authority to do so, and therefore believed a statutory amendment was necessary. This authorization would expire 30 days after the date that the COVID-19 national emergency declaration terminates, or upon a finding that emergency conditions no longer materially affect the functioning of that particular bankruptcy court, whichever is earlier. The Executive Committee approved the recommendation.

Bankruptcy Judgeships. In March 2019, the Judicial Conference agreed to ask Congress to convert 10 temporary judgeships to permanent status: five in the District of Delaware, two in the District of Puerto Rico, and one each in the District of Maryland, the Eastern District of Michigan, and the Southern District of Florida (JCUS-MAR 19, p. 9). The Executive Committee was asked by the Bankruptcy Committee to act on behalf of the Judicial Conference on an expedited basis to approve seeking for inclusion in COVID-19 stimulus legislation the conversion of four additional judgeships from temporary to permanent status, in addition to the 10 conversions sought in the March 2019 Judicial Conference position, as follows: two in the District of Delaware and one each in the Middle District of Florida and the Eastern District of Michigan. These four judgeships were requested as additional permanent judgeships by the Judicial Conference in its March 2017 position, but Congress authorized each of the four as temporary judgeships. The Bankruptcy Committee noted that conversion of the four new judgeships, in addition to the previously recommended 10 conversions, had been warranted prior to the COVID-19 pandemic, and that bankruptcy filings nationwide were expected to increase significantly during the recovery from the pandemic, likely resulting in significant workload increases in the bankruptcy courts that already carry among the nation's highest caseloads per judgeship. The Executive Committee approved the recommendation.

TEMPORARY EXCEPTIONS TO HUMAN RESOURCES POLICIES

Time Limits for Term and Temporary Appointments. Judicial Conference policy limits all term and temporary appointments to a maximum duration of four

years (JCUS-SEP 07, p. 26; JCUS-MAR 11, pp. 24-25; *Guide to Judiciary Policy*, Vol. 12, Ch. 5, § 510.50). The Committee on Judicial Resources noted that courts had expressed concerns that the complexities and uncertainties associated with the COVID-19 pandemic may make it unfeasible for replacement positions (such as incoming term law clerks) to be filled in a timely manner in some cases. It therefore recommended that the Executive Committee act on behalf of the Judicial Conference on an expedited basis to authorize a waiver of the four-year limitation on term and temporary appointments under September 2007 and March 2011 Judicial Conference policy for employees whose appointments have expired or will expire during the pandemic, to allow extensions of their term or temporary appointments not to exceed December 31, 2020, upon a finding by the appointing officer that hiring a replacement prior to this date is not feasible due to COVID-19. The Executive Committee approved the recommendation.

Mandatory Background Checks. Newly appointed and transferring employees in courts and federal public defender organizations are appointed contingent upon a satisfactory suitability determination based on, at minimum, a mandatory background check (*Guide to Judiciary Policy*, Vol. 12, Ch. 5, § 570.50.10(a)(1)). Judicial Conference policy requires that all background checks for “sensitive” positions include a Federal Bureau of Investigation (FBI) fingerprint check, which consists of a fingerprint search of the FBI’s national database of criminal history records (JCUS-SEP 02, pp. 52-53). The Judicial Resources Committee noted that courts and federal public defender organizations, as well as most police stations, were unable to obtain fingerprints due to social distancing recommendations during the pandemic, but that the Administrative Office could perform FBI National Crime Information Center (NCIC) checks remotely using an employee’s name, social security number, and date of birth, which would reduce the face-to-face interaction associated with fingerprinting and protect the safety of judiciary employees. The Committee also noted that NCIC checks provide all the same data that FBI fingerprint checks do, with the exception of some state misdemeanor arrests, most of which would not prohibit employment. It therefore recommended that the Executive Committee act on behalf of the Judicial Conference on an expedited basis to authorize the use of FBI NCIC checks in lieu of fingerprint checks when conducting a background check for new and transferring employees for sensitive positions under September 2002 Judicial Conference policy, through December 31, 2020, due to health and safety concerns resulting from COVID-19. The Executive Committee approved the recommendation.

Limitation on Law Enforcement Officer Reemployed Annuitants. Judicial Conference policy permits a retired law enforcement officer to be reappointed as a reemployed annuitant for a single period of 18 months when one of the following two criteria is satisfied: (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 (JCUS-MAR 09, p. 26). The Executive Committee was asked by the Judicial Resources Committee to act on an expedited basis on behalf of the Judicial Conference to authorize an additional one-year reemployment period for law enforcement officers serving as reemployed annuitants under the March 2009 Judicial Conference policy whose appointment expires on or before December 31, 2020, upon a finding by the chief district judge that a robust recruitment process cannot be conducted due to COVID-19. The Judicial Resources Committee noted that COVID-19 may preclude courts from conducting a robust recruitment process for positions where the incumbent's term expires during the pandemic, and that a one-year extension period may be necessary because of the nature of work that law enforcement officer reemployed annuitants perform, the senior roles they typically serve, and the extensive preemployment activities that must be conducted before successors can be hired to backfill these positions. The Executive Committee approved the recommendation.

JUDGES' PHYSICAL SECURITY

The Executive Committee was asked by the Committee on Judicial Security to act on an expedited basis on behalf of the Judicial Conference to approve five measures to enhance judges' physical security in response to the July 2020 attack on Judge Esther Salas (District of New Jersey) and her family, and to address longstanding concerns of the Security Committee:

- (1) Seek legislation to enhance the protection of judges' personally identifiable information (PII), particularly on the internet;
- (2) Support the development of a resource, in coordination with the U.S. Marshals Service (USMS), to monitor the public availability of judges' PII, inform judges of security vulnerabilities created by this information, and where necessary, advise the appropriate law enforcement of an inappropriate communication;
- (3) Support additional appropriations for the upgrade, installation, and continued sustainment of the Home Intrusion Detection Systems (HIDS) program to ensure that it is in line with current security capabilities and technologies;
- (4) Support funding for the USMS for additional deputy U.S. Marshals in accordance with the District Staffing Model and pursuant to the USMS annual appropriations request; and
- (5) Support a direct appropriation to the Federal Protective Service (FPS) to fund the required upgrades for and cyclical maintenance of the security camera

systems it manages at U.S. courthouses.

The Committee on Judicial Security noted that while multiple legislative and regulatory schemes already exist at the state level in furtherance of the first objective of protecting judges' PII, federal legislation could pre-empt state laws, impose new responsibilities on data holders, and provide a greater deterrent for data sellers. The Committee also noted that the development of a resource to monitor PII—as proposed in the second measure—would be critical to the success of any such legislation. In making its third recommendation, the Committee pointed to the USMS' acknowledgement that current HIDS system components are lacking in modern technologies, and thus inadequate, as a result of funding deficiencies. The Committee similarly observed with respect to its fourth recommendation that due to funding shortfalls, the current number of onboard USMS deputies is lower than the number USMS has requested pursuant to its District Staffing Model. Finally, the Committee noted in making its fifth recommendation that inadequate funding has contributed to the lack of a comprehensive FPS strategy for cyclical maintenance, replacement, and upgrade of cameras located on the exterior of courthouse facilities. The Executive Committee approved the Security Committee's recommendations.

UPDATE TO THE *STRATEGIC PLAN FOR THE FEDERAL JUDICIARY*

Since its approval by the Judicial Conference in September 2010 (JCUS-SEP 10, pp. 5-6), the *Strategic Plan for the Federal Judiciary (Strategic Plan)* has served as a framework for national policy deliberations. The approach to planning for the Judicial Conference and its committees, also approved by the Judicial Conference in September 2010, calls for a review of the *Strategic Plan* every five years. Starting in the summer of 2019, Judicial Conference committees were asked to consider significant policy changes, trends affecting the judiciary, progress that had been achieved and issues to be addressed, and other challenges facing the judiciary since the *Strategic Plan* was last updated in 2015 (JCUS-SEP 15, pp. 5-6). Committees were then asked to propose updates and revisions to the *Strategic Plan*. In consultation with the Chief Justice, an Ad Hoc Strategic Planning Group was established to review committee proposals for revisions and prepare a draft of an updated and revised plan. In August 2020, the Ad Hoc Strategic Planning Group submitted a proposed updated *Strategic Plan* to the Executive Committee for consideration and recommendation to the Judicial Conference. At this session, on recommendation of the Executive Committee, the Judicial Conference approved the update to the *Strategic Plan for the Federal Judiciary*.

The updated *Strategic Plan* retains the mission, core values, and scope of the 2015 and 2010 versions of the *Strategic Plan* while adding a new core value titled “Diversity and Respect.” The *Strategic Plan* adds several new strategies and supporting goals related to workplace conduct and diversity, transparency and accountability, civics education, health and wellness, and criminal defense, as well as language underscoring the judiciary’s commitment to non-discrimination and the delivery of fair and impartial justice. Other substantial changes reflect significant policy changes adopted by the Judicial Conference since 2015.

RESOLUTION

The Judicial Conference approved a recommendation of the Executive Committee to adopt the following resolution recognizing the substantial contributions made by Judicial Conference committee chairs whose terms of service end in 2020:

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

HONORABLE RICARDO S. MARTINEZ
Committee on Criminal Law

HONORABLE RAYMOND J. LOHIER, JR.
Committee on Defender Services

HONORABLE ANTHONY JOHN TRENGA
Committee on Financial Disclosure

HONORABLE ANTHONY J. SCIRICA
Committee on Judicial Conduct and Disability

HONORABLE DAVID G. CAMPBELL
Committee on Rules of Practice and Procedure

HONORABLE MICHAEL A. CHAGARES
Advisory Committee on Appellate Rules

HONORABLE JOHN D. BATES
Advisory Committee on Civil Rules

HONORABLE DEBRA ANN LIVINGSTON
Advisory Committee on Evidence Rules

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

MISCELLANEOUS ACTIONS

The Executive Committee—

- Approved interim fiscal year 2021 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 court programs.
- Approved costs related to the Ninth Circuit's 2022 judicial conference, pursuant to the Judicial Conference regulations on meeting planning and administration, Guide to Judiciary Policy, Vol. 24, Ch. 2, § 23.
- Approved, on behalf of the Judicial Conference on an expedited basis, a recommendation from the Committee on Judicial Resources to grant a request for an exception to Judicial Conference policy that allows judges to employ only one chambers law clerk at Judiciary Salary plan (JSP)-14 or above (JCUS-SEP 97, pp. 57-59; *Guide to Judiciary Policy*, Vol. 12, Ch. 6, § 615.50(h)(1)), to allow a career law clerk to retain their JSP-14 grade and pay for two clerkships in the same court, one beginning in fall 2020 and another at a future date, in order to address a workplace misconduct matter.
- Approved, on behalf of the Judicial Conference on an expedited basis, a recommendation from the Committee on the Administration of the Bankruptcy

System to seek legislation to extend the temporary bankruptcy judgeship in the Eastern District of Tennessee for an additional five years.

- Referred to the Committees on Court Administration and Case Management, Criminal Law, Defender Services, and the Administration of the Magistrate Judges System for their consideration a proposal to amend the Speedy Trial Act, 18 U.S.C. § 3161-3174, to add a crisis, such as a pandemic, as a reason for excludable delay under the Act.
- Referred to the Committees on Court Administration and Case Management, Criminal Law, Defender Services, and Rules of Practice and Procedure for their consideration a proposal either to amend the Federal Rules of Criminal Procedure, or to seek legislation, to authorize remote grand jury operations during the pandemic.
- Pending the development of the resource sought in the second measure to enhance judges' physical security approved by the Executive Committee on an expedited basis on behalf of the Judicial Conference (*see supra*, pp. 12-13), requested that the Committee on Judicial Security evaluate a proposal from the Ninth Circuit (or any alternative proposal) to utilize existing commercial entities, in coordination with the U.S. Marshals Service, to monitor for online threats against judges and courthouses, and expressed that it views the development of such a resource as a programmatic and funding priority.

COMMITTEE ON AUDITS AND ADMINISTRATIVE OFFICE ACCOUNTABILITY

COMMITTEE ACTIVITIES

The Committee on Audits and Administrative Office (AO) Accountability reported that it was updated on the results of various audits and engagements, including audits of the judiciary's retirement funds for fiscal years 2015 and 2016, and the Court Registry Investment Service audits for fiscal years 2016 and 2017. The Committee was also updated on the status and results of audits of the judiciary's appropriations and cyclical financial audits of court units and federal public defender organizations, including the remote audit procedures being implemented in response to COVID-19. Finally, the Committee was briefed on the AO's strategy for continuing to address corrective actions relating to AO contract management and the ongoing

effort to develop consolidated judiciary financial reporting and a more integrated approach to internal controls to support consolidated financial statements.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

CONTINUING NEED FOR BANKRUPTCY JUDGESHIPS

In accordance with 28 U.S.C. § 152(b)(3), the Judicial Conference conducts a comprehensive review of all judicial districts every other year to assess the continuing need for authorized bankruptcy judgeships. By December 31 of each even-numbered year, the Conference reports to Congress its findings and any recommendations for the elimination of an authorized bankruptcy judgeship that can be eliminated when a vacancy exists by reason of resignation, retirement, removal, or death. On recommendation of the Committee on the Administration of the Bankruptcy System, which relied on the results of the 2020 continuing needs survey, the Conference agreed to take the following actions:

- a. Recommend to Congress that no existing bankruptcy judgeship be statutorily eliminated; and
- b. Advise the appropriate circuit judicial councils to consider not filling vacancies that currently exist or may occur because of resignation, retirement, removal, or death, until there is a demonstrated need to do so in the following districts: Alaska, Arizona, California-Central, California-Eastern, California-Northern, California-Southern, Colorado, Connecticut, Idaho, Illinois-Central, Iowa-Northern, Iowa-Southern, Kansas, Maine, Massachusetts, Michigan-Western, New York-Western, Ohio-Northern, Ohio-Southern, Oklahoma-Northern, Oklahoma-Western, Oregon, Pennsylvania-Eastern, South Dakota, Virginia-Western, and Washington-Western.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Bankruptcy System reported that it discussed the potential for significant, long-term impacts of the COVID-19 pandemic on the economy, the bankruptcy system, and bankruptcy case filings. It also discussed how that, in turn, could affect bankruptcy judge workloads and bankruptcy court budgets and staffing. The Committee continued to consider whether to identify

additional courts to participate in the bankruptcy judgeship vacancy pilot, approved by the Judicial Conference in September 2014, but decided again to defer the matter until its December 2020 meeting, when it will reevaluate needs for bankruptcy judge resources. In anticipation of increasing workloads, the Committee also transmitted a memorandum to chief circuit judges and chief bankruptcy judges regarding resources and tools (in addition to the vacancy pilot) available to bankruptcy courts experiencing workload challenges, including inter- and intra-circuit assignments, multi-district designation, recalled bankruptcy judges, and the temporary bankruptcy law clerk program. Finally, the Committee continues to work to improve bankruptcy courts' management of unclaimed funds through its Unclaimed Funds Task Force, and approved a recommendation of its Task Force to ask the Advisory Committee on Bankruptcy Rules to consider amending Federal Rule of Bankruptcy Procedure 3011.

COMMITTEE ON THE BUDGET

FISCAL YEAR 2022 BUDGET REQUEST

After considering the budget requests of the program committees, the Budget Committee recommended to the Judicial Conference a fiscal year 2022 budget request of \$7.7 billion in discretionary appropriations, which is 4.0 percent above assumed discretionary appropriations for fiscal year 2021, but \$50.0 million below the funding levels requested by the program committees. The Judicial Conference approved the Budget Committee's fiscal year 2022 budget request, subject to amendments necessary as a result of (a) new legislation, (b) actions of the Judicial Conference, or (c) any other reason the Executive Committee considers necessary and appropriate.

COMMITTEE ACTIVITIES

The Committee on the Budget reported that it discussed the status of the fiscal year 2021 appropriations cycle, the continued importance of congressional outreach, and the status of judiciary cost-containment initiatives. In its FY 2022 budget recommendation, the Committee also agreed to set aside up to \$500,000 from within the Salaries and Expenses account's court allotment reserves that can be allocated to courts needing assistance with implementing a consolidation or extensive flexible sharing arrangement, and it approved guidelines for court units to request and receive funding for this purpose. The Committee also decided to ask the Executive Committee to consider beginning funding these efforts in the FY 2021 final financial

plan, if the Executive Committee determines sufficient funding is available and other conditions permit.

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 2020, the Committee received 19 new written inquiries and issued 16 written advisory responses. During this period, the average response time for requests was 13 days. In addition, the Committee chair responded to 11 informal inquiries, individual Committee members responded to 183 informal inquiries, and Committee counsel responded to 563 informal inquiries, for a total of 757 informal inquiries.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

REMOTE PROCEEDINGS DURING COVID-19 PANDEMIC

The “Coronavirus Aid, Relief, and Economic Security Act” (CARES Act), Pub. L. 116-136, enacted on March 27, 2020, authorized the use of video and telephone conferencing for various criminal events during the course of the COVID-19 emergency, under certain circumstances and with the consent of the defendant after consultation with counsel. This use of video and telephone conferencing could only take place when authorized by the chief judge of a district or a designee, contingent upon a finding by the Judicial Conference that emergency conditions exist that materially affect either the federal courts generally or a particular district court of the United States. The authority would end 30 days after the date on which the national emergency declared by the President ends, or when the Judicial Conference finds that the federal courts are no longer materially affected, whichever is earlier. On the joint recommendation of the chairs of the Committee on Court Administration and Case Management and the Committee on Rules of Practice and Procedure (*see infra*, pp. 34-35), the Judicial Conference by mail ballot found, pursuant to the CARES Act, that emergency conditions due to the national emergency declared by the President under the National Emergencies Act (50 U.S.C. § 1601 et seq.) with respect to COVID-19 have materially affected and will materially affect the functioning of the federal courts generally.

BANKRUPTCY COURT MISCELLANEOUS FEE SCHEDULE

With the goal of facilitating requests to withdraw unclaimed funds, the Committee on Court Administration and Case Management, in consultation with the Committee on the Administration of the Bankruptcy System, recommended that the Judicial Conference amend Item 11 of the Bankruptcy Court Miscellaneous Fee Schedule to provide that fees not be charged in connection with a request to withdraw unclaimed funds, unless the court orders otherwise. The Conference approved the amendment as follows (new language underlined, deleted language struck through):

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

- to permit a party to file a complaint to obtain a determination under Rule 4007(b); ~~or~~
- when a debtor files a motion to reopen a case based upon an alleged violation of the terms of the discharge under 11 U.S.C. § 524; ~~or~~
- when the reopening is to correct an administrative error;
- to redact a record already filed in a case, pursuant to Fed. R. Bankr. P. 9037, if redaction is the only reason for reopening; or
- when a party files a motion to reopen a case to request to withdraw unclaimed funds, unless the court orders otherwise.

RECORDS MANAGEMENT

Retention and disposition of judiciary records is controlled by records disposition schedules jointly established by the Judicial Conference and the National Archives and Records Administration (NARA) (44 U.S.C. chapter 21; 28 U.S.C. § 457). At this session, the Judicial Conference approved three recommendations of the Committee on Court Administration and Case Management related to these schedules, as set forth below.

Email Records. In September 2019, the Judicial Conference, on recommendation of the Committee on Court Administration and Case Management, approved the application of the judiciary's records disposition schedules to email by

clarifying that the term “correspondence” in the schedules includes email (JCUS-SEP 19, pp. 8-9). The term “correspondence” appears frequently in the schedules and as part of the catch-all category of “general correspondence” files, which includes “all other administrative records” and must be retained for five years after the file is closed. The Committee noted that this broad category would now encompass an enormous and vast array of emails exchanged daily by court staff in the general course of business, which would be cumbersome, if not impossible, to store outside of the email system. The Committee accordingly recommended that the Conference approve amendments to Records Disposition Schedules 1, 2, and 3 to allow general correspondence files to be destroyed when business use ceases; and clarify the location where email records should be stored depending on the type of record and its retention period. The amendments would provide that only email requiring retention for more than three years must be stored outside of the email system, while email requiring retention for three years or less may be retained inside the email system. The Conference approved the Committee’s recommendation and authorized the revised schedules to be transmitted to NARA for its concurrence.

Local Rules. In September 2019, the Judicial Conference, on recommendation of the Committee on Court Administration and Case Management, approved revisions to Records Disposition Schedule 1, Item C(5), and Records Disposition Schedule 2, Item B(9), to designate records pertaining to local rules as permanent, and authorized the revised schedules to be transmitted to NARA for its concurrence (JCUS-SEP 19, p. 9). NARA subsequently suggested several changes to the proposed revised schedules to make them easier to apply, with which the Committee agreed. On the Committee’s recommendation, the Conference approved amendments to Records Disposition Schedule 1, Item C(5) and Records Disposition Schedule 2, Item B(9), governing records pertaining to local rules, to clarify the types of records that are subject to retention and to provide a definitive time frame for when such records should be transferred to NARA.

Powers of Attorney. Records Disposition Schedule 2, Item B(6) permits district courts to destroy the certified copy of a power of attorney seven years after the date of its revocation. However, the Committee noted that surety companies frequently do not notify courts when they revoke the appointment of a resident agent, forcing district courts to retain these powers of attorney indefinitely, as the seven-year retention period begins to run only “after the date of revocation.” The Committee accordingly recommended that the Judicial Conference approve an amendment to Records Disposition Schedule 2, Item B(6), to change the disposition period for appointment of process agents by surety companies. The amendment would allow district courts to dispose of powers of attorney filed by surety companies either 7 years after the resident agent is terminated by reason of resignation, death, disability,

removal, or other cause, or 15 years after the power of attorney is filed when the filer does not object to the destruction within 30 days of written notice being provided, whichever occurs first. The Conference approved the Committee’s recommendation and authorized the revised schedule to be transmitted to NARA for its concurrence.

COMMITTEE ACTIVITIES

The Court Administration and Case Management Committee reported that it received updates on several of its ongoing initiatives, including efforts to limit access to sensitive information about cooperators in CM/ECF, to develop guidelines and technical requirements for a district court audio streaming pilot (expected to launch in fall 2020), and to wholly revise the Civil Litigation Management Manual. The Committee also discussed the work of its subcommittee on foreign state interference to address informational and reputational attacks on the judiciary and the judicial process. In particular, the Committee approved an update to the model jury instructions concerning “The Use of Electronic Technology to Learn or Communicate About a Case,” recommended by the subcommittee to help address the threat of foreign interference and social media-based misinformation while also modernizing the instructions more generally. Finally, the Committee was updated on progress made toward performance of an independent assessment of the project to develop the Next Generation of CM/ECF.

COMMITTEE ON CRIMINAL LAW

METHOD OF MONITORING INMATES IN PRERELEASE CUSTODY

The probation and pretrial services system assists the Bureau of Prisons in monitoring inmates in three different categories of prerelease custody under 34 U.S.C. § 60541(g), 18 U.S.C. 3624(c), and 18 U.S.C. 3624(g). However, each category is governed by different statutory requirements concerning the method of monitoring, which creates challenges to the effective and efficient implementation of the probation system’s location monitoring program. Noting that each set of requirements conflicts with the probation system’s own policies and procedures (which allow for more flexible adjustment of supervision methods based on the recidivism risk of each individual), the Committee on Criminal Law supported applying to all three categories—to add consistency and clarity to the statutory scheme—the 2018 Federal Sentencing Guidelines’ definition of “home detention,” which is more comparable to the probation system’s policies, and provides that electronic monitoring or any

alternative means of surveillance may each be used as appropriate. The Committee therefore recommended, and the Judicial Conference approved, seeking legislation amending 18 U.S.C. §§ 3624(c) and (g) and 34 U.S.C. § 60541(g) to define home detention or home confinement requirements in each to state that electronic monitoring is an appropriate means of surveillance for home detention, but that alternative means of surveillance may be used if appropriate.

INTERACTION OF MULTIPLE TERMS OF SUPERVISED RELEASE

When modifying an imposed term of imprisonment based on a motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A), a court may impose a term of probation or supervised release equal to or less than the portion of unserved time remaining on the original term of imprisonment. The statute is silent, however, as to how a newly imposed term of probation or supervised release interacts with a previously imposed term of supervised release. The Committee expressed concern that reading the statute together with 18 U.S.C. § 3624(e) could yield a conclusion that the terms must run consecutively rather than concurrently, which would result in duplicative and potentially lengthy supervised release periods that may conflict with established social science research indicating that excessive supervision is not necessary to achieve positive outcomes and in some cases may even be counterproductive. The Committee accordingly recommended, and the Conference approved, seeking legislation to clarify how an original term of supervised release interacts with an additional term of supervised release imposed under 18 U.S.C. § 3582(c)(1)(A).

COMMITTEE ACTIVITIES

The Committee on Criminal Law reported that it continued to oversee and coordinate implementation of the First Step Act of 2018, particularly the provisions that allow for early release from prison. Among other actions, the Committee developed and endorsed a standardized court order and pro se form to be used in connection with motions for compassionate release under 18 U.S.C. § 3582(c)(1)(A). The Committee also provided guidance to courts on the impact of the COVID-19 pandemic on operations in probation and pretrial services offices. Finally, the Judiciary-BOP Working Group, which includes members from the Criminal Law Committee and other Judicial Conference committees, has held biweekly meetings to discuss the impact of the COVID-19 pandemic on operations within the Bureau of Prisons and the Department of Justice, on operations in the probation and pretrial services system, and on criminal proceedings in the courts.

COMMITTEE ON DEFENDER SERVICES

COMMITTEE ACTIVITIES

The Committee on Defender Services reported that it discussed the impact of the COVID-19 pandemic on representation under the Criminal Justice Act (CJA), including challenges associated with CJA practitioners' ability to access and communicate with their clients and to perform in-person tasks necessary to prepare a constitutionally effective defense during the pandemic. In addition, the Committee recommended that the Committee on Judicial Resources recommend the Conference approve a Model Federal Public Defender Organization Employment Dispute Resolution Plan. Recognizing that there is a pronounced need to improve diversity within the Defender Services program, the Committee reaffirmed its commitment to monitoring and supporting workforce diversity, including through such efforts as the creation of a Defender Services Diversity Fellowship Program (*see infra*, p. 32). The Committee also discussed critical technical improvements needed to bring eVoucher, the judiciary's electronic CJA voucher processing system, into compliance with current financial, audit, and cybersecurity standards and reaffirmed its support for sufficient funding for these necessary system updates. Finally, the Committee received updates on several developments in death penalty representation that will necessitate increased resources for the Defender Services program, including the Department of Justice's reinstatement of federal executions and certification of the state of Arizona for "opt-in" status.

COMMITTEE ON FEDERAL-STATE JURISDICTION

CASE ACT OF 2019

The Copyright Alternative in Small-Claims Enforcement Act of 2019 ("CASE Act"), pending in the 116th Congress, would create an Article I tribunal within the legislative branch to resolve copyright claims valued at under \$30,000 in damages, in order to address concerns that litigation in Article III courts may be cost-prohibitive for potential plaintiffs with valid small copyright claims. Noting that the Long Range Plan for the Federal Courts approved by the Judicial Conference in 1995 recognizes copyright matters as a category of cases for which federal statutory law should provide an Article III forum (*Long Range Plan for the Federal Courts*, Recommendation 6, p. 28; JCUS-SEP 95, p. 41), and that the bill could set a dangerous precedent for

transferring adjudication of a wide range of other claims more appropriately heard in Article III forums to Article I tribunals based on concerns about litigation costs without a clear limiting principle, the Committee recommended that the Judicial Conference express concern with the CASE Act or any other similar legislation that would divert copyright law claims from Article III courts, and encourage Congress to instead collaborate with the federal judiciary to consider other strategies to facilitate the cost-effective resolution of valid copyright infringement small claims. The Conference adopted the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported that it continued its review of potential changes to the statutory procedure regarding intra-district transfers of cases as part of its ongoing jurisdictional improvements project. The Committee received reports from the Federal Judicial Center on updates being made to the bankruptcy section of the *Manual for Cooperation Between State and Federal Courts* and on a statistical study of certified questions of law. The Committee was also briefed on numerous legislative matters of interest, including legislation related to immigration reform, extreme risk protection orders, national injunctions, and the tribal jurisdictional aspects of the proposed reauthorization of the Violence Against Women Act. In addition, the Committee received a report on the Department of Justice's certification of Arizona's "opt-in" petition regarding federal habeas review of state-imposed death sentences.

COMMITTEE ON FINANCIAL DISCLOSURE

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported that it was updated on efforts to procure and implement a new electronic financial disclosure reporting system, including efforts to improve the timeline for hosting, development, and implementation of a complete electronic financial disclosure system. The Committee authorized the release to the public of the 2019 reports, which are being filed in 2020, and future reports in Portable Document Format (PDF). The Committee also approved updating the financial disclosure regulations in the *Guide to Judiciary Policy (Guide)*, Vol. 2, Part D, to incorporate guidance previously provided outside the regulations on eligibility to claim reimbursement for professional fees incurred in the preparation of financial disclosure reports. Procedural guidance on processing those reimbursement

claims was moved from Vol. 2 to Vol. 13 of the *Guide*. As of April 24, 2020, the Committee had received 4,375 financial disclosure reports and certifications for calendar year 2018 (out of a total of 4,393 required to file), including 1,257 annual reports from Supreme Court justices and Article III judges; 333 annual reports from bankruptcy judges; 580 annual reports from magistrate judges; 1,595 annual reports from judicial employees; and 610 reports from nominee, initial, and final filers.

COMMITTEE ON INFORMATION TECHNOLOGY

LONG RANGE PLAN FOR INFORMATION TECHNOLOGY IN THE FEDERAL JUDICIARY

Pursuant to 28 U.S.C. § 612 and on recommendation of the Committee on Information Technology, the Judicial Conference approved the fiscal year 2021 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 measures taken to address the judiciary’s expanded IT needs in the wake of the COVID-19 pandemic. The Committee also discussed the evolution of the judiciary’s IT self-assessments (scorecard) and determined that newly introduced metrics requiring significant effort should be “non-scored” for the first year. In addition, the Committee continued its discussion of the judiciary’s remote access program and initiatives underway to move the judiciary toward a “Zero Trust Architecture,” which requires verification for every user and device attempting to access the judiciary’s resources and network segmentation. Finally, the Committee approved a budget request for fiscal year 2022 that included a request for an annual judiciary IT modernization fund that would allow work on a prioritized list of activities to modernize the judiciary’s IT infrastructure.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that 80 intercourt assignments were undertaken by 62 Article III judges from January 1, 2020, to June 30, 2020. During this time, the Committee continued to disseminate information about intercourt assignments and aided courts requesting assistance by identifying and obtaining judges willing to take assignments. The Committee also reviewed and concurred with 17 proposed intercourt assignments of bankruptcy judges and nine of magistrate judges.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported on international rule of law work that was supported by federal judges in Europe and Eurasia, the Near East, East Asia and the Pacific, South and Central Asia, the Western Hemisphere, and Africa, most of which had taken place prior to the March 2020 Conference session. Due to the COVID-19 pandemic, there were no requests for federal judiciary support of programs hosted abroad after February 2020, although one committee member provided support to a virtual program in April 2020. The Committee also discussed the judiciary's impact on international rule of law programming since November 2018, when the Committee made this a focus, and noted that executive and legislative branch partners have continuously acknowledged the positive and often indispensable contributions made by federal judges. Finally, the Committee discussed future participation in such programs, based on information from partner agencies about the effects of COVID-19 on international rule of law programs sponsored by the United States.

COMMITTEE ON THE JUDICIAL BRANCH

COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that it discussed legislation

passed in response to the COVID-19 pandemic applicable to the federal courts and other judiciary legislative requests. Administrative Office Director James C. Duff led a discussion about the politicization of the branch that could harm the public perceptions of the integrity and fairness of the federal judiciary. The Committee discussed recent activities related to judicial health and wellness, including the formation of circuit-wide wellness committees, and received a briefing from the Judicial Integrity Officer on the status of workplace employment initiatives. Finally, the Committee was briefed on civics education activities across the judiciary, including the innovations many educational programs have incorporated to operate in a distance learning environment.

COMMITTEE ON JUDICIAL CONDUCT AND DISABILITY

COMMITTEE ACTIVITIES

The Committee on Judicial Conduct and Disability reported that it discussed and considered complaint-related matters under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351–364 (Act), and the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules). The Committee also discussed the ongoing implementation of recommendations contained in the Report of the Federal Judiciary Workplace Conduct Working Group. The Committee and its staff have continued to address inquiries regarding the Act and the Rules, and to give other assistance as needed to circuit judicial councils and chief judges.

COMMITTEE ON JUDICIAL RESOURCES

OFFICE OF SPECIAL MASTERS

Locality pay for Court of Federal Claims special masters is capped at Level III of the Executive Schedule. The chief judge of the Court of Federal Claims requested that the Judicial Resources Committee consider raising the cap to establish pay parity with magistrate judges, noting that the current pay disparity has made recruitment and retention difficult, and that special masters perform many of the same judicial functions as do other types of judicial officers. The Judicial Resources Committee observed that magistrate judges, unlike special masters, are statutorily designated as judicial officers and their pay is tied to the salary of district judges. However, to achieve fairness and to support the recruitment and retention of special masters, and noting that special masters are quasi-judicial officers whose pay is more appropriately

tied to the Executive Schedule, the Committee recommended that the Judicial Conference approve raising the locality pay cap for the chief special master and special masters of the United States Court of Federal Claims to Level II of the Executive Schedule, which would bring special masters' maximum pay to within one percent of the maximum salary of magistrate judges under 2020 judicial pay rates. The Conference approved the Committee's recommendation.

LAW CLERK QUALIFICATIONS

The qualification standards for chambers law clerks require an individual to have three years of legal work experience, including two years as a chambers law clerk or equivalent experience in the federal judiciary, among other things, to qualify for the Judiciary Salary Plan (JSP)-14 grade level (JCUS-SEP 94, p. 59). The Counselor to the Chief Justice of the United States, who serves as Executive Director of the Supreme Court Fellows Program, asked the Committee on Judicial Resources to consider crediting experience as a Supreme Court Fellow toward the two-year requirement. The Judicial Conference has previously recognized experience as a pro se law clerk (JCUS-SEP 03, p. 28), staff attorney (JCUS-MAR 04, p. 20), bankruptcy appellate panel law clerk (JCUS-SEP 06, p. 27), or death penalty law clerk (JCUS-MAR 07, pp. 23-24) as equivalent to chambers law clerk experience for the purposes of this policy. The Supreme Court Fellows Program, founded in 1973, offers mid-career professionals, recent law school graduates, and other post-graduate degree holders from the law and political science fields to gain practical experience in judicial administration, policy development, and education. To recognize the service of Supreme Court Fellows to the judiciary, the Committee on Judicial Resources recommended, and the Conference approved, amending the qualification standards for chambers law clerks to include experience in the Supreme Court Fellows Program as creditable for purposes of establishing JSP-14 grade eligibility.

EXCEPTION TO TERM LAW CLERK SERVICE LIMITATION

In September 2007, the Judicial Conference adopted a policy prohibiting service for more than four years in a term law clerk capacity (JCUS-SEP 07, p. 26). The chief judge of the Western District of Michigan requested an exception to this policy to allow a term law clerk to continue serving one additional year in his chambers until he steps down as chief judge in July 2022, noting that recruitment for a successor term law clerk would be challenging as he works to maintain continuity of operations during the COVID-19 pandemic. On recommendation of the Judicial Resources Committee, the Judicial Conference authorized a waiver of the four-year

limit on term law clerk service under September 2007 Conference policy to allow the chief judge of the Western District of Michigan to continue to employ his current term law clerk through July 17, 2022.

COURT REPORTER STAFFING CREDIT

In March 1999, the Judicial Conference authorized the Administrative Office, when a court requests, to provide court reporter staffing credit and associated funding based on judicial vacancies when an active district judge leaves the court without taking senior status (JCUS-MAR 99, p. 26). Recognizing that the rationale behind this policy is that court reporter resources are still needed when a judgeship becomes vacant (as the departing judge's caseload is distributed to the other judges of the court), the Judicial Resources Committee noted that the impact to the court is the same when an active judge retires directly to inactive senior status as when an active judge leaves the court entirely. The Committee accordingly recommended that the Conference amend its March 1999 policy to authorize the Administrative Office, at the court's request, to provide a court reporter staffing credit and associated funding based on judicial vacancies when an active judge takes inactive senior status under 28 U.S.C. § 371(b)(2) as follows (new language underlined):

[A]uthorize the Administrative Office, when the court requests, to provide court reporter staffing credit and associated funding based on judicial vacancies when an active district judge leaves the court without taking senior status, other than inactive senior status. The additional credit may be withdrawn if other vacant judgeships are filled before the specific vacancy for which the court reporter credit was given or if the inactive senior status judge chooses to become active and attains certification as outlined in 28 U.S.C. § 371(e)(1).

STAFF COURT INTERPRETER POSITIONS

Using established criteria, the Committee recommended, and the Conference approved, one additional full-time Spanish staff court interpreter position for the Southern District of California, to be considered for inclusion in the judiciary's fiscal year 2022 request.

CLERK'S OFFICE RESOURCES

The judiciary's Court Personnel System (CPS) covers all court positions except court unit executives, their seconds-in-command, chambers staff, court staff law clerks, and court reporters (JCUS-SEP 93, pp. 49-50). Salary expenses for CPS positions are paid using decentralized funds, and judiciary budget policy prohibits courts from using decentralized funds to pay the salaries of any chambers staff (*Guide to Judiciary Policy*, Vol. 13, Ch. 2, § 280.60.40(c)). The Committee on Judicial Resources was advised that judges in some courts use courtroom deputies (operational court support positions covered by the CPS) as additional law clerks, requiring applicants to those positions to have law degrees. Noting that this practice violates classification principles, depletes clerk's office resources at a time when court unit executives are being required to manage within budgetary constraints, and deprives courtroom deputies performing law clerk duties of the opportunity to be promoted based on those duties (since time spent as a courtroom deputy is not creditable as legal work experience), the Committee recommended that the Judicial Conference establish a policy that clerk's office positions paid using decentralized funds may not be used to provide additional law clerk support to a judge. The Conference approved the Committee's recommendation.

TYPE II DEPUTIES

As part of an effort to identify potential incentives to encourage court units to consider consolidation and at the request of the Committee on Court Administration and Case Management subcommittee on cost containment, the Committee on Judicial Resources evaluated a proposal from the Administrative Office's Budget and Finance Advisory Council that would provide court units of a consolidated court with ten or more judgeships with a credit of decentralized funds equivalent to the salary of a Judiciary Salary Plan (JSP) Type II deputy position in lieu of hiring a second Type II deputy. While courts are generally permitted to have only one Type II deputy position per unit at a JSP-16 level, the Judicial Conference in 2004 authorized any unit in a district or bankruptcy court with ten or more authorized judgeships to establish a second JSP-16 Type II deputy position upon notification to the Administrative Office, to be funded with the court's decentralized funds (JCUS-SEP 04, p. 23). The Committee on Judicial Resources observed that when offices are consolidated within courts, some clerks and chief judges might prefer a credit of funds to hire additional managers or special staff rather than a second chief deputy. To encourage court consolidation as a cost-containment measure, the Committee on Judicial Resources

recommended that the Judicial Conference allow any consolidated court eligible for a second JSP Type II chief deputy position to elect to receive a credit of decentralized funds equivalent to a JSP-16, step 1, chief deputy position for the hire of a Court Personnel System position(s) instead. The Conference adopted the Committee's recommendation. The Committee additionally noted that it would be appropriate to retroactively apply this policy to courts that have already consolidated in order to provide flexibility to address staffing changes.

STAFFING FORMULAS FOR PROBATION AND PRETRIAL SERVICES OFFICES

In accordance with its schedule for updating staffing formulas every five years, the Committee on Judicial Resources considered updates to the formulas for probation and pretrial services offices. On recommendation of the Committee, the Conference approved new staffing formulas for the probation and pretrial services offices, to be applied starting in fiscal year 2021, which provide an increase of 39 full-time equivalent positions, based on the statistical year 2019 workload.

DEFENDER SERVICES DIVERSITY FELLOWSHIP PROGRAM

The Committee on Judicial Resources, at the request of the Committee on Defender Services, recommended that the Judicial Conference approve two full-time equivalent attorney positions for the establishment of a Defender Services Capital Diversity Fellowship and 12 full-time equivalent attorney positions for the establishment of a pilot Defender Services Non-Capital Diversity Fellowship of up to four years, to be considered for inclusion in the judiciary's fiscal year 2022 budget request, and delegate to the Committee on Defender Services the authority to issue and amend guidelines consistent with the parameters of the fellowships. The goal of these fellowships—together comprising the Defender Services Diversity Fellowship Program—is to create a pipeline of diverse attorneys qualified to provide representation under the Criminal Justice Act. Each fellow would be hosted by a federal defender organization for a two-year fellowship term, during which they would gain federal criminal defense experience. The capital fellowship component was successfully piloted on an informal basis between 2018 and 2020, while the pilot for the non-capital fellowship component will permit an evaluation of its efficacy based on two full cycles of the fellowship. The Conference approved the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that it submitted to the Committee on the Budget a FY 2022 budget request for programs under the Judicial Resources Committee’s jurisdiction that was equivalent to a 3.1 percent increase over the FY 2021 assumed obligations and would result in 11,482 full-time equivalent positions for court staff under its jurisdiction. Subsequent to the meeting, the chair adjusted the Committee’s recommendation using updated caseload data, resulting in a recommendation to the Budget Committee of 11,533 FTE positions, a 3.3 percent increase over FY 2021 assumed obligations.

COMMITTEE ON JUDICIAL SECURITY

COMMITTEE ACTIVITIES

The Committee on Judicial Security reported that it recommended a court security budget request of \$701.4 million, a 4.1 percent increase over the assumed obligations for fiscal year 2021. The Committee also discussed the efforts of the COVID-19 Task Force, a partnership across all three branches of the federal government that was established by the Administrative Office to provide operational, facility management, and security support to federal courts nationwide in response to the COVID-19 pandemic. Finally, the Committee met with Donald Washington, the Director of the U.S. Marshals Service (USMS), who discussed how the response to the COVID-19 pandemic and to civil unrest occurring after the May 2020 death of George Floyd has impacted USMS operations.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

CHANGES IN MAGISTRATE JUDGE POSITIONS

After considering the recommendations of the Committee on the Administration of the Magistrate Judges System and the views of the Administrative Office, the district courts, and the judicial councils of the circuits, the Judicial Conference agreed to (a) authorize a part-time magistrate judge position at Washington, DC, designated at Salary Level 1 (\$99,544 per annum); (b) authorize an

additional magistrate judge position at Camden in the District of New Jersey; (c) authorize an additional magistrate judge position at Corpus Christi in the Southern District of Texas; (d) authorize an additional magistrate judge position at Waco in the Western District of Texas, and make no other change in the number, locations, or arrangements of the magistrate judge positions in the district; (e) authorize an additional magistrate judge position at Indianapolis in the Southern District of Indiana; (f) make no change in the number, locations, or arrangements of the magistrate judge positions in the Northern District of Iowa; (g) authorize the conversion of the part-time magistrate judge position at Pierre in the District of South Dakota to a full-time position, and discontinue the part-time magistrate judge position at Aberdeen upon the filling of the full-time position at Pierre; (h) make no change in the number, location, or arrangements of the magistrate judge positions in the District of Idaho; and (i) authorize the conversion of the part-time magistrate judge position at St. George in the District of Utah to a full-time position.

ACCELERATED FUNDING

On recommendation of the Committee on the Administration of the Magistrate Judges System, the Conference agreed to designate for accelerated funding, effective April 1, 2021, the new full-time magistrate judge positions in the District of New Jersey at Camden, the Southern District of Texas at Corpus Christi, the Southern District of Indiana at Indianapolis, and the District of South Dakota at Pierre.

COMMITTEE ACTIVITIES

The Committee reported that it considered six cyclical district-wide magistrate judge utilization reviews and, where appropriate, endorsed suggestions regarding the utilization of magistrate judges in these districts. Pursuant to Judicial Conference policy regarding the review of magistrate judge position vacancies (JCUS-SEP 04, p. 26), for the period between its December 2019 and June 2020 meetings, the Committee, through its chair, approved filling 23 magistrate judge position vacancies in 17 district courts. At its June 2020 meeting, the Committee considered requests from two courts to fill three magistrate judge position vacancies and approved filling one position in each of the courts. By mail ballot or at its June 2020 meeting, the Committee also considered and approved requests from seven courts for the recall, extension of recall, approval of staff, or extension of staff, for eleven retired magistrate judges. Finally, the Committee considered by mail ballot three requests for a waiver of policy prohibiting a former merit selection panel member to be considered for a

magistrate judge position in the same district for one year after completion of panel service, granting two and declining one of the requests.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

REMOTE PROCEEDINGS DURING COVID-19 PANDEMIC

As discussed more fully *supra*, p. 19, on the joint recommendation of the chairs of the Committee on Court Administration and Case Management and the Committee on Rules of Practice and Procedure, the Judicial Conference by mail ballot found, pursuant to the CARES Act, that emergency conditions due to the national emergency declared by the President under the National Emergencies Act (50 U.S.C. § 1601 et seq.) with respect to COVID-19 have materially affected and will materially affect the functioning of the federal courts generally.

FEDERAL RULES OF APPELLATE PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Appellate Rules 3 (Appeal as of Right—How Taken) and 6 (Appeal in a Bankruptcy Case), and Forms 1 (Notice of Appeal to a Court of Appeals From a Judgment or Order of a District Court) and 2 (Notice of Appeal to a Court of Appeals From a Decision of the United States Tax Court), together with committee notes explaining their purpose and intent. The Judicial Conference approved the proposed amendments and authorized their transmittal to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Bankruptcy Rules 2005 (Apprehension and Removal of Debtor to Compel Attendance for Examination), 3007 (Objections to Claims), 7007.1 (Corporate Ownership Statement), and 9036 (Notice and Service Generally), together with committee notes explaining their purpose and intent. The Judicial Conference approved the proposed amendments and authorized their transmittal to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure reported on its advisory committees' consideration of possible rule amendments that would address emergency measures that may be taken by the federal courts during future national emergencies, as directed by § 15002(b)(6) of the CARES Act. The Committee asked each advisory committee to identify rules that should be amended to account for emergency situations and to develop discussion drafts of proposed amendments. As a starting point, subcommittees formed by the Advisory Committees on Appellate, Bankruptcy, Civil, and Criminal Rules solicited public comments on challenges encountered during the COVID-19 pandemic in state and federal courts from lawyers, judges, parties, or the public, and on solutions developed to deal with those challenges. Additionally, the Advisory Committee on Criminal Rules held a virtual mini-conference with Department of Justice representatives, defense attorneys, and judges. Each subcommittee subsequently has held several meetings by videoconference. The advisory committees will consider the issue at their fall meetings and will present any proposed rules to the full Committee at its January 2021 meeting.

COMMITTEE ON SPACE AND FACILITIES

JUDICIAL SPACE EMERGENCY

In 2006, on recommendation of the Committee on Space and Facilities, the Judicial Conference adopted a policy that a building should be eligible to be considered a judicial space emergency when the Committee on Space and Facilities determines that, among other things, (1) the court building is severely damaged, or (2) it has an excessive caseload that will impact its space. In making its case-by-case determination, the Committee would take into account whether any unique situations merit the declaration of a space emergency. JCUS-MAR 06, pp. 27-28. The First Circuit Judicial Council, on behalf of the District of Puerto Rico, requested that the construction of a new annex to the federal building in Hato Rey, Puerto Rico, be designated a space emergency because there is a lack of practicable alternative space where occupants could be moved while building improvements are made to address structural deficiencies in the event of seismic activity. The Committee deemed this concern—when taken together with the building's seismic vulnerabilities and pre-existing structural and security deficiencies, as well as the district's high criminal caseload and current responsibility for overseeing the case brought under the "Puerto

Rico Oversight, Management, and Economic Stability Act,” Pub L. No. 114-187—to warrant the declaration of a space emergency. On recommendation of the Committee on Space and Facilities, the Judicial Conference agreed to designate the courthouse construction project in Hato Rey, Puerto Rico, as a judicial space emergency, remove the project from the *Federal Judiciary Courthouse Project Priorities (CPP)*, and display the project above the projects on the *CPP*, beginning with the fiscal year 2022 *CPP*, until full funding is received.

COURTHOUSE PROJECT PRIORITIES

The *Federal Judiciary Courthouse Project Priorities (CPP)* identifies the judiciary’s priorities for new courthouse construction. Part I lists the projects for which the judiciary will request funding in its annual budget submission, while Part II consists of the judiciary’s out-year courthouse construction priorities. To address concerns expressed by the General Services Administration (GSA) about the current process for developing the *CPP*, in which projects are added to the *CPP* based only on the results of Phase I feasibility studies (which yield only preliminary data on project scope and related construction costs), the Committee on Space and Facilities recommended, and the Judicial Conference approved, changes to the methodology used to develop the *CPP* list. These changes would, among other things, require that a Phase II feasibility study be completed before placement on Part I of the *CPP*, so that more complete and accurate information can be provided for each Part I project.

On recommendation of the Committee on Space and Facilities, the Judicial Conference also adopted a fiscal year 2022 *CPP*, which carried forward all the projects on Part I and Part II of the FY 2021 *CPP*, with the exception of the project in Hato Rey, Puerto Rico, which was designated a judicial space emergency (*see supra*, p. 36), as they had not yet received full funding, and added a project in Anchorage, Alaska to Part II. The projects on the FY 2022 *CPP* were approved in the following priority order:

- a. Part I: (1) Hartford, Connecticut; and (2) Chattanooga, Tennessee; and

- b. Part II: (1) Bowling Green, Kentucky; (2) Anchorage, Alaska; (3) Greensboro/Winston-Salem, North Carolina; (4) McAllen, Texas; and (5) Norfolk, Virginia.

REPAIR AND ALTERATION PROJECTS

On recommendation of the Committee on Space and Facilities, the Judicial Conference approved, as Component B projects, requests from the Fourth Circuit for a prospectus-level repair and alteration project in the leased courthouse facility in Clarksburg, West Virginia.

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

Ceilings in jury assembly spaces exceeding ten feet in height are considered an exception to the *U.S. Courts Design Guide (Design Guide)*, requiring Judicial Conference approval. The Third Circuit Judicial Council and the Fifth Circuit Judicial Council, on behalf of the Middle District of Pennsylvania and the Southern District of Texas, respectively, requested exceptions to the *Design Guide* to exceed this height in the jury assembly rooms being constructed as part of courthouse construction projects in Harrisburg, Pennsylvania and San Antonio, Texas. The Committee on Space and Facilities noted that granting the exceptions would increase the functionality and capacity of the spaces, and avoid negatively impacting the projects' budgets and construction schedules, since construction on non-conforming ceiling heights had already commenced and any design changes at this point would thus necessitate additional costs. On recommendation of the Committee on Space and Facilities, the Conference approved exceptions to the *Design Guide* to permit ceiling heights that exceed the 10-foot standard in the jury assembly rooms in the new courthouse construction projects in Harrisburg, Pennsylvania, and San Antonio, Texas.

COMMITTEE ACTIVITIES

The Committee on Space and Facilities reported that it reviewed three requests for GSA Phase I feasibility studies but determined to defer consideration of these requests until its December 2020 meeting. In addition, the Committee approved 18 funding requests for the construction of new courtrooms or chambers in federal court facilities, and six funding requests for No Net New projects in support of the Judicial Conference's No Net New policy adopted in September 2013 (JCUS-SEP 13, p. 32).

Finally, the Committee received an update on the review and revision of the *U.S. Courts Design Guide*; the Committee anticipates considering a final draft at its December 2020 meeting.

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