

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

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*SEPTEMBER 16, 2008  
WASHINGTON, D.C.*

*JUNE 17, 2008  
SPECIAL SESSION*

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

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**Contents**

Call of the Conference .....	1
Reports .....	4
Executive Committee .....	4
Resolutions .....	4
Senior District Judge Participation in Court Governance .....	5
Miscellaneous Actions .....	6
Committee on the Administrative Office .....	7
Committee Activities .....	7
Committee on the Administration of the Bankruptcy System .....	8
Committee Activities .....	8
Committee on the Budget .....	8
Fiscal Year 2010 Budget Request .....	8
Capital Investment Fund .....	8
Committee Activities .....	9
Committee on Codes of Conduct .....	9
Committee Activities .....	9
Committee on Court Administration and Case Management .....	10
Courtroom Usage Study .....	10
Senior District Judge Participation in Court Governance .....	11
Miscellaneous Fees .....	12
District of North Dakota .....	17
Data Transfer to Bankruptcy Case Trustees .....	17
Records Disposition Schedule for Electronic Case Files .....	17
Committee Activities .....	18
Committee on Criminal Law .....	18
Committee Activities .....	18
Committee on Defender Services .....	19
Case-Budgeting Pilot Project .....	19
Committee Activities .....	19
Committee on Federal-State Jurisdiction .....	19
Committee Activities .....	19

Committee on Financial Disclosure .....	20
Committee Activities .....	20
Committee on Information Technology .....	20
Long Range Plan for Information Technology .....	20
Committee Activities .....	21
Committee on Intercircuit Assignments .....	21
Committee Activities .....	21
Committee on International Judicial Relations .....	21
Committee Activities .....	21
Committee on the Judicial Branch .....	22
Judicial Survivors' Annuities System .....	22
Judges' Travel Regulations .....	22
Committee Activities .....	23
Committee on Judicial Conduct and Disability .....	23
Committee Activities .....	23
Committee on Judicial Resources .....	24
Staffing Formulas .....	24
Two-Percent Productivity Adjustment .....	24
Pro Se Law Clerks .....	24
Court Personnel System .....	25
Staff Court Interpreter Positions .....	26
Type II Deputies .....	27
Alternative Dispute Resolution .....	27
Entry and Exit Surveys .....	28
Human Resources Legislation .....	28
Committee Activities .....	28
Committee on Judicial Security .....	29
Committee Activities .....	29
Committee on the Administration of the Magistrate Judges System .....	29
Senior District Judge Participation in Court Governance .....	29
Changes in Magistrate Judge Positions .....	30
Accelerated Funding .....	33
Committee Activities .....	33
Committee on Rules of Practice and Procedure .....	34
Time Computation Project .....	34
Federal Rules of Appellate Procedure .....	35
Federal Rules of Bankruptcy Procedure .....	35
Federal Rules of Civil Procedure .....	36
Federal Rules of Criminal Procedure .....	36
Committee Activities .....	36
Committee on Space and Facilities .....	37
Circuit Rent Budget Allotments - Component B Projects .....	37
Committee Activities .....	38
Funding .....	38

**REPORT OF THE PROCEEDINGS  
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OF THE UNITED STATES**

**September 16, 2008**

The Judicial Conference of the United States convened in Washington, D.C., on September 16, 2008, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Sandra L. Lynch  
Judge Ernest C. Torres,  
District of Rhode Island

Second Circuit:

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

Third Circuit:

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

Fourth Circuit:

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

Fifth Circuit:

Chief Judge Edith Hollan Jones<sup>1</sup>  
Judge Sim Lake,  
Southern District of Texas

Sixth Circuit:

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

Seventh Circuit:

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

Eighth Circuit:

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

Ninth Circuit:

Judge Sidney R. Thomas<sup>2</sup>  
Judge Charles R. Breyer,  
Northern District of California

Tenth Circuit:

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

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<sup>1</sup>Due to a weather emergency, Chief Judge Jones and Judge Lake participated by telephone.

<sup>2</sup>Designated by the Chief Justice.

Eleventh Circuit:

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

District of Columbia Circuit:

Chief Judge David Bryan Sentelle  
Chief Judge 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 or chair substitutes attended the Conference session: Circuit Judges Arthur J. Gajarsa, Julia Smith Gibbons, Roger L. Gregory, M. Margaret McKeown, Carl E. Stewart, and Richard C. Tallman, and District Judges Joseph F. Bataillon, Julie E. Carnes, Dennis M. Cavanaugh, John Gleeson, Janet C. Hall, Robert L. Hinkle, D. Brock Hornby, Henry E. Hudson, Mark R. Kravitz, Barbara M.G. Lynn, J. Frederick Motz, Gordon J. Quist, Lee H. Rosenthal,<sup>3</sup> George Z. Singal, Ortrie D. Smith, Laura Taylor Swain, John R. Tunheim, and Thomas I. Vanaskie. Bankruptcy Judge David S. Kennedy and Magistrate Judge Robert B. Collings were also in attendance. Millie Adams of the Eighth Circuit represented the circuit executives.

James C. Duff, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Jill C. Sayenga, Deputy Director; William R. Burchill, Jr., Associate Director and General Counsel; Laura C. Minor, Assistant Director, and Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat; Cordia

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<sup>3</sup> Due to a weather emergency, Judge Rosenthal participated by telephone.

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, Chair, and Judith W. Sheon, Staff Director, United States Sentencing Commission, were in attendance at the session of the Conference, as was Jeffrey P. Minear, Administrative Assistant to the Chief Justice. Scott Harris, Supreme Court Counsel, and the 2008-2009 Supreme Court Fellows also observed the Conference proceedings.

Attorney General Michael B. Mukasey addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice. Senators Patrick Leahy, Arlen Specter, and Jeff Sessions and Representative John Conyers, Jr., 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 Hornby, Chair of the Committee on the Judicial Branch, presented a report on the judicial salary restoration initiative, and Judge Gibbons, Chair of the Committee on the Budget, presented a report on judiciary appropriations and other budget matters.

## **EXECUTIVE COMMITTEE**

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### **RESOLUTION**

The Judicial Conference approved a recommendation of the Executive Committee to adopt the following resolution recognizing the substantial contributions made by the Judicial Conference committee chairs whose terms of service end in 2008:

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

**HONORABLE GORDON J. QUIST**  
Committee on Codes of Conduct

**HONORABLE JOHN GLEESON**  
Committee on Defender Services

**HONORABLE ORTRIE D. SMITH**  
Committee on Financial Disclosure

**HONORABLE THOMAS I. VANASKIE**  
Committee on Information Technology

**HONORABLE ROYCE C. LAMBERTH**  
Committee on Intercircuit Assignments

**HONORABLE ROBERT H. HENRY**  
Committee on International Judicial Relations

**HONORABLE DAVID B. SENTELLE**  
Committee on Judicial Security

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

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**SENIOR DISTRICT JUDGE PARTICIPATION  
IN COURT GOVERNANCE**

The Court Security Improvement Act of 2007 (Pub. L. No. 110-177), enacted in January 2008, contained two provisions that expand the role in court governance of district court judges who take senior status under 28 U.S.C. § 371(b). However, the provisions differ on whether these judges must meet a workload requirement in order to exercise a statutory right to participate in the selection of magistrate judges. Noting the confusion in the

courts caused by the contradictory provisions, and the need for expeditious resolution of the discrepancy before the 110<sup>th</sup> Congress adjourns, the Committee on Court Administration and Case Management asked the Executive Committee to approve on behalf of the Conference a recommendation that the Conference seek repeal of section 504, which does not contain a workload requirement. The Executive Committee approved the recommendation. (*See also infra*, “Senior Judge Participation in Court Governance,” pp. 11-12; 29-30.)

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## MISCELLANEOUS ACTIONS

The Executive Committee —

- Approved, on behalf of the Judicial Conference and on recommendation of the Committee on Court Administration and Case Management and the Committee on Information Technology, an annual report to Congress on deferred court compliance with section 205 of the E-Government Act of 2002, and authorized transmittal of that report to Congress as specified in the Act;
- On recommendation of the Committee on the Administration of the Magistrate Judges System and on behalf of the Conference, authorized an additional full-time and an additional part-time magistrate judge position for the District of Arizona and accelerated funding for the positions to help address a dramatic caseload increase related to enhanced immigration enforcement;
- Approved on behalf of the Conference a recommendation of the Space and Facilities Committee that the Cedar Rapids, Iowa courthouse construction project be designated a judicial space emergency and that the General Services Administration be encouraged not to expend significant money to remediate for re-occupancy by the court the old courthouse, which has been severely damaged by flooding;
- Pending congressional action on the judiciary’s appropriations for the next fiscal year, approved fiscal year (FY) 2009 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;

- Established a short-term ad hoc advisory committee to take the first steps in reviewing the judiciary’s long-range planning process;
- Agreed to a request of the Chair of the Committee on Rules of Practice and Procedure to recommend to the Chief Justice that the Civil Rules Advisory Committee be expanded to include an additional Article III judge and that a district judge slot on the Bankruptcy Rules Advisory Committee be converted to a slot for a private-sector attorney;<sup>4</sup>
- Endorsed revised attorney admission fund guidelines that incorporate updates and clarifications and asked the Administrative Office to promulgate them, and referred two suggested policy changes to the guidelines to the Committee on Court Administration and Case Management for its consideration; and
- Asked the Committee on Court Administration and Case Management to take the lead, in consultation with other interested committees, on a study of the impact on court space of streamlining court operations and processes through the use of technology or other means.

## COMMITTEE ON THE ADMINISTRATIVE OFFICE

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### COMMITTEE ACTIVITIES

The Committee on the Administrative Office reported that it received an extensive briefing on the AO’s audit and investigations responsibilities. The Committee emphasized that conducting thorough and comprehensive financial audits and ensuring that corrective actions are taken to address any noted deficiencies are critical functions of the AO. The Committee also reported that it reviewed and endorsed a proposal to revise the Administrative Office’s advisory process. In addition, after reviewing nominations submitted by judges, court managers, and AO managers, the Committee selected three AO employees to receive the Leonidas Ralph Mecham Award for Exemplary Service to the Courts.

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<sup>4</sup>The Chief Justice subsequently approved the request.

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

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### **COMMITTEE ACTIVITIES**

The Bankruptcy Committee reported that it considered a recommendation of its Subcommittee on Judgeships regarding the continued need for existing bankruptcy judgeships. It also endorsed the proposed new staffing formula for bankruptcy clerks' offices approved by the Judicial Conference at this session (*see infra*, "Staffing Formulas," p. 24), and voted to recommend to the Budget Committee that funding in FY 2010 remain at the FY 2009 adjusted current services levels for the three areas within the Bankruptcy Committee's jurisdiction. In addition, the Committee received status reports from its members who serve in liaison roles to other Conference committees on law clerk recruitment, diversity, work measurement, and courtroom use study projects.

## **COMMITTEE ON THE BUDGET**

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### **FISCAL YEAR 2010 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 2010 budget request to Congress that is 7.4 percent above assumed appropriations for fiscal year 2009. 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.

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### **CAPITAL INVESTMENT FUND**

In order to provide courts with greater flexibility in the management of their resources, the Budget Committee proposed that the Judicial Conference establish a fund that would allow courts to carry forward moneys saved from a previous fiscal year to use in future years to fund major and multi-year projects. In accordance with the Committee's recommendation, the

Conference agreed to establish a Capital Investment Fund pilot program for a four-year period beginning in fiscal year 2009, subject to congressional approval, which would allow participating court units to do the following:

- a. Voluntarily return funds for deposit into the Capital Investment Fund up to a maximum at any given time of \$50,000;
- b. Utilize funds deposited into the Capital Investment Fund in subsequent fiscal years, once the Executive Committee has approved the national Salaries and Expenses financial plan and final allotments have been transmitted to the courts; and
- c. Expend funds deposited into the Capital Investment Fund specifically for, and limited to, tenant alterations, cyclical facilities maintenance, non-judicial furniture, capital goods, courtroom technology, and multi-year contracts for services that enhance major projects and acquisitions.

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## **COMMITTEE ACTIVITIES**

The Committee on the Budget reported that it endorsed changes to the Cost Control Monitoring System, the funding formula used to issue salary allotments to the courts. These changes included updating salary baselines, modifying national average salaries for bankruptcy court and court interpreter positions, and adding a locality adjustment factor to national average salaries for courts in high-cost areas. The Committee also discussed the work measurement process used to develop court staffing formulas and endorsed updates to the information technology infrastructure and law enforcement funding formulas.

## **COMMITTEE ON CODES OF CONDUCT**

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### **COMMITTEE ACTIVITIES**

The Committee on Codes of Conduct reported that it continues to work on revisions to the Code of Conduct for United States Judges for consideration by the Conference in March 2009. It also indicated that since its last report to the Judicial Conference in March 2008, the Committee received 39 new written inquiries and issued 37 written advisory responses. During

this period, the average response time for requests was 15 days. In addition, the Committee chair received and responded to 69 informal inquiries from colleagues, and individual Committee members responded to 278 such inquiries.

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

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### **COURTROOM USAGE STUDY**

In response to a request from Congress, the Court Administration and Case Management Committee asked the Federal Judicial Center to conduct an independent and comprehensive study of courtroom use in the district courts. Based on the findings of this study, the Committee, after consultation with several other Conference committees, recommended that the Conference adopt several policy changes with regard to courtroom usage to be applied to new courthouse construction and to construction of additional courtrooms in existing buildings. After discussion and in accordance with the Committee's recommendations, the Conference agreed to —

- a. Direct the Committee on Court Administration and Case Management – in consultation with the Committee on Space and Facilities – to develop appropriate regulations for the *U.S. Courts Design Guide* regarding the assignment of courtrooms for senior judges to reflect a policy that provides one courtroom for every two senior judges, recognizing that the application of this policy for some senior judges who maintain a high caseload may require closer examination and the development of a standard, objective, and narrowly tailored exemption policy.
- b. Direct the Committee on Court Administration and Case Management – 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, balancing the need to maintain the flexibility afforded to district courts to utilize magistrate judge resources to meet local needs with the ability to standardize space planning on a national basis, and ensuring the efficient use of courtrooms without sacrificing the availability of immediate access to a courtroom.

- c. Direct the Committee on Court Administration and Case Management – in consultation with the Committee on Space and Facilities – to assess the feasibility of, and to develop an appropriate policy implementing, courtroom sharing among non-senior district judges in large courthouses (i.e., courthouses with more than ten non-senior district judges).
- d. Direct the Committee on Court Administration and Case Management to study the usage of bankruptcy courtrooms and, if usage levels so indicate, develop – in consultation with the Committee on Space and Facilities and the Committee on the Administration of the Bankruptcy System – an appropriate sharing policy for bankruptcy courtrooms.
- e. Adopt the proposed “Report on the Usage of Federal District Court Courtrooms” as the position of the Conference and transmit it, in conjunction with the Federal Judicial Center’s study on courtroom use, to the House Committee on Transportation and Infrastructure’s Subcommittee on Economic Development, Public Buildings and Emergency Management, as an explanation of the Conference’s views on the FJC’s study.

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### **SENIOR DISTRICT JUDGE PARTICIPATION IN COURT GOVERNANCE**

As previously noted (*see supra*, “Senior District Judge Participation in Court Governance,” pp. 5-6), the Court Security Improvement Act of 2007 contains contradictory provisions relating to the statutory right of district judges who take senior status under 28 U.S.C. § 371(b) to participate in the selection of magistrate judges. Under section 503 of that Act, these judges may elect to participate in magistrate judge selection if in the preceding calendar year they performed an amount of work equal to or greater than the amount of work an average judge in active service on that court would perform in six months. Section 504 authorizes senior district judges to participate in the appointment of magistrate judges without reference to a workload requirement. As also noted *supra*, the Executive Committee authorized seeking legislation to repeal section 504, which does not include a workload requirement. To assist the courts in implementing the Act despite the conflicting provisions, the Conference agreed to issue the following

guidance recommended by the Court Administration and Case Management Committee:

- a. That the 50 percent workload requirement for senior judges set forth in section 503 should apply to governance activities (including appointing magistrate judges) while legislative repeal of section 504 is being sought; and
- b. That the 50 percent workload requirement should be based on the amount of work actually performed by a senior judge within the district, but that courts, at their discretion, may include work performed by the senior judge outside the district to assist courts in need.

*See also infra*, “Senior District Judge Participation in Court Governance,” pp. 29-30.

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## **MISCELLANEOUS FEES**

In March 2008, the Judicial Conference amended the Bankruptcy Court Miscellaneous Fee Schedule to clarify and make stylistic changes to fee items to comport with current editorial standards. No fee amounts were changed. At this session, on recommendation of the Committee, the Conference approved similar technical and style revisions to the Court of Appeals Miscellaneous Fee Schedule and the District Court Miscellaneous Fee Schedule, which now read as follows:

### **Court of Appeals Miscellaneous Fee Schedule** (Issued in accordance with 28 U.S.C. § 1913)

The fees included in the Court of Appeals Miscellaneous Fee Schedule are to be charged for services provided by the courts of appeals.

- The United States should not be charged fees under this schedule, except as prescribed in Items 2, 4, and 5 when the information requested is available through remote electronic access.
- Federal agencies or programs that are funded from judiciary appropriations (agencies, organizations, and

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

- (1) For docketing a case on appeal or review, or docketing any other proceeding, \$450.
  - Each party filing a notice of appeal pays a separate fee to the district court, but parties filing a joint notice of appeal pay only one fee.
  - There is no docketing fee for an application for an interlocutory appeal under 28 U.S.C. § 1292(b) or other petition for permission to appeal under Fed. R. App. P. 5, unless the appeal is allowed.
  - There is no docketing fee for a direct bankruptcy appeal or a direct bankruptcy cross appeal, when the fee has been collected by the bankruptcy court in accordance with item 14 of the Bankruptcy Court Miscellaneous Fee Schedule.
- (2) For conducting a search of the court of appeals records, \$26 per name or item searched. This fee applies to services rendered on behalf of the United States if the information requested is available through remote electronic access.
- (3) For certification of any document, \$9.
- (4) For reproducing any document, \$.50 per page. This fee applies to services rendered on behalf of the United States if the document requested is available through remote electronic access.
- (5) For reproducing recordings of proceedings, regardless of the medium, \$26. This fee applies to services rendered on behalf of the United States if the recording is available through remote electronic access.

- (6) For reproducing the record in any appeal in which the court of appeals does not require an appendix pursuant to Fed. R. App. P. 30(f), \$71.
- (7) For retrieving a record from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court, \$45.
- (8) For a check paid into the court that is returned for lack of funds, \$45.
- (9) For copies of opinions, a fee commensurate with the cost of printing, as fixed by each court.
- (10) For copies of the local rules of court, a fee commensurate with the cost of distributing the copies. The court may also distribute copies of the local rules without charge.
- (11) For filing:
  - Any separate or joint notice of appeal or application for appeal from a bankruptcy appellate panel, \$5;
  - A notice of the allowance of an appeal from a bankruptcy appellate panel, \$5.
- (12) For counsel's requested use of the court's videoconferencing equipment in connection with each oral argument, the court may charge and collect a fee of \$200 per remote location.
- (13) For original admission of an attorney to practice, including a certificate of admission, \$150. For a duplicate certificate of admission or certificate of good standing, \$15.

**District Court Miscellaneous Fee Schedule**  
(Issued in accordance with 28 U.S.C. § 1914)

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

- The United States should not be charged fees under this schedule, with the exception of those specifically prescribed in Items 2, 4 and 5, when the information requested is available through remote electronic access.
  - Federal agencies or programs that are funded from judiciary appropriations (agencies, organizations, and individuals providing services authorized by the Criminal Justice Act, 18 U.S.C. § 3006A, and bankruptcy administrators) should not be charged any fees under this schedule.
- (1) For filing any document that is not related to a pending case or proceeding, \$39.
  - (2) For conducting a search of the district court records, \$26 per name or item searched. This fee applies to services rendered on behalf of the United States if the information requested is available through electronic access.
  - (3) For certification of any document, \$9. For exemplification of any document, \$18.
  - (4) For reproducing any record or paper, \$.50 per page. This fee applies to paper copies made from either: (1) original documents; or (2) microfiche or microfilm reproductions of the original records. This fee applies to services rendered on behalf of the United States if the record or paper requested is available through electronic access.
  - (5) For reproduction of an audio recording of a court proceeding, \$26. This fee applies to services rendered

on behalf of the United States if the recording is available electronically.

- (6) For each microfiche sheet of film or microfilm jacket copy of any court record, where available, \$5.
- (7) For retrieval of a record from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court, \$45.
- (8) For a check paid into the court which is returned for lack of funds, \$45.
- (9) For an appeal to a district judge from a judgment of conviction by a magistrate judge in a misdemeanor case, \$32.
- (10) For original admission of an attorney to practice, including a certificate of admission, \$150. For a duplicate certificate of admission or certificate of good standing, \$15.
- (11) For copies of the local rules of court, a fee commensurate with the cost of distributing the copies. The court may also distribute copies of the local rules without charge.
- (12) For the handling of registry funds deposited with the court, the clerk shall assess a fee from interest earnings and in accordance with the detailed fee schedule issued by the Director of the Administrative Office of the United States Courts.
- (13) For filing an action brought under title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, Pub. L. No. 104-114, 110 Stat. 785, \$5,431. (This fee is in addition to the filing fee prescribed in 28 U.S.C. § 1914(a) for instituting any civil action other than a writ of habeas corpus.)

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## **DISTRICT OF NORTH DAKOTA**

Section 114 of title 28, United States Code, establishes the District of North Dakota as one judicial district comprised of four divisions, enumerates the counties within each division, and sets out the places of holding court for these divisions. In order for the district to have greater flexibility in adjusting the workload among the judges of the court, the Committee, at the request of the district court, recommended that the Conference seek legislation to amend 28 U.S.C. § 114 to eliminate references to the divisions and counties in the District of North Dakota, while maintaining language providing that North Dakota constitutes one judicial district and that court be held at Bismarck, Fargo, Grand Forks, and Minot. The Conference approved the Committee's recommendation.

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## **DATA TRANSFER TO BANKRUPTCY CASE TRUSTEES**

In March 1989, the Judicial Conference authorized the bulk electronic transfer of data from bankruptcy courts to the Department of Justice's Executive Office for U.S. Trustees (EOUST), with the understanding that the EOUST could not sell or otherwise distribute the data to other entities (JCUS-MAR 89, p. 20). With the passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, bankruptcy case trustees must collect and report additional data from bankruptcy case files. To facilitate the work of the case trustees and at the request of the EOUST, the Conference adopted a Committee recommendation to permit the EOUST and bankruptcy administrators to transfer to trustees in bankruptcy cases (or their agents) data received from the judiciary's Case Management/Electronic Case Files (CM/ECF) system without application of the Electronic Public Access fee. Such a transfer is limited to the data that the case trustees are required to provide in final reports filed in bankruptcy cases, and the EOUST, the case trustees and their agents, and the bankruptcy administrators are not permitted to otherwise transfer or sell such data.

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## **RECORDS DISPOSITION SCHEDULE FOR ELECTRONIC CASE FILES**

Pursuant to regulations adopted by the National Archives and Records Administration (NARA) in December 2007, if an electronic record replaces

either a permanent hard copy record or a hard copy record that has both temporary and permanent elements, a previously approved hard copy permanent disposition authority may be applied to the entire electronic record (36 C.F.R. § 1228.31(b)(1)(i) and (ii)). Since all appellate case files are classified as permanent under existing records schedules, and virtually all district and bankruptcy cases contain at least one permanent element under such schedules (i.e., the docket sheet), the Committee recommended that the Conference notify NARA that the judiciary will apply the previously approved hard copy permanent disposition authority to appellate, district, and bankruptcy court electronic case file records in accordance with 36 C.F.R. § 1228.31(b)(1). The Conference adopted the Committee's recommendation.

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## COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported that it considered, among other things, implementation of the Judicial Conference's access plan for electronic transcripts of court proceedings; the measures used to rank courts with respect to case processing and how more assistance could be provided to the "most congested courts"; and the future of electronic case management systems in bankruptcy and district courts. The Committee also considered and endorsed several budget items, including a fiscal year 2010 records management program funding request and a fiscal year 2010 libraries and computer-assisted legal research funding request, both of which have been provided to the Budget Committee.

## COMMITTEE ON CRIMINAL LAW

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### COMMITTEE ACTIVITIES

The Committee on Criminal Law reported that, in coordination with the AO's Forms Working Group, it considered and approved technical revisions to several national forms (AO forms 199A, 199B, 199C, 245B, and 472) to conform to statutory amendments, new privacy requirements, and policy changes previously approved by the Conference. As part of its continuing exploration of evidence-based practices, the Committee also discussed the use of programs modeled on problem-solving courts (e.g., drug courts and diversion courts) in the federal system, paying particular attention to post-conviction reentry court programs. The Committee has asked the

Federal Judicial Center to conduct a study of existing federal programs and to report its findings at a future meeting of the Committee.

## **COMMITTEE ON DEFENDER SERVICES**

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### **CASE-BUDGETING PILOT PROJECT**

In September 2005, the Judicial Conference approved a three-year pilot project for the Defender Services appropriation to fund a position in up to three circuits to support the case-budgeting process (JCUS-SEP 05, p. 21). Preliminary reports indicate that the case-budgeting attorneys are helping to contain costs and to improve the management of high-cost Criminal Justice Act (CJA) representations. However, in order to ensure that the project is evaluated effectively, the Committee on Defender Services recommended that the Judicial Conference extend the time period of the pilot project by one year. The Conference adopted the Committee's recommendation.

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### **COMMITTEE ACTIVITIES**

The Committee on Defender Services reported that under its delegated authority from the Judicial Conference (JCUS-MAR 89, pp. 16-17), it approved federal defender organization FY 2009 budgets and grants totaling \$518 million. The Committee also reported that it reviewed data from the first phase of an ongoing project to update a 1998 report on the cost, availability, and quality of defense representation in federal death penalty cases. In addition, the Committee received a status report on the follow-up actions from a 15-district audit of the system for processing CJA payments to panel attorneys and interpreters.

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

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### **COMMITTEE ACTIVITIES**

The Committee on Federal-State Jurisdiction reported that it was briefed on the work of the Ninth Circuit's Pacific Islands Committee and discussed a draft report prepared by the Government Accountability Office related to the establishment of a federal judicial presence in American Samoa. The Committee also discussed ways to more fully implement its charge to

serve as a conduit of communication between the federal and state courts and identified possible areas of federal-state cooperation that would require coordination with other Judicial Conference committees, such as working with the state courts to improve the ability of federal and state courts at the local levels to share files electronically. It continued its discussion of capital habeas corpus petitions, focusing on ways the federal and state courts can improve coordination between the two court systems related to capital litigation. The Committee also continued its review of legislation that would amend the Prison Litigation Reform Act.

## **COMMITTEE ON FINANCIAL DISCLOSURE**

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### **COMMITTEE ACTIVITIES**

The Committee on Financial Disclosure reported that it included a self-audit function in the most recent release of the Financial Disclosure Report Software that allows filers to check their reports prior to submission and avoid inadvertent errors such as inconsistent income data and missing or incorrect codes. The use of the self-audit feature will be included in the Committee's development of a system for electronic filing and records management of reports. As of July 8, 2008, the Committee had received 3,942 financial disclosure reports and certifications for calendar year 2007, including 1,209 reports and certifications from Supreme Court justices, Article III judges, and judicial officers of special courts; 331 reports from bankruptcy judges; 519 reports from magistrate judges; and 1,883 reports from judicial employees.

## **COMMITTEE ON INFORMATION TECHNOLOGY**

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

Pursuant to 28 U.S.C. § 612 and on recommendation of the Committee on Information Technology, the Judicial Conference approved the fiscal year 2009 update to the *Long Range Plan for Information Technology in the Federal Judiciary*. Funds for the judiciary's information technology program will be spent in accordance with this plan.

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## **COMMITTEE ACTIVITIES**

The Committee on Information Technology reported that it reviewed a status report on the information technology (IT) projects and initiatives funded through the Judiciary Information Technology Fund and asked that the information be made available to the court community on the J-Net. The Committee also reviewed and endorsed revisions to the IT infrastructure formula used to provide IT funds to the courts and agreed that an IT-related component of the existing law enforcement formula should be established beginning in fiscal year 2009. The Committee asked the Administrative Office to work with two courts that have developed calendaring systems to provide national support for those systems. The Committee received information about, and approved implementation of, port-to-port encryption of e-mail on the judiciary's data communications network.

## **COMMITTEE ON INTERCIRCUIT ASSIGNMENTS**

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### **COMMITTEE ACTIVITIES**

The Committee on Intercircuit Assignments reported that 79 intercircuit assignments were undertaken by 61 Article III judges from January 1, 2008 to June 30, 2008. The Committee recommended to the Chief Justice changes to the Guidelines for Intercircuit Assignments (including changes to the operating procedures) and agreed to distribute a revised questionnaire to all Article III judges in order to update the Committee's roster of judges willing to take intercircuit assignments. To increase awareness and facilitate the use of visiting judges, the Committee continued to disseminate information about intercircuit assignments and aided courts requesting assistance by identifying and obtaining judges willing to take assignments.

## **COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS**

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### **COMMITTEE ACTIVITIES**

The Committee on International Judicial Relations reported on its involvement in rule of law and judicial reform activities throughout the world. The U.S. State Department, the United States Agency for International Development, and the U.S. Department of Justice Overseas Prosecutorial

Development and Training Office reported about the progress of rule of law efforts. A special presentation by the World Bank's Lead Public Sector Specialist for the Europe and Central Asia Region focused on the Bank's support for justice sector reform in 17 countries in Europe and Central Asia, including the Russian Federation, Croatia, and Bulgaria.

## **COMMITTEE ON THE JUDICIAL BRANCH**

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### **JUDICIAL SURVIVORS' ANNUITIES SYSTEM**

In March 2008, after considering a study conducted by the Administrative Office on the Judicial Survivors' Annuities System (JSAS) coverage and cost, the Conference determined to seek legislation authorizing a one-time open season for judges who previously opted not to enroll in JSAS, with certain conditions. The JSAS study had also examined a September 1990 position of the Judicial Conference (JCUS-SEP 90, p. 85; *see also* JCUS-MAR 91, p. 19) to seek legislation allowing survivors of judicial officers to continue Federal Employees Health Benefits (FEHB) program enrollment regardless of whether the judicial officer participated in JSAS. At this session the Committee recommended that, in light of the Conference's endorsement of an open season to enroll in JSAS, the Conference should rescind its September 1990/March 1991 position supporting legislation to allow a federal judge's survivors to continue FEHB program enrollment whether or not the judge participated in JSAS. The Conference adopted the Committee's recommendation.

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### **JUDGES' TRAVEL REGULATIONS**

Meetings with Governmental Agencies and Associations. On recommendation of the Committee on the Judicial Branch, the Judicial Conference amended section B.3. of the Travel Regulations for Justices and Judges to clarify and simplify the procedure for approving judges' attendance at governmental meetings that are held within the geographic boundaries of a court. Also on the Committee's recommendation, the Conference clarified that portion of section B.3. pertaining to meetings of non-governmental organizations to substitute the phrase "colleges and universities, schools" for the terms "educational institutes" and "educational institutions" to clarify which organizations were intended to be covered in that section.

Security-Related Travel. On recommendation of the Committee, the Judicial Conference approved an amendment to section B.3. of the judges' travel regulations to specifically authorize reimbursement for judges and their dependents for the expenses of security-related travel.

Travel Interruptions. The Committee recommended and the Conference approved an amendment to section A.3. of the judges' travel regulations to expressly authorize reimbursement of judges for expenses of transportation, lodging, meals, and incidentals that may result from the judges' inability to complete their official travel due to illness or injury.

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## COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that it continues to give high priority to securing the enactment of judicial salary restoration legislation and a 2009 Employment Cost Index pay adjustment for judges. The Committee also devoted considerable attention to benefits matters. In addition, the Committee continues to work closely with the Freedom Forum's First Amendment Center on planning and conducting regional programs for judges and journalists.

## COMMITTEE ON JUDICIAL CONDUCT AND DISABILITY

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### COMMITTEE ACTIVITIES

The Committee on Judicial Conduct and Disability reported that it adopted a uniform docket numbering scheme for judicial conduct and disability complaints, as required under Rule 8(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. Related efforts now proceeding under the Committee's direction include (a) developing a process to monitor activity under the Judicial Conduct and Disability Act and the Rules for Judicial-Conduct and Judicial-Disability Proceedings; (b) assessing the Rules, after initial experience, for whether they may need to be adjusted; (c) preparing online resource materials, including a compendium of authorities; (d) responding to courts' inquiries; and (e) developing a new online system for the gathering and reporting of statistical data on complaints under the Act and Rules.

## COMMITTEE ON JUDICIAL RESOURCES

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### STAFFING 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 bankruptcy clerks, circuit librarians, conference attorneys, and circuit executives, for implementation in fiscal year 2009. The new formula for bankruptcy clerks' offices represents the first systematic adjustment to the method for estimating bankruptcy staffing needs since the Bankruptcy Abuse Prevention and Consumer Protection Act's impact on workload became apparent. The new formulas for the appellate court and circuit offices are the first adjustments to these offices' staffing formulas since fiscal year 2001.

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### TWO-PERCENT PRODUCTIVITY ADJUSTMENT

Included among the cost-containment strategies approved by the Judicial Conference in September 2004 (*see* JCUS-SEP 04, pp. 5-7) was a two-percent productivity adjustment to be applied cumulatively (through fiscal year 2009) to certain outdated staffing formulas. However, citing to a confluence of factors, including increased work requirements in appellate court and district clerks' offices, combined with possible decreased court allotments resulting from implementation of new salary funding formulas, the Committee concluded that imposition of a two-percent productivity adjustment in fiscal year 2009 might create salary shortfalls that would be difficult for some offices to sustain. The Committee therefore recommended that the Conference eliminate the additional two-percent productivity adjustment in fiscal year 2009 for the offices of the appellate clerks, staff attorneys, bankruptcy appellate panel clerks, and district clerks. The Conference adopted the Committee's recommendation.

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### PRO SE LAW CLERKS

In March 2002, the Judicial Conference adopted a stabilization policy for allocating pro se law clerk positions whereby the number of allocated positions in a court would only be reduced if the number of prisoner filings did not support those positions under the staffing formula for two years in a row (JCUS-MAR 02, p. 22). In March 2007, the Conference temporarily extended the stabilization period to three years, beginning in fiscal year 2008,

with the two-year period to resume once a new pro se law clerk staffing formula was in place (JCUS-MAR 07, p. 24). Noting that a new staffing formula will not be available until fiscal year 2010 and that some districts with over-strength positions might have to downsize only to rehire after the new formula is developed, the Committee recommended that the Conference approve the retention of encumbered over-strength pro se law clerk positions through fiscal year 2009, with the understanding that, in accordance with the pro se law clerk stabilization policy, if an over-strength position is vacated, a court would not be authorized to refill that vacancy. The Conference approved the Committee's recommendation.

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## **COURT PERSONNEL SYSTEM**

Benchmarks. As part of the judiciary's long-term cost-containment strategy approved by the Judicial Conference in September 2004, the Judicial Resources Committee conducted a court compensation study to explore fair and reasonable opportunities to limit future compensation costs. Based on that study, in September 2007, the Conference approved a Committee recommendation to replace existing Court Personnel System (CPS) benchmarks with new benchmarks that more accurately reflect current job duties and responsibilities performed in the courts (JCUS-SEP 07, pp. 24-25). To implement this recommendation, at this session, the Committee recommended, and the Conference approved, effective January 5, 2009, titles and classification levels for forty new benchmarks, updated minimum qualification requirements, and a revised procedure for classifying CPS supervisory and managerial positions. Further, with regard to on-board employees, the Conference agreed that CPS employees will remain in their current classifications unless the court takes a personnel action that changes an individual employee's position, or the court decides to apply the new benchmarks to the entire court unit or a portion of the court unit where all employees are performing a particular function, e.g., all financial positions. In the latter case, the decision to apply the new benchmarks to current employees must be made in a consistent, nondiscriminatory manner based on sound business principles.

CPS Salary Progression Policy. In September 2007, the Judicial Conference agreed to modify the CPS salary progression policy to reduce the number of automatic default step increases and to give unit executives greater discretion to grant step increases based upon each employee's overall contribution. It also directed that national performance guidelines be developed to assist executives in making decisions about pay increases

(JCUS-SEP 07, p. 25). At this session, the Committee recommended that the Conference approve performance management guidelines for local implementation along the lines set forth by the Committee. However, noting that the October 2009 date envisioned for full implementation of the new policy was unrealistic, it also recommended modification of the implementation time line to delay pay linkage until October 2010, while maintaining October 2009 as the date for implementation of the other aspects of the policy. In addition, the Committee determined that three existing salary progression policies had been superseded or were inconsistent with the new salary progression policy. Consequently, it recommended that the pay-for-performance policy adopted by the Judicial Conference for CPS employees in 1996 be eliminated, and that the quality-step-increase program (which has been suspended since 1993) and the longevity bonus program (which has been suspended since 2005) be eliminated for CPS and Judiciary Salary Plan (JSP) employees. The Conference adopted the Committee's recommendations.

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## **STAFF COURT INTERPRETER POSITIONS**

Conversion from CPS to JSP. Noting that staff court interpreter positions are highly specialized and present unique challenges for fitting into the new CPS salary progression policy due to the difficulties in making meaningful distinctions on the fundamental elements of the interpreters' work, the Committee recommended that the Conference approve the conversion of the staff court interpreter position from the CPS to the JSP, effective October 13, 2008. It also recommended the creation of a JSP landmark standard with a target grade of JSP-14 for all staff court interpreter positions and the establishment of a grade JSP-15 for supervisory court interpreter positions. The Conference adopted the Committee's recommendations.

Additional Positions. Using established criteria, the Committee recommended, and the Conference approved, one additional Spanish staff court interpreter position each for the Central District of California, the District of New Mexico, the District of Oregon, and the Western District of Texas, for fiscal year 2010, based on the Spanish language interpreting workloads in these courts. Also on the Committee's recommendation, the Conference declined to authorize one Spanish staff court interpreter position for the District of Connecticut. Accelerated funding in fiscal year 2009 was authorized for the additional Spanish staff court interpreter positions approved for the District of New Mexico and the Western District of Texas.

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## **TYPE II DEPUTIES**

Ninth Circuit Court of Appeals. Courts of appeals are permitted to have only one Type II deputy position per unit at a JSP-16 level unless the Judicial Conference finds that an additional Type II deputy is needed based on unique circumstances and individual justification provided by the court. Citing extraordinary circumstances in the Ninth Circuit Court of Appeals, the Committee recommended that the Conference authorize a second JSP-16 Type II chief deputy clerk position for the appellate clerk's office in that circuit, using existing decentralized funding. The Conference adopted the Committee's recommendation.

Courts of Appeals Generally. Since September 2004, district and bankruptcy courts with 10 or more judgeships may obtain a second Type II deputy position, funded with the court's decentralized funds, upon notification to the Administrative Office, and without Conference approval. Noting that the complexity and scope of responsibilities assigned to appellate court unit executives have changed substantially over the years, especially with the advent of CM/ECF, and that a policy similar to that for district courts may be appropriate for the courts of appeals, the Committee recommended that the Conference adopt a policy authorizing any clerk's office in an appellate court with 12 or more authorized judgeships and a minimum staffing level of 75 full-time equivalents (validated by the appellate clerk's office staffing formula at 100 percent) to establish a second JSP-16 Type II chief deputy clerk position, using its decentralized funds, upon notification to the Administrative Office. The Conference approved the Committee's recommendation

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## **ALTERNATIVE DISPUTE RESOLUTION**

In March 1998, the Judicial Conference approved "basic" and "robust" staffing factors for clerk's office positions performing duties related to alternative dispute resolution (ADR) (JCUS-MAR 98, pp. 20-21). The basic staffing factor was intended to apply to most district courts' ADR programs, while the robust factor was intended for a limited number of courts with extensive ADR programs. Based on the number of cases participating in the ADR program in the Northern District of Ohio, and on the number of hours spent processing these cases, the Committee recommended that the Conference approve that district's request for application of the robust staffing factor for clerk's office positions with duties related to ADR. The Conference adopted the Committee's recommendation.

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## **ENTRY AND EXIT SURVEYS**

In order to assist the judiciary in recruiting and retaining highly qualified employees, the Committee recommended that the Conference approve the concept and implementation of detailed national entry and exit surveys for employees in the courts and federal public defender organizations, and encourage their use. The Conference adopted the Committee's recommendation.

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## **HUMAN RESOURCES LEGISLATION**

On recommendation of the Committee, the Conference agreed to express to Congress the support of the judiciary for the concepts contained in bills pending in the 110<sup>th</sup> Congress that would provide paid parental leave (H.R. 5781), clarify the method for computing annuities under the Civil Service Retirement System that are based on part-time service (H.R. 2780), and amend title 5, United States Code, to facilitate the re-employment of annuitants (H.R. 3579).

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## **COMMITTEE ACTIVITIES**

The Committee on Judicial Resources reported that it recommended to the Committee on the Budget an FY 2010 budget request of 7.5 percent above the FY 2009 baseline for that portion of the budget over which the Judicial Resources Committee exercises responsibility. This request is within the guidelines issued by the Budget Committee chair, but is about \$20 million short of the fiscal year 2010 total requirements level. To resolve the shortfall, the Judicial Resources Committee recommended a proportionate reduction of authorized work units based on each program area's FY 2010 budget request. In addition, the Committee, in consultation with the Criminal Law Committee, endorsed a one-year moratorium on adopting new staffing formulas for probation and pretrial services offices, to allow the Administrative Office the opportunity to correlate work measurement results and case-weighting factors. The Committee also postponed consideration of revisions to the court reporter salary structure until December 2008 in order to obtain a broader view of the court reporter salary situation.

## COMMITTEE ON JUDICIAL SECURITY

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### COMMITTEE ACTIVITIES

The Committee on Judicial Security reported that it began work with the Defender Services and Criminal Law Committees to identify and resolve issues arising from housing pretrial detainees in jail facilities located great distances from the courthouse. Members and staff from the three committees met in July 2008 with representatives from the U.S. Marshals Service, the Federal Bureau of Prisons, the Office of the Federal Detention Trustee, and other criminal justice system staff to establish the scope of the problem. The Committee was also briefed on the status of the perimeter security pilot program at seven courthouses and considered the results of a survey of judges on court and judicial security.

## COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

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### SENIOR DISTRICT JUDGE PARTICIPATION IN COURT GOVERNANCE

As noted *supra* (see “Senior Judge Participation in Court Governance,” pp. 5-6; 11-12), sections 503 and 504 of the Court Security Improvement Act of 2007 are inconsistent on the issue of whether senior district judges must meet a workload requirement in order to exercise a statutory right to participate in the selection and appointment of United States magistrate judges. Since, notwithstanding this inconsistency, at least some senior district judges are now statutorily eligible to participate in the appointment process, the Magistrate Judges Committee recommended, and the Conference agreed, that the Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Appointment and Reappointment of United States Magistrate Judges be amended to (a) remove the word “active” from “active district judges” in sections 3.01, 3.02(a), 4.01, 6.02, and 6.03(c) (those provisions addressing who participates in the appointment process) and (b) add the following language to the introduction:

References to district judges in sections 3.01, 3.02(a), 4.01, 6.02, and 6.03(c) of these regulations include all active district judges and, as determined by the court, either all senior judges or those senior judges who performed in the preceding calendar

year an amount of work equal to or greater than the amount of work an average judge in active service on that court would perform in six months, and who elect to exercise such powers. [Ed. Note: There is a conflict in the law as it relates to senior judges voting on the appointment of magistrate judges. *See* 28 U.S.C. §§ 296 and 631(a), as amended January 7, 2008. The Executive Committee, on behalf of the Judicial Conference, is seeking the repeal of Section 504 of the Court Security Improvement Act of 2007, which amended 28 U.S.C. § 631(a) to allow all senior judges to participate in the appointment of magistrate judges.]

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## CHANGES IN MAGISTRATE JUDGE POSITIONS

After consideration of the report of the Committee on the Administration of the Magistrate Judges System and the recommendations of the Director of the Administrative Office, the district courts, and the judicial councils of the circuits, the Judicial Conference approved the following changes in the number, salaries, locations, and arrangements for full-time and part-time magistrate judge positions. *See also* “Miscellaneous Actions,” p. 6. Changes with a budgetary impact are to be effective when appropriated funds are available.

### SECOND CIRCUIT

#### Eastern District of New York

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

#### District of Vermont

Made no change in the location or arrangement of the magistrate judge position in the district.

### THIRD CIRCUIT

#### District of New Jersey

1. Authorized an additional full-time magistrate judge position at Camden;

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

Middle District of Pennsylvania

1. Authorized an additional full-time magistrate judge position at Harrisburg; 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 Maryland

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

Western District of Virginia

1. Increased the salary of the part-time magistrate judge position at Harrisonburg from Level 4 (\$39,227 per annum) to Level 1 (\$71,919 per annum); and
2. Made no other change in the number, locations, or arrangements of the magistrate judge positions in the district.

**FIFTH CIRCUIT**

Northern District of Mississippi

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

Eastern District of Texas

1. Authorized an additional full-time magistrate judge position for the district, to be located at Sherman;

2. Redesignated the full-time magistrate judge position at Sherman as Sherman or Plano; and
3. Made no other change in the number, locations, or arrangements of the magistrate judge positions in the district.

**SIXTH CIRCUIT**

Eastern District of Kentucky

1. Redesignated the full-time magistrate judge position at Ashland as Pikeville or Ashland; and
2. Authorized the full-time magistrate judge position at Pikeville or Ashland to serve in the adjoining Western District of Virginia and the adjoining Eastern District of Tennessee.

Eastern District of Tennessee

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

Western District of Tennessee

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

**SEVENTH CIRCUIT**

Southern District of Indiana

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

Eastern District of Wisconsin

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

## **EIGHTH CIRCUIT**

### Western District of Arkansas

1. Authorized an additional full-time magistrate judge position for the court, to be located at Fayetteville;
2. Discontinued the part-time magistrate judge position at Harrison; and
3. Made no other change in the number, locations, or arrangements of the magistrate judge positions in the district.

### District of South Dakota

Increased the salary of the part-time magistrate judge position at Aberdeen from Level 6 (\$13,073 per annum) to Level 4 (\$39,227 per annum).

## **ELEVENTH CIRCUIT**

### Middle District of Georgia

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

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## **ACCELERATED FUNDING**

On recommendation of the Committee, the Judicial Conference agreed to designate for accelerated funding in fiscal year 2009 the new full-time magistrate judge positions at Camden and Trenton in the District of New Jersey; Harrisburg in the Middle District of Pennsylvania; Sherman in the Eastern District of Texas; Memphis in the Western District of Tennessee; and Fayetteville in the Western District of Arkansas.

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## **COMMITTEE ACTIVITIES**

The Committee on the Administration of the Magistrate Judges System reported that it asked the Executive Committee to authorize, on behalf of the Judicial Conference and on an expedited basis, one new full-time and one new part-time magistrate judge position for the District of Arizona and accelerated

funding for the new positions effective immediately. The Executive Committee approved the recommendations (*see supra*, “Miscellaneous Actions,” p. 6). 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 2007 and June 2008 meetings, the Committee chair approved filling eight full-time and four part-time magistrate judge position vacancies. At its June 2008 meeting, the Committee decided to defer until December 2008 decisions on two courts’ requests to fill vacancies in magistrate judge positions so that the Committee could have the benefit of additional information provided by district-wide reviews of the courts.

## COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

### TIME COMPUTATION PROJECT

Rules Amendments. The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to 91 time-counting provisions in the Federal Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure to simplify and reduce inconsistencies in the computation of time periods under the procedural rules. The proposed new rules adopt a “days-are-days” approach to computing time periods, i.e., intermediate weekends and holidays and not just work days are counted regardless of the length of the specified period. To further simplify time-counting, most periods of less than 30 days would be changed to 7, 14, 21, and 28-day periods wherever possible so that deadlines usually fall on weekdays. To account for the effect of including intermediate weekends and holidays in calculating time periods, the proposed amendments would also extend short time deadlines. The Judicial Conference approved the 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.

Statutory Amendments. The time-computation methodology used in the federal procedural rules applies to time periods set in statutes that affect court proceedings, unless the statutes themselves specify how to compute time. If the proposed rules amendments discussed above are adopted, they would have the effect of shortening statutory time periods because intermediate weekends and holidays would no longer be excluded. In order to accommodate the changes that would result from the proposed amendments, the Committee recommended that the Conference seek legislation to adjust the

time periods in 29 statutory provisions affecting court proceedings. The Conference adopted the Committee's recommendation.

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## **FEDERAL RULES OF APPELLATE PROCEDURE**

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Appellate Rules 4 (Appeal as of Right — When Taken), 22 (Habeas Corpus and Section 2255 Proceedings), and 26 (Computing and Extending Time), and proposed new Rule 12.1 (Remand After an Indicative Ruling by the District Court on a Motion for Relief That is Barred by a Pending Appeal), together with Committee Notes explaining their purpose and intent. The Judicial Conference approved the amendments and new rule 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. *See also supra*, "Time Computation Project," p. 34.

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## **FEDERAL RULES OF BANKRUPTCY PROCEDURE**

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Bankruptcy Rules 2016 (Compensation for Services Rendered and Reimbursement of Expenses), 4008 (Filing of Reaffirmation Agreement; Statement in Support of Reaffirmation Agreement), 7052 (Findings by the Court), 9006 (Time), 9015 (Jury Trials), 9021 (Entry of Judgment), 9023 (New Trials; Amendment of Judgments), and proposed new Rule 7058 (Entering Judgment in Adversary Proceeding), together with Committee Notes explaining their purpose and intent. Many of these changes are technical or conforming in nature. The Judicial Conference approved the proposed amendments and new rules 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. *See also supra*, "Time Computation Project," p. 34.

The Committee also submitted to the Judicial Conference proposed revisions to Bankruptcy Official Forms 8, 9F, 10, 23, and Exhibit D to Official Form 1, and proposed new Official Form 27. The Judicial Conference approved the revised forms to take effect on December 1, 2008, with the exception of new Official Form 27, which will take effect on December 1,

2009, to coincide with the anticipated effective date of the proposed amendment to Bankruptcy Rule 4008.

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## **FEDERAL RULES OF CIVIL PROCEDURE**

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Civil Rules 13 (Counterclaim and Crossclaim), 15 (Amended and Supplemental Pleadings), 48 (Number of Jurors; Verdict), and 81 (Applicability of the Rules in General; Removed Actions), and proposed new Rule 62.1 (Indicative Ruling on a Motion for Relief That is Barred by a Pending Appeal), together with Committee Notes explaining their purpose and intent. The Judicial Conference approved the proposed amendments and new rule 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. *See also supra*, “Time Computation Project,” p. 34.

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## **FEDERAL RULES OF CRIMINAL PROCEDURE**

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Criminal Rules 7 (The Indictment and the Information), 32 (Sentencing and Judgment), 32.2 (Criminal Forfeiture), and 41 (Search and Seizure) and Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts<sup>5</sup> and of the Rules Governing Section 2255 Proceedings for the United States District Courts, together with Committee Notes explaining their purpose and intent. The Judicial Conference approved the 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. *See also supra*, “Time Computation Project,” p. 34.

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## **COMMITTEE ACTIVITIES**

The Committee on Rules of Practice and Procedure reported that it approved publishing for public comment proposed amendments to Appellate

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<sup>5</sup>Rule 11 of the Rules Governing Section 2254 Cases was amended by renumbering existing Rule 11 as Rule 12 and substituting new language in Rule 11.

Rules 1 and 29, and Appellate Form 4; Bankruptcy Rules 1007, 1014, 1015, 1018, 1019, 4004, 7001, and 9001, and proposed new Rules 1004.2 and 5012; Civil Rules 26 and 56; Criminal Rules 5, 12.3, 15, 21, and 32.1; and Evidence Rule 804. The comment period expires on February 17, 2009. Publication of proposed restyled Evidence Rules 101-415 has been deferred until the entire Federal Rules of Evidence have been approved for publication.

## **COMMITTEE ON SPACE AND FACILITIES**

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

Procedure. In September 2007, the Judicial Conference adopted a circuit rent budget allotment methodology that divides the judiciary's rent bill into three components (JCUS-SEP 07, pp. 36-37). "Component B" of the rent bill funds newly constructed courthouses or annexes, build-to-suit lease projects, requests for General Services Administration (GSA) feasibility studies, and prospectus-level repair and alteration projects (which require Committee and Conference approval), as well as necessary chambers and courtrooms for judges taking senior status, replacement judges, and new judgeships (which require only the approval of the Committee). At this session, on recommendation of the Committee, the Judicial Conference approved the following process for approval of Component B project requests: 1) all decisions made by the Committee on Space and Facilities' Rent Management Subcommittee will be provided to circuit judicial councils for comment prior to the full Committee's consideration of the recommendations; 2) all comments received will be provided to the full Committee; and 3) appeals of full Committee actions will be considered by the Judicial Conference.

Eastern District of Pennsylvania. The Conference adopted a recommendation of the Committee to approve, as a Component B project, a request from the Eastern District of Pennsylvania for a new build-to-suit leased courthouse in Lancaster, Pennsylvania, contingent on the district taking nine specific space actions releasing space that would offset the anticipated rent increase involved with adding the new courthouse.

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## COMMITTEE ACTIVITIES

The Committee on Space and Facilities reported that it endorsed the Court Administration and Case Management Committee's recommendations to the Judicial Conference with regard to the courtroom usage study (*see supra*, "Courtroom Usage Study," pp. 10-11). The Committee also directed AO staff to continue to work with GSA to reform the procurement process for build-to-suit leased courthouses.

## 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

## INDEX

### **Administrative Office, Committee on the, 7**

### **Administrative Office of the United States Courts**

- advisory process, 7
- attorney admission fund guidelines, 7
- build-to-suit leased courthouses, procurement process, 38
- Director, 30
- Forms Working Group, 18
- Judicial Survivors' Annuities System, 22
- Leonidas Ralph Mecham Award for Exemplary Service to the Courts, 7
- magistrate judge positions, 30
- Type II deputy positions, 27
- work measurement studies, 24, 28

### **Alternative dispute resolution, 27**

### **Appellate rules** (*see* rules of practice and procedure)

### **Appropriations** (*see also* cost containment)

- accelerated funding
  - court interpreter position, 26
  - magistrate judge positions, 6, 33
- budget caps, 8
- budget request, FY 2010, 8, 28
- Capital Investment Fund, 8-9
- Cost Control Monitoring System, 9
- court allotments, 6, 9
- Court Security account, 6
- Defender Services account, 6
- federal defender organization FY 2009 budgets, 19
- Fees of Jurors and Commissioners account, 6
- financial plans, FY 2009, interim, 6
- information technology infrastructure funding formula, 9, 21
- Judiciary Information Technology Fund, 21
- law enforcement funding formula, 9, 21
- Salaries and Expenses account, 6, 9
- salary funding formula, 9

### **Attorney admission fund guidelines, 7**

**Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, 17, 24**

**Bankruptcy judges** (*see* judges, bankruptcy)

**Bankruptcy rules** (*see* rules of practice and procedure)

**Bankruptcy system** (*see also* court administration; staffing resources)

- Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, 17, 24
- bankruptcy administrators, 17
- bankruptcy case trustees, 17
- courtroom sharing, 11
- electronic data transfer, 17
- FY 2010 funding request, 8
- records disposition, electronic, 17-18
- rules of practice and procedure, 34-37
- staffing formula
  - bankruptcy appellate panel clerks' offices, 24
  - bankruptcy clerks' offices, 8, 24

**Bankruptcy System, Committee on the Administration of the, 8, 11**

**Benefits**

- Federal Employees Health Benefits, 22
- judicial officer survivors', 22
- Judicial Survivors' Annuities System, 22

**Budget** (*see* appropriations)

**Budget, Committee on the, 8-9, 18, 28**

**Capital Investment Fund, 8-9**

**Case management** (*see* court administration)

**Case Management/Electronic Case Files system** (*see* CM/ECF)

**Chief Justice, 7, 21, Sp.Sess. 4.**

**Circuit councils** (*see* circuit judicial councils)

**Circuit executives**

offices, staffing formula, 24

**Circuit judges** (*see* judges, circuit)

**Circuit judicial councils**

changes in magistrate judge positions, 30

Component B space projects, 37

**Civil rules** (*see* rules of practice and procedure)

**CM/ECF**, 17, 27

**Code of Conduct for United States Judges**, 9, Sp.Sess. 5-6

**Codes of Conduct, Committee on**, 9-10

**Community defender organizations** (*see* federal defender organizations)

**Compensation**

cost containment, 25

Court Personnel System, 25-26

court reporter, 28

judicial, 23

Judiciary Salary Plan, 26

longevity bonus program, 26

pay-for-performance policy, 26

quality-step-increase program, 26

salary funding formula, 9

salary progression policy, 25-26

**Congress** (*see also* legislation, pending)

budget request, FY 2010, 8

Capital Investment Fund, 8-9

courtroom usage study, 10-11

E-Government Act annual report, 6

Government Accountability Office, 19

House Committee on Transportation and Infrastructure, Subcommittee on

Economic Development, Public Buildings and Emergency Management, 11

House of Representatives, Sp.Sess. 4

impeachment, Sp.Sess. 6

**Congress** (continued)

- rules of practice and procedure, 34-36
- senior judge participation in court governance, 5-6, 11-12, 29-30

**Cost containment**, 24, 25

**Court administration** (*see also* bankruptcy system; courts of appeals; district courts; electronic public access; fees; magistrate judges system; personnel, judiciary; records; staffing resources)

- CM/ECF, 17, 27
- court governance, senior district judges, 5-6, 11-12, 29-30
- courtroom sharing, 10-11
- courtroom usage study, 10-11, 38
- electronic case management, 17-18
- miscellaneous fees, style/technical revisions, 12-16
- places of holding court, District of North Dakota, 17
- Report on the Usage of Federal District Court Courtrooms, 11
- rules of practice and procedure, 34-37
- streamlining court operations, impact on space, 7

**Court Administration and Case Management, Committee on**, 6, 7, 10-18, 38

**Court interpreters**

- salaries, 9
- staff positions
  - additional, 26
  - conversion from CPS to JSP, 26

**Court Personnel System**

- benchmarks, 25
- compensation study, 25
- national performance guidelines, 25-26
- salary progression policy, 25-26
- staff court interpreter positions, 26
- supervisory and managerial position classifications, 25

**Court reporters**, 28

**Court Security Improvement Act of 2007**, 5, 11, 30

**Courthouses** (*see* space and facilities)

**Courtrooms** (*see* space and facilities)

**Courts of appeals** (*see also* court administration)

- fees, miscellaneous, 12-15
- records disposition, electronic, 17-18
- staffing formulas
  - circuit executive offices, 24
  - circuit librarians offices, 24
  - conference attorneys offices, 24
  - two-percent productivity adjustment
    - appellate clerks, 24
    - staff attorneys, 24
- Type II deputies, 27

**Criminal Justice Act (CJA)** (*see also* defender services)

- representations, case budgeting, 19

**Criminal law** (*see also* Criminal Justice Act; defender services; probation and pretrial services system)

- forms amendments, 18
- rules of practice and procedure, 34, 36-37

**Criminal Law, Committee on**, 18-19, 28, 29

**Criminal rules** (*see* rules of practice and procedure)

**Data communications network**, 21

**Defender services** (*see also* Criminal Justice Act (CJA); personnel, judiciary)

- budgets, federal defender organizations, 19
- case-budgeting pilot project, 19
- employee exit/entry surveys, 28
- financial plan, FY 2009, interim, 6

**Defender Services, Committee on**, 19, 29

**Department of Justice**

- Executive Office for U.S. Trustees (EOUST), 17
- Federal Bureau of Prisons, 29
- Office of Federal Detention Trustee, 17

**Department of Justice** (continued)

Overseas Prosecutorial Development and Training Office, 21-22  
United States Marshals Service, 29

**Department of State**, 21-22

**Director, Administrative Office of the United States Courts**, 30

**District courts** (*see also* bankruptcy system; court administration; fees; magistrate judges system; probation and pretrial services system; staffing resources)

alternative dispute resolution, 27  
clerks' offices staffing formula, 24  
court interpreter positions, 26  
courtroom sharing, 10-11  
courtroom usage study, 10-11  
District of North Dakota divisions, 17  
fees, miscellaneous, 12-16  
magistrate judge positions  
    changes, 30-34  
    vacancies, 34  
places of holding court, District of North Dakota, 17  
pro se law clerk allocation, 24-25  
records disposition, electronic, 17-18  
rules of practice and procedure, 34, 36-37  
two-percent productivity adjustment, 24

**District judges** (*see* judges, district)

**E-Government Act of 2002**, 6

**Electronic case files**

management, 17-18  
records disposition schedule, 17-18

**Electronic public access (EPA)**

data transfer to bankruptcy case trustees, 17

**Evidence rules** (*see* rules of practice and procedure)

**Executive branch**

Department of Justice, 17, 21-22  
Department of State, 21-22  
Executive Office for U.S. Trustees, 17  
Federal Bureau of Prisons, 29  
General Services Administration, 6, 37, 38  
Office of the Federal Detention Trustee, 29  
United States Marshals Service, 29

**Executive Committee**, 4-7, 8, 9, 11, 30, 33-34

**Executive Office for U.S. Trustees**, 17

**Federal Bureau of Prisons**, 29

**Federal defender organizations** (*see* also defender services; federal defenders)  
budgets and grants, 19  
exit/entry employee surveys, 28

**Federal defenders** (*see* defender services; federal defender organizations; personnel, judiciary)

**Federal Employees Health Benefits**, 22

**Federal Judicial Center**, 10-11, 19

**Federal rules** (*see* rules of practice and procedure)

**Federal-State Jurisdiction, Committee on**, 19-20

**Federal/state relations**, 19-20

**Fees**

Court of Appeals Miscellaneous Fee Schedule, 12-14  
District Court Miscellaneous Fee Schedule, 12, 15-16  
Electronic public access, data transfer to bankruptcy case trustees, 17

**Financial Disclosure, Committee on**, 20

**Financial disclosure reports**, 20

**General Services Administration**, 6, 37, 38

**Gleeson, John**, 4-5

**Government Accountability Office**, 19

**Guidelines for Intercircuit Assignments**, 21

**Henry, Robert H.**, 4-5

**Impeachment**

certificate of consideration of, Sp.Sess. 4-6

*In re: Complaint of Judicial Misconduct against United States  
District Judge G. Thomas Porteous, Jr., under the Judicial Conduct  
and Disability Act of 1980*, Sp.Sess. 3

**Information technology**

Judiciary Information Technology Fund, 21

*Long Range Plan for Information Technology in the Federal Judiciary*, 20

**Information Technology, Committee on**, 6, 20-21

**Intercircuit assignments**, 21

**Intercircuit Assignments, Committee on**, 21

**International Judicial Relations, Committee on**, 21-22

**Judges, Article III** (*see also* judges, federal)

district, courtroom sharing, 10-11

intercircuit assignments, 21

**Judges, bankruptcy** (*see* bankruptcy system; judges, federal)

**Judges, circuit** (*see* judges, Article III; judges, federal)

**Judges, Court of Federal Claims** (*see* judges, federal)

**Judges, Court of International Trade** (*see* judges, federal)

- Judges, district** (*see also* judges, Article III; judges, federal)  
    courtroom sharing  
        large courthouses, 10-11  
        senior, 10-11  
    senior, court governance, 5-6, 11-12, 29-30
- Judges, federal** (*see also* judges, Article III; judges, magistrate)  
    compensation, 23  
    financial disclosure reports, 20  
    health benefits enrollment, survivors, 22  
    travel, 22-23
- Judges, magistrate** (*see also* judges, federal; magistrate judges system)  
    accelerated funding, 6, 33  
    changes in positions, 6, 30-33  
    selection and appointment  
        senior district judge participation, 5-6, 11-12, 29-30  
    vacancies, 34
- Judges, territorial** (*see* judges, federal)
- Judgeships, bankruptcy**  
    continued need, 8
- Judicial Branch, Committee on the**, 22-23
- Judicial conduct and disability**  
    complaints, 23, Sp.Sess. 3-4  
    proceeding, Sp.Sess. 3-6  
    Rules for Judicial-Conduct and Judicial-Disability Proceedings, 23
- Judicial Conduct and Disability Act**, 23, Sp.Sess. 3, Sp.Sess. 6
- Judicial Conduct and Disability, Committee on**, 23, Sp.Sess. 3-6
- Judicial Resources, Committee on**, 24-28
- Judicial Security, Committee on**, 29
- Judicial Survivors' Annuities System**, 22

**Judiciary Salary Plan**

- longevity bonus program, 26
- staff court interpreter positions, 26
- Type II deputy, 27

**Lamberth, Royce, C., 4-5**

**Legislation, pending (110<sup>th</sup> Congress)**

- Civil Service Retirement System annuities, part-time service, 28
- paid parental leave, 28
- re-employment of annuitants, 28

**Leonidas Ralph Mecham Award for Exemplary Service to the Courts, 7**

***Long Range Plan for Information Technology in the Federal Judiciary, 20***

**Long-range planning**

- ad hoc advisory committee, 7

**Magistrate judges (*see* judges, magistrate)**

**Magistrate judges system (*see also* judges, magistrate)**

- courtroom sharing, 10-11
- magistrate judge positions
  - accelerated funding, 6, 33
  - changes, 6, 30-34
  - selection, 5-6, 11-12, 29-30
  - vacancies, 34
- selection and appointment regulations, 29-30

**Magistrate Judges System, Committee on the Administration of the, 6, 10, 29-34**

**Miscellaneous fee schedules (*see* fees)**

**National Archives and Records Administration (NARA), 17-18**

**Office of the Federal Detention Trustee, 29**

**Personnel, judiciary** (*see also* staffing resources)

compensation, 9, 25-26, 28

Court Personnel System

    benchmarks, 25

    salary progression policy, 25-26

employee exit/entry surveys, 28

financial disclosure reports, 20

human resources legislation, pending 110<sup>th</sup> Congress

    Civil Service Retirement System annuities, part-time service, 28

    paid parental leave, 28

    re-employment of annuitants, 28

Judiciary Salary Plan, 26, 27

staff court interpreter positions, 26

**Porteous, G. Thomas, Jr.**, Sp.Sess. 3-6

**Probation and pretrial services officers** (*see* personnel, judiciary; probation and pretrial services system)

**Probation and pretrial services system**

    staffing formulas, 28

**Quist, Gordon J.**, 4-5

**Records**

    data transfer to bankruptcy case trustees, 17

    disposition schedules, electronic case files, 17-18

**Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Appointment and Reappointment of United States Magistrate Judges**, 29

**Report on the Usage of Federal District Court Courtrooms**, 11

**Resolutions**

    Gleeson, John, 4-5

    Henry, Robert, H., 4-5

    Lamberth, Royce, C., 4-5

    Quist, Gordon J., 4-5

    Sentelle, David B., 4-5

**Resolutions** (continued)

Smith, Ortrie D., 4-5  
Vanaskie, Thomas I., 4-5

**Rule of law programs**, 21-22

**Rules for Judicial-Conduct and Judicial-Disability Proceedings**, 23

**Rules of practice and procedure**

appellate rules, 34, 35, 36-37  
bankruptcy rules, 34, 35-36, 36-37  
civil rules, 34, 36, 36-37  
criminal rules, 34, 36-37  
evidence rules, 36-37  
time computation, 34-35

**Rules of Practice and Procedure, Committee on**, 7, 34-37

Bankruptcy Rules Advisory Committee, 7  
Civil Rules Advisory Committee, 7

**Salaries** (*see* compensation)

**Security**, 29

**Sentelle, David B.**, 4-5

**Smith, Ortrie D.**, 4-5

**Space and facilities**

circuit rent budget allotment methodology, 37  
courthouse construction/renovation  
    build-to-suit leased courthouse, 37, 38  
    Component B projects, 37  
    courtroom sharing, 10-11  
    judicial space emergency, 6  
courtroom usage study, 10-11, 38  
*U.S. Courts Design Guide*, 10

**Space and Facilities, Committee on**, 6, 10-11, 37-38

**Staffing formulas** (*see* staffing resources)

**Staffing resources** (*see also* personnel, judiciary; staffing formulas)

- alternative dispute resolution, 27
- court interpreters positions, 26
- staffing formulas
  - bankruptcy clerks offices, 24
  - circuit executives offices, 24
  - circuit librarians offices, 24
  - conference attorneys offices, 24
  - pro se law clerks, stabilization factor, 24-25
  - probation/pretrial services offices, 28
  - two-percent productivity adjustment, 24
- Type II deputy positions, courts of appeals, 27

**Technology** (*see* information technology)

**Travel, judges'**

- meetings
  - governmental, 22
  - non-governmental, 22
- regulations, 22-23
- security-related travel, 23
- travel interruptions, 23

**Travel Regulations for United States Justices and Judges, 22-23**

**Type II deputies, 27**

***U. S. Courts Design Guide, 10***

**United States Agency for International Development, 21**

**United States Marshals Service, 29**

**Vanaskie, Thomas I., 4-5**

**Work measurement, 8, 9, 24, 28**

**World Bank, 22**

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