

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

March 16, 2010

The Judicial Conference of the United States convened in Washington, D.C., on March 16, 2010, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Sandra L. Lynch
Chief Judge Mark L. Wolf,
District of Massachusetts

Second Circuit:

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

Third Circuit:

Chief Judge Anthony J. Scirica
Chief Judge Harvey Bartle III,
Eastern District of Pennsylvania

Fourth Circuit:

Chief Judge William B. Traxler, Jr.
Chief Judge James P. Jones,
Western District of Virginia

Fifth Circuit:

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

Sixth Circuit:

Chief Judge Alice M. Batchelder
Judge Solomon Oliver, Jr.,
Northern District of Ohio

Seventh Circuit:

Chief Judge Frank H. Easterbrook
Chief Judge Richard L. Young,
Southern District of Indiana

Eighth Circuit:

Chief Judge James B. Loken
Judge Rodney W. Sippel,
Eastern District of Missouri

Ninth Circuit:

Chief Judge Alex Kozinski
Judge Charles R. Breyer,
Northern District of California

Tenth Circuit:

Chief Judge Robert H. Henry
Judge Robin J. Cauthron,
Western District of Oklahoma

Eleventh Circuit:

Chief Judge Joel F. Dubina
Judge Myron H. Thompson,
Middle District of Alabama

District of Columbia Circuit:

Chief Judge David Bryan Sentelle
Chief Judge Royce C. Lamberth,
District of Columbia

Federal Circuit:

Chief Judge Paul R. Michel

Court of International Trade:

Chief Judge Jane A. Restani

The following Judicial Conference committee chairs attended the Conference session: Circuit Judges Bobby R. Baldock, Julia Smith Gibbons, Michael S. Kanne, M. Margaret McKeown, Jeffrey S. Sutton, and Richard C. Tallman, and District Judges Julie E. Carnes, Rosemary M. Collyer, Claire V. Eagan, Janet C. Hall, Robert L. Hinkle, D. Brock Hornby, Mark R. Kravitz, Barbara M.G. Lynn, J. Frederick Motz, Donald C. Pogue, Michael A. Ponsor, Julie A. Robinson, Lee H. Rosenthal, Charles R. Simpson III, George Z. Singal, and Laura Taylor Swain. Bankruptcy Judge Rosemary Gambardella and Magistrate Judge Anthony J. Battaglia were also in attendance. Collins Fitzpatrick of the Seventh Circuit represented the circuit executives.

James C. Duff, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Jill C. Sayenga, Deputy Director; William R. Burchill, Jr., Associate Director and General Counsel; Laura C. Minor, Assistant Director, and Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat; Cordia A. Strom, Assistant Director, Legislative Affairs; and David A. Sellers, Assistant Director, Public Affairs. District Judge Barbara Jacobs Rothstein and John S. Cooke, Director and Deputy Director of the Federal Judicial Center, and Judith W. Sheon, Staff Director of the United States Sentencing Commission, were in attendance at the session of the Conference, as was Jeffrey P. Minear, Counselor to the Chief Justice. The 2009-2010 Supreme Court Fellows also observed the Conference proceedings.

Acting Deputy Attorney General Gary Grindler addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice. Senators Jeff Sessions and Sheldon Whitehouse and Representatives John Conyers, Jr., and Henry C. Johnson, 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 Sessions, in his capacity as chair of the United States Sentencing Commission, reported on Sentencing Commission activities. Judge Julia Smith Gibbons, Chair of the Committee on the Budget, presented a report on budget matters.

ELECTION

The Judicial Conference elected to membership on the Board of the Federal Judicial Center Judge Edward Prado of the Court of Appeals for the Fifth Circuit to succeed Chief Judge William R. Traxler, Jr., of the Court of Appeals for the Fourth Circuit.

EXECUTIVE COMMITTEE

TRIBAL LAW AND ORDER ACT OF 2009

The proposed Tribal Law and Order Act of 2009, S. 797 and H.R. 1924 (111th Congress), addresses the administration of criminal justice in Indian country. Three committees of the Judicial Conference considered portions of the bill and two committees, the Criminal Law Committee and the Defender Services Committee, determined to make recommendations to the Judicial Conference regarding select provisions. So that the judiciary's views would not be mooted by intervening legislative action, the Executive Committee was asked to consider the recommendations on an expedited basis. The Executive Committee agreed to act on behalf of the Conference with regard to one of two recommendations made by the Criminal Law Committee. It approved a recommendation that the Judicial Conference oppose any legislation that would establish litigation priorities among different kinds of criminal cases brought in the federal courts or that would supplant in any way the time limits presently set by the Speedy Trial Act, 18 U.S.C. § 3161 et seq. With regard to the remaining recommendation of the Criminal Law Committee and the recommendation of the Defender Services Committee, the Executive Committee determined that they should be considered and

discussed by the full Conference at the March 2010 session. *See infra*, “Tribal Law and Order Act of 2009,” pp. 10-11, 12.

MISCELLANEOUS ACTIONS

The Executive Committee —

- Approved final fiscal year 2010 financial plans for the Salaries and Expenses, Defender Services, Court Security, and Fees of Jurors and Commissioners accounts;
- Approved technical adjustments to the judiciary’s fiscal year 2011 budget request;
- Approved on behalf of the Conference an updated Five-Year Courthouse Project Plan for Fiscal Years 2011-2015 for submission to Congress;
- Asked the Defender Services Committee to consider, in consultation with the Budget and Federal-State Jurisdiction Committees, issues raised in a letter concerning federal defender representation of defendants in state court capital habeas corpus proceedings; and
- Asked the Judicial Resources Committee to develop a statement about employment dispute resolution hearing officers’ duties.

COMMITTEE ON AUDITS AND ADMINISTRATIVE OFFICE ACCOUNTABILITY¹

COMMITTEE ACTIVITIES

The Committee on Audits and Administrative Office Accountability reported that it had an in-depth discussion of how to carry out its revised jurisdiction. It determined to enhance its oversight of the audit program, including having regular direct contact with auditors; approved a plan to assess the AO’s program review responsibilities, standards, objectives and

¹Previously known as the Committee on the Administrative Office.

practices; and determined that the AO should update and reissue internally the publication, *The Federal Judiciary's Oversight and Review System*, originally published at the request of the Committee in December 2005.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

OFFICIAL DUTY STATION

On recommendation of the Bankruptcy Committee, and in accordance with 28 U.S.C. § 152(b)(1), the Judicial Conference approved a request of the Fourth Circuit Judicial Council to transfer the official duty station for Chief Judge Randy Doub in the Eastern District of North Carolina from Wilson to Greenville and to designate Wilson as an additional place of holding court. Also on the Committee's recommendation, and in accordance with § 230.10 of Volume 9 of the *Guide to Judiciary Policy*,² the Conference approved the transfer of the duty station of the bankruptcy administrator in the Eastern District of North Carolina from Wilson to Raleigh, subject to the approval of the Judicial Council of the Fourth Circuit.

RECALL OF BANKRUPTCY JUDGES

At the request of the Committee, the Conference agreed that recommendations regarding recall of bankruptcy judges would be withdrawn.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Bankruptcy System reported that it voted unanimously to recommend to the Budget Committee that the existing system of budgeting for chambers staff be maintained. It also approved a recommendation of its Subcommittee on Technology and Statistics that certain additional bankruptcy data be transmitted to the Inter-University Consortium for Political and Social Research at the University of Michigan. In addition, the Committee discussed several issues related to judicial

²Previously known as the *Guide to Judiciary Policies and Procedures*.

resources, including efforts to make more efficient use of the bankruptcy judge recall program and to promote greater use of intercircuit assignments of bankruptcy judges.

COMMITTEE ON THE BUDGET

COMMITTEE ACTIVITIES

The Committee on the Budget reported that it continues to be concerned about the long-term financial health of the judiciary and spent considerable time discussing internal and external actions that will impact future budgets. Given the current difficult fiscal environment, the Committee plans to work with the program committees to begin consideration of revising the annual budget cap of 8.2 percent for the Salaries and Expenses account. The Committee also discussed the judiciary's most recent long-range budget estimates (through fiscal year 2019) and noted that sizable shortfalls in the Salaries and Expenses account are projected. Consequently, the judiciary's two-pronged approach of cost containment and congressional outreach, which has been critical to the judiciary's recent financial success, will be even more important in the coming years.

COMMITTEE ON CODES OF CONDUCT

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Judicial Conference in September 2009, the Committee received 40 new written inquiries and issued 41 written advisory responses. During this period, the average response time for requests was 18 days. In addition, the Committee chair responded to 150 informal inquiries, individual Committee members responded to 132 informal inquiries, and Committee counsel responded to 389 informal inquiries.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

CIVIL LITIGATION MANAGEMENT MANUAL

In March 2001, the Judicial Conference approved publication of the *Civil Litigation Management Manual*, which provides information on litigation management, cost and delay reduction techniques, and alternative dispute resolution programs, as required by the Civil Justice Reform Act of 1990 (see 28 U.S.C. § 479(c)) (JCUS-MAR 01, p. 15). To fulfill its obligation under the Act to update periodically the *Civil Litigation Management Manual*, at this session, on recommendation of the Committee on Court Administration and Case Management, the Conference approved a revised version of the *Manual* that updates the relevant statutes and rules, describes changes in civil practice since 2001, and provides more current advice and references on civil case management. In addition, the Conference delegated to the Court Administration and Case Management Committee the authority to make technical and/or conforming, non-controversial amendments to the *Manual*.

COURTROOM SECURITY SURVEILLANCE RECORDINGS

In September 2009, the Judicial Conference approved the development and transmission to the National Archives and Records Administration (NARA) of a records disposition schedule for routine courtroom security surveillance recordings, consistent with the terms of a memorandum of understanding (MOU) to be entered into by the judiciary and the U.S. Marshals Service establishing guidance on the creation, retention, use, and disposal of such recordings (JCUS-SEP 09, pp. 23-24). At this session, on recommendation of the Committee and consistent with the terms of the MOU, the Conference approved a records disposition schedule for routine courtroom security surveillance recordings that provides for a retention period of 14 to 30 days before disposal of the recordings, as well as the authority, in the case of a security incident, for the security video to be maintained until the conclusion of the investigation or such time as determined by order of the chief judge of the court.

ELECTRONIC PUBLIC ACCESS FEE SCHEDULE

In order to encourage use of the Public Access to Court Electronic Records (PACER) system by the public, in March 2001 the Judicial Conference provided that users would not be billed until their accounts totaled at least \$10 in a one-year period, thus allowing free access to at least 125 pages of court filings (JCUS-MAR 01, pp. 12-13). To increase the amount of data available without charge, at this session the Committee recommended, and the Conference agreed, that users would be allowed to accrue \$10 in free usage quarterly, instead of yearly, before they would be charged. The Conference therefore amended Item I of the Electronic Public Access Fee Schedule to read, in part, as follows: “No fee is owed under this provision until an account holder accrues charges of more than \$10 in a quarterly billing cycle.”

PUBLIC ACCESS TO DISTRICT AND BANKRUPTCY COURT OPINIONS

On recommendation of the Committee on Court Administration and Case Management, the Judicial Conference approved a one-year pilot project with the Government Printing Office (GPO), involving no more than 12 courts, to provide public access to court opinions through GPO’s FDsys system, which is an advanced, internet-based digital system that allows searches across opinions and across courts. The Conference also agreed to delegate to the Committee the authority to extend the pilot program for up to one additional year, if necessary to ensure that sufficient data is collected to evaluate the program.

ELECTRONIC ACCESS TO DIGITAL AUDIO RECORDINGS

In March 2007, the Judicial Conference established a pilot program to evaluate the feasibility of making digital audio recordings of court hearings available to the public through PACER (JCUS-MAR 07, p. 12). After reviewing the results of the program and concluding that providing such access did not adversely affect the performance of the judiciary’s information technology systems and that it improved public access, the Committee recommended that the Judicial Conference—

- a. Allow courts, at the discretion of the presiding judge, to provide access to digital audio files via PACER;
- b. Establish a fee for public access to such recordings commensurate with the maximum fee for downloading a single file from PACER (currently \$2.40); and
- c. Delegate to the Administrative Office the authority to establish appropriate language in the Electronic Public Access Fee Schedule to effectuate this fee.

The Conference adopted the Committee's recommendations.

COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported that it created a subcommittee to oversee the progress of Phase I of the Next Generation of CM/ECF. The Committee also discussed how it could assist courts and judges with handling the increasing number of terrorism-related cases. In that regard, the Committee endorsed revisions to the judiciary's security procedures under the Classified Information Procedures Act, which will be forwarded to the Chief Justice, who must approve the procedures in consultation with the Attorney General, Director of National Intelligence, and Secretary of Defense.

COMMITTEE ON CRIMINAL LAW

TRIBAL LAW AND ORDER ACT OF 2009

As discussed above, the Criminal Law Committee made two recommendations to the Judicial Conference regarding the proposed Tribal Law and Order Act of 2009. The first recommendation, to oppose establishment of litigation priorities among different kinds of criminal cases brought in the federal courts, was adopted by the Executive Committee on behalf of the Conference. *See* "Tribal Law and Order Act of 2009," pp. 4-5. The second recommendation, to oppose any legislation that would expand tribal court sentencing authority beyond one year of imprisonment, was discussed at the Conference session along with a related recommendation from the Defender Services Committee to urge Congress to incorporate in

legislation applying to Indian tribal criminal adjudications certain bedrock principles of the right to counsel that are part of the federal and state systems. After discussion, the Conference adopted a recommendation, offered as a substitute for both the Criminal Law and Defender Services Committees' recommendations, that the Conference would take no position on pending tribal court legislation but would communicate to Congress concerns about the impact on the federal courts of portions of the legislation, as set forth in a draft letter presented to the Conference. In that letter, the Conference stated:

After careful consideration, the Judicial Conference of the United States, which is the policy-making body of the Judicial Branch, has decided not to take a position as to whether the Congress should increase tribal sentencing authority from one to three years, and it defers to Congress as to its determination on this matter of Indian tribal authority.

The Judicial Conference nevertheless notes that enactment of the proposed legislation, which would effectively give tribal courts felony jurisdiction over a number of common offenses, could result in increased petitions to the federal courts for habeas corpus relief from tribal court action. The absence of procedural requirements in tribal courts poses difficulties for federal habeas courts reviewing tribal proceedings. For example, the absence of a record could render it difficult for a federal court to evaluate challenges to tribal convictions. In addition, the procedural and substantive differences between federal and tribal law may complicate federal court assessments of whether certain tribal convictions qualify as predicate offenses for federal sentencing purposes.

We can offer no simple solution for addressing those concerns. We nevertheless respectfully request that your committee take account of those factors in your consideration of the proposed legislation.

COMMITTEE ACTIVITIES

The Committee on Criminal Law reported that pursuant to authority delegated to the Committee by the Judicial Conference (JCUS-MAR 06, p. 15), it endorsed stylistic modifications to Monograph 110, *Judicial Officer's Reference on Alternatives to Detention and Conditions of Release*,

and Monograph 113, *The Federal Location Monitoring Program for Defendants and Offenders*. The Committee also reported that it endorsed the use of alphanumeric user identification (“user ID”) and password verification to facilitate the use of electronic monthly reporting by a defendant or offender as an alternative to the collection of paper forms bearing a defendant’s or offender’s “pen and ink” signature. Finally, the Committee reported that the Federal Judicial Center has agreed to conduct a study to assess the efficacy and cost effectiveness of federal reentry court programs and has designed a multi-year research project to that end.

COMMITTEE ON DEFENDER SERVICES

COMMUNITY DEFENDER ORGANIZATION BENEFITS

On recommendation of the Committee on Defender Services, the Judicial Conference approved a community defender organization severance pay policy that is based on the policy applicable to federal public defender organization employees. If a community defender organization decides to adopt a severance pay plan, it must conform to this policy.

TRIBAL LAW AND ORDER ACT OF 2009

The Committee on Defender Services made a recommendation with regard to the proposed Tribal Law and Order Act of 2009, S. 797, H.R. 1924 (111th Congress) urging Congress to incorporate in legislation applying to Indian tribal criminal adjudications certain bedrock principles of the right to counsel that are part of the federal and state systems. As discussed above (*see supra*, “Tribal Law and Order Act of 2009,” pp. 4-5), the Executive Committee, which had been asked to act on the recommendation on an expedited basis, determined that the recommendation should be discussed by the full Conference at the March 2010 session. After discussion, the Conference approved a substitute motion in lieu of this recommendation and a related Criminal Law Committee recommendation, agreeing to take no position on pending tribal court legislation, but to communicate to Congress concerns about the impact on the federal courts of portions of the legislation, as set forth in a draft letter presented at the Conference session. *See supra*, “Tribal Law and Order Act of 2009,” pp. 10-11.

COMMITTEE ACTIVITIES

The Committee on Defender Services reported that it received a report on a federal defender compensation study containing recommendations for achieving closer salary and benefits parity with comparable positions in the United States attorneys' offices, and it endorsed for FY 2010 those recommendations that could be accomplished within the existing budgetary allocations to individual federal defender organizations. The Committee also discussed the role of its Defender Services Budget Subcommittee in reviewing federal defender organizations' requests for additional funds to support "mega-cases." In addition, the Committee considered and declined to approve a request from the District of Idaho to establish a Coeur d'Alene branch office of the community defender organization serving the district because the current level of Criminal Justice Act appointments did not warrant the increased expense.

COMMITTEE ON FEDERAL-STATE JURISDICTION

DIVERSITY JURISDICTION

In response to a request from the Executive Committee, the Federal-State Jurisdiction Committee has been considering the continued viability of older Judicial Conference-approved legislative positions that have not been pursued in Congress for some time. At this session, it reviewed the Conference's 1990 position supporting elimination of non-economic damages from the calculation of the amount in controversy for cases based on diversity jurisdiction under 28 U.S.C. § 1332 (JCUS-SEP 90, p. 60). Noting that the judiciary had not pursued the position in Congress in over ten years and that it was extremely unlikely that the position would be viewed favorably by Congress, the Committee recommended that the position be rescinded. The Conference approved the recommendation.

PRISON ABUSE REMEDIES ACT

The proposed Prison Abuse Remedies Act, H.R. 4335 (111th Congress), would amend the Prison Litigation Reform Act of 1995 (PLRA) to reduce some of the restrictions that the PLRA placed on the filing of civil rights actions by prisoners alleging prison abuse. After reviewing the

proposed legislation, the Committee recommended that the Conference take no position on H.R. 4335, or similar legislation, with the exception of opposition to the provision that would amend 28 U.S.C. § 1915(b) to eliminate the requirement in current law that a prisoner proceeding *in forma pauperis* be assessed the filing fee upon the filing of a civil action. It further recommended that should Congress proceed to modify the current filing fee requirement, the Conference should respectfully urge Congress to retain the requirement for the assessment of fees upon the filing of a civil action, with allowance for the refund of filing fees for those actions that are not dismissed under 28 U.S.C. § 1915A, 28 U.S.C. § 1915(e)(2), or 42 U.S.C. § 1997e(c)(1). The Conference adopted the Committee's recommendations.

HAGUE CONVENTION ON CHOICE OF COURT AGREEMENTS

In response to a request from the United States Department of State, the Committee conducted a review of the Hague Convention on Choice of Court Agreements, which was signed by the United States in January 2009 and awaits Senate ratification and the adoption of implementing legislation. Under the terms of the Convention, ratifying Nation-States agree that their courts will give effect to clauses in international commercial contracts in which the parties select a particular nation's courts as the forum for adjudication of disputes arising from the contract. With regard to proposed federal legislation to implement the Hague Convention, on recommendation of the Committee, the Judicial Conference, consistent with principles of federalism, agreed to—

- a. Support the inclusion of language to provide that actions do not, solely by virtue of the fact that they have been brought for the resolution of contract disputes or for the enforcement of judgments of other courts under the Hague Convention, qualify for federal question jurisdiction;
- b. Oppose the inclusion of language that would allow parties to remove actions brought pursuant to the Hague Convention to federal court at any time, but support the application of current law governing removal to such actions; and
- c. Oppose the inclusion of language that would provide for federal district court interlocutory review of state court decisions concerning conflicts between the federal and state statutes implementing the Hague Convention.

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported that it was continuing its efforts to facilitate the exchange of information and ideas among local state-federal judicial councils. The Committee continues to monitor the status of regulations to certify states for expedited review of federal capital habeas corpus petitions and also is continuing its dialogue with state supreme court chief justices concerning improvements in capital habeas corpus litigation in both the federal and state court systems. The Committee also received a report on the status of legislation addressing procedures for claiming the state secrets privilege. In addition, a representative of the Department of Justice gave a presentation on efforts to enact comprehensive immigration reform legislation and such legislation's potential impact on the federal courts.

COMMITTEE ON FINANCIAL DISCLOSURE

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported that it continues to enhance the financial disclosure report (FDR) software, and also is overseeing development of a system for the electronic filing and records management of financial disclosure reports. Analysis of the calendar year 2008 financial disclosure reports reflects that use of the enhanced self-audit function in the FDR software continues to improve the quality of the reports and reduce the volume of correspondence between the Committee and filers. As of December 31, 2009, the Committee had received 4,421 financial disclosure reports and certifications for calendar year 2008, including 1,338 reports and certifications from Supreme Court justices, Article III judges, and judicial officers of special courts; 365 reports from bankruptcy judges; 582 reports from magistrate judges; and 2,136 reports from judicial employees.

COMMITTEE ON INFORMATION TECHNOLOGY

COMMITTEE ACTIVITIES

The Committee on Information Technology reported that it discussed efforts to lay the foundation for an improved communications infrastructure

and endorsed the concept of developing and managing an enterprise-wide internet telephone service the courts could use at their option. The Committee endorsed providing e-mail accounts and access to the J-Net on the judiciary's data communications network (DCN) to retired bankruptcy and magistrate judges who are subject to recall. Along with other updates, the Committee heard reports on development of the next generation of the Case Management/Electronic Case Files (CM/ECF) systems; current issues within the Electronic Public Access program; and a project to create an electronic Criminal Justice Act voucher processing system. It also awarded five grants to local courts to promote the development of local technology solutions that may be shared with other court units.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that 99 intercircuit assignments were undertaken by 70 Article III judges from July 1, 2009, to December 31, 2009. The Committee also reported that for the full calendar year 2009, 238 intercircuit assignments were processed by the Committee and approved by the Chief Justice, the highest number in the last 20 years. During this time, 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

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported on its involvement in rule of law and judicial reform throughout the world, highlighting activities in Africa, Asia and the Pacific Basin, Latin America and the Caribbean, the Middle East, Europe, and Eurasia. The Committee further reported on its continued participation in the rule of law component of the Library of Congress' Open World Program for jurists from Russia, Ukraine, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, and Turkmenistan. In addition, the Committee reported about rule of law activities involving the Federal Judicial Center, the U.S. State Department, the U.S. Agency for International Development, the U.S. Department of Justice, the World Bank,

the AO Office of Defender Services, and United States court administrators. Finally, the Committee reported on hosting foreign delegations of jurists and judicial personnel for briefings at the Administrative Office.

COMMITTEE ON THE JUDICIAL BRANCH

COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that it continues to pursue possible avenues for improving judicial compensation and benefits, notwithstanding the constrained budget climate. The Committee also reported that it continues to consider ways to improve judicial-legislative communications. Educating the public, especially the media, on the role of judges and the judiciary in society remains a priority of the Committee.

COMMITTEE ON JUDICIAL CONDUCT AND DISABILITY

COMMITTEE ACTIVITIES

The Committee on Judicial Conduct and Disability reported that on October 26, 2009, it issued a decision on a petition for review of a circuit judicial council order on a complaint under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364, and that it has under advisement a petition for review of a judicial council order on two complaints under the Act. The Committee also reported that it continues to address courts' inquiries and to develop resources and infrastructure in support of the Committee's responsibilities.

COMMITTEE ON JUDICIAL RESOURCES

EXECUTIVE COMPENSATION

In September 1993, the Judicial Conference approved locality pay for the courts to be provided in the same amounts, in the same areas, and at the same time as is approved for the executive branch. This had the effect of imposing a locality pay cap on salaries of circuit executives and Judicial Salary Plan (JSP) positions graded at JSP-16 through JSP-18 at the equivalent

of level III of the Executive Schedule, which was the locality pay cap for the executive branch Senior Executive Service (SES) (JCUS-SEP 93, p. 50). In 2005, when changes to the executive branch salary structure made locality pay caps no longer applicable to the SES, the Conference agreed to approve, as an interim measure, the application of locality pay for unit executives up to the salary of a district judge, to be applied at the request of the chief judge on behalf of the court, as set forth on what have become known as optional pay tables (JCUS-SEP 05, p. 29). Aggregate pay, which includes bonuses and awards on top of basic pay and locality pay, had already been capped at the salary of a district judge (JCUS-SEP 03, p. 30). In 2007, in response to a request to reconsider the pay caps, the Committee authorized the conduct of a comprehensive study of executive compensation. Four proposals that evolved from that study were considered by the Conference and are discussed below.

Pay Cap Exception for National Judiciary Awards. Unit executives at or near the aggregate pay cap, which as noted above is the salary of a district judge, are ineligible to receive some or all of the cash payments that accompany national judiciary awards. For those executives, these awards have become largely honorary. On recommendation of the Committee, the Conference approved lifting the current aggregate pay cap for court employees only to allow receipt of the full amount of a national judiciary award.

Grading Formulas. The judiciary determines maximum grades for district clerks of court, bankruptcy clerks of court, and chief probation and pretrial services officers through application of grading formulas (also known as court-sizing formulas). The formulas for district and bankruptcy clerks are based on the number of judgeships and authorized work units (AWUs) at a court; the formula for chief probation and pretrial services officers is based solely on the numbers of AWUs. The grades are recalculated annually, which can lead to grade volatility as workload rises and falls. In order to reduce that volatility, the Committee recommended, and the Conference approved, the following revised procedures when a grade reduction for a court unit executive is supported by application of the grading formula:

- a. Calculate a three-year average using the data from the current year and from the two previous years;
- b. Retain the current grade if the three-year average falls above the respective threshold;

- c. Retain the current grade for a one-year grace period if the three-year average falls below the respective threshold by less than five percent of the threshold;
- d. Downgrade the position at the end of the one-year grace period if the new three-year average remains below the threshold; and
- e. Downgrade the position if the original three-year average falls more than five percent below the threshold.

Pay Stratification. Noting that there is currently no differentiation in the pay potential for circuit and court unit executives at the JSP-16 through JSP-18 levels, the Committee expressed concern that should the salary of a district judge increase other than through ordinary annual pay adjustments, there could be an uncontrolled upward migration of pay rates for unit executives on the optional pay tables. The Committee therefore recommended, and the Conference approved, the following stratified pay caps for application to the optional pay tables for circuit and court unit executives should the salary of a district judge increase (other than through anticipated annual Employment Cost Index-based pay adjustments), with the understanding that the aggregate pay cap of court employees cannot exceed the salary of a district judge:

- a. EX-I (\$196,700 in 2009) as the cap for circuit executive positions and court unit executive positions at JSP-18;
- b. EX-II (\$177,000 in 2009) as the cap for court unit executive positions at JSP-16 and JSP-17; and
- c. EX-III (\$162,900 in 2009) as the cap for court unit executive positions at JSP-15 and below.

Annual Leave Accrual. Currently, unit executives only begin to earn eight hours of leave per pay period after they have accrued 15 years of creditable service. On recommendation of the Committee, the Judicial Conference agreed to seek legislation to allow unit executives to accrue eight hours of annual leave per pay period prospectively, regardless of the length of service, similar to what is provided to executives in the executive branch.

COURT PERSONNEL SYSTEM PROMOTION POLICY

In September 2004, the Conference modified the promotion rule for Court Personnel System (CPS) employees to afford court units greater flexibility when determining the salary of employees being promoted to a higher classification level (JCUS-SEP 04, p. 22). Instead of a set rate of six percent over current salary, the Conference allowed court units to establish a local promotion policy that set the increase for a fiscal year at a uniform, unit-wide rate of not less than three percent nor more than six percent. At this session, on recommendation of the Committee, the Conference agreed to give court units even greater latitude by setting at one percent the minimum salary promotion rate, to be applied for a fiscal year at a uniform, unit-wide rate in keeping with existing policy.

MODEL EMPLOYMENT DISPUTE RESOLUTION PLAN

On recommendation of the Committee, the Judicial Conference approved revisions to the *Model Employment Dispute Resolution Plan* adopted for the federal judiciary in 1997. Revisions incorporated in the 2010 *Model Employment Dispute Resolution Plan* include (a) specifying procedures for handling claims involving judges; (b) extending the definition of harassment beyond sexual harassment to apply to all types of discrimination; (c) creating a special reporting process for wrongful conduct to bring these matters quickly to management's attention even outside of the employment dispute resolution process; (d) allowing for summary dismissals throughout the process; and (e) clarifying the provisions regarding confidentiality.

RETIRED LAW ENFORCEMENT OFFICER RE-EMPLOYMENT

The District of Hawaii requested an exception to the March 2009 Conference policy limiting re-employment of a retired law enforcement officer to a single period of a maximum of 18 months (JCUS-MAR 09, p. 26). Without the exception, the district would lose its chief and deputy chief probation officers within four months of each other. On recommendation of the Committee, the Conference approved the request and allowed the district to re-employ its deputy chief probation officer for a second 18-month period from November 1, 2010 to April 30, 2012.

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that it continued its discussion of executive compensation, requesting that the Administrative Office explore several additional options for Committee review, including increasing the number and amount of national judiciary awards, establishing centralized funding to pay the relocation expenses of internal judiciary candidates who are filling circuit and court unit executive positions, and developing through its advisory structure one or more options for measuring executive performance. The Committee also requested that the Administrative Office and the Federal Judicial Center explore together the need to provide additional training opportunities and professional development programs for unit executives.

COMMITTEE ON JUDICIAL SECURITY

COMMITTEE ACTIVITIES

The Committee on Judicial Security reported that it discussed the security implications of internet social networking by judiciary employees and expressed support for the efforts of the Committee on Codes of Conduct to develop guidelines and model policies on such internet use for courts to consider. At the request of the Committee, the Administrative Office Director appointed an ad hoc working group to develop and implement strategies to mitigate the misuse and abuse of judges' names used as domain names on the internet when it is believed that a judge's security is being compromised.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

SELECTION AND APPOINTMENT REGULATIONS

The Judicial Conference's selection and appointment regulations for magistrate judges require that magistrate judge applicants have actively practiced law for at least five years. The court may consider other legal experience as a substitute for the active practice of law, except that if that other experience is as a law clerk to any judge, credit is limited to two years. This limitation is intended to ensure, among other things, that magistrate judge

applicants are seasoned and experienced attorneys. However, staff attorney and pro se law clerk experience has not been subject to this limitation. Noting that the duties of staff attorneys and pro se law clerks are similar to the duties of elbow law clerks and could, in fact, be seen as more limited in scope than the elbow law clerk position, the Committee recommended that the Judicial Conference amend Section 1.01(b)(4) of the Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Appointment and Reappointment of United States Magistrate Judges to provide that only two years of experience as a staff attorney or pro se law clerk in a court may be used toward meeting the five-year active-practice-of-law requirement. The Conference adopted the Committee's recommendation.

CHANGES IN MAGISTRATE JUDGE POSITIONS

After consideration of the report of the Committee on the Administration of the Magistrate Judges System and the recommendations of the Director of the Administrative Office, the respective district courts, and the judicial councils of the relevant circuits, the Judicial Conference determined to make the following changes regarding the magistrate judge positions in the District of North Dakota:

- a. Redesignate the part-time magistrate judge position at Grand Forks, Devils Lake, or Minnewaukan as Grand Forks;
- b. Authorize the part-time magistrate judge position at Grand Forks to exercise adjoining district jurisdiction in the District of Minnesota; and
- c. Make no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

The Conference also agreed to make no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the following courts: Southern District of New York, Western District of Pennsylvania, Southern District of West Virginia, Eastern District of Louisiana, Northern District of Iowa, District of Alaska, District Court of Guam, District of Hawaii, and Middle District of Alabama.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Magistrate Judges System reported that pursuant to the September 2004 Judicial Conference policy regarding the review of magistrate judge position vacancies (JCUS-SEP 04, p. 26), during the period between the Committee’s June 2009 and December 2009 meetings, the Committee chair approved filling fourteen full-time magistrate judge position vacancies. At its December 2009 meeting, the full Committee approved filling two additional magistrate judge position vacancies. The Committee also agreed to share with the Ad Hoc Advisory Committee on Judiciary Planning some ideas in response to a draft strategic plan for the federal judiciary circulated by the Ad Hoc Committee.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure reported that the Advisory Committee on Civil Rules is sponsoring a major conference at Duke University School of Law in May 2010 to consider the current civil litigation process and whether any changes are needed to the Federal Rules of Civil Procedure to achieve just, cost-effective, and timely disposition of cases. The Advisory Committees on Bankruptcy, Criminal, and Evidence Rules are reviewing comments from the public submitted on amendments proposed in August 2009 to their respective sets of rules. The proposals include a comprehensive restyling of the Federal Rules of Evidence.

COMMITTEE ON SPACE AND FACILITIES

COMMITTEE ACTIVITIES

The Committee on Space and Facilities reported that it approved a change to the Circuit Rent Budget (CRB) Business Rules to allow more flexibility for “Component C” spending and amended the business rules and CRB Program Manual to reflect the courtroom-sharing policies previously approved by the Judicial Conference for senior and magistrate judges (see JCUS-MAR 09, pp. 14-16; JCUS-SEP 09, pp. 9-11). The Committee also approved amendments to the Asset Management Planning (AMP) Business

Rules to specify treatment of general building conditions in the facility benefit assessment structure, to reflect the September 2009 Judicial Conference policy on courtroom sharing for magistrate judges, and to provide clarification to current rules.

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