

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

September 20, 1993

The Judicial Conference of the United States convened in Washington, D.C., on September 20, 1993, 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 Stephen G. Breyer  
Judge Francis J. Boyle,  
District of Rhode Island

Second Circuit:

Chief Judge Jon O. Newman  
Judge Charles L. Brieant,  
Southern District of New York

Third Circuit:

Chief Judge Dolores K. Sloviter  
Chief Judge John F. Gerry,  
District of New Jersey

Fourth Circuit:

Chief Judge Sam J. Ervin, III  
Judge W. Earl Britt,  
Eastern District of North Carolina

Fifth Circuit:

Chief Judge Henry A. Politz  
Chief Judge Morey L. Sear,  
Eastern District of Louisiana

Sixth Circuit:

Chief Judge Gilbert S. Merritt  
Chief Judge Thomas D. Lambros,  
Northern District of Ohio

Seventh Circuit:

Chief Judge William J. Bauer  
Chief Judge Barbara B. Crabb,  
Western District of Wisconsin

Eighth Circuit:

Chief Judge Richard S. Arnold  
Judge Donald E. O'Brien,  
Northern District of Iowa

Ninth Circuit:

Chief Judge J. Clifford Wallace  
Judge William Matthew Byrne, Jr.,  
Central District of California

Tenth Circuit:

Chief Judge Monroe G. McKay  
Judge Richard P. Matsch,  
District of Colorado

Eleventh Circuit:

Chief Judge Gerald B. Tjoflat  
Judge William Terrell Hodges,  
Middle District of Florida

District of Columbia Circuit:

Chief Judge Abner J. Mikva  
Chief Judge John Garrett Penn,  
District of Columbia

Federal Circuit:

Chief Judge Helen W. Nies

Court of International Trade:

Chief Judge Dominick L. DiCarlo

Circuit Judges Douglas Ginsburg, Otto R. Skopil, Deanell Reece Tacha, and William W. Wilkins, Jr., and District Judges Vincent L. Broderick, Robert C. Broomfield, Robert E. Keeton, Ann C. Williams, and Rya W. Zobel attended the Conference session. Circuit Executives Vincent Flanagan, Steven Flanders, Toby Slawsky, Samuel W. Phillips, Lydia Comberrel, James A. Higgins, Collins T. Fitzpatrick, June L. Boadwine, Gregory B. Walters, Eugene J. Murret, Norman E. Zoller, and Linda Finkelstein were also present.

Representative William J. Hughes, Chairman of the House Judiciary Subcommittee on Intellectual Property and Judicial Administration, spoke to the Conference on matters pending in the House of interest to the judiciary. Attorney General Janet Reno and Solicitor General Drew S. Days, III addressed the Conference on matters of mutual interest to the Department of Justice and the Conference.

L. Ralph Mecham, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Clarence A. Lee, Jr., Associate Director; William R. Burchill, Jr., General Counsel; Robert E. Feidler, Legislative and Public Affairs Officer; Karen K. Siegel, Chief, Judicial Conference Secretariat; Wendy Jennis, Deputy Chief, Judicial Conference Secretariat; Charles W. Nihan, Chief, Long Range Planning Office; and David A. Sellers, Public Information Officer. Judge William W. Schwarzer and Russell R. Wheeler, Director and Deputy Director of the Federal Judicial Center, also attended the session of the Conference, as did Robb Jones, Administrative Assistant to the Chief Justice, Richard Schickele, Supreme Court Staff Counsel, and Judicial Fellows Mark Brown, Rosann Greenspan, Margaret McCain, and Harvey Rishikof.

## REPORTS

Mr. Mecham, Director of the Administrative Office, reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office. Judge Schwarzer, Director of the Federal Judicial Center, spoke to the Conference about Federal Judicial Center programs, and Judge Wilkins, Chairman of the United States Sentencing Commission, reported on Commission activities.

## UNITED STATES SENTENCING COMMISSION

The Judicial Conference approved the following additional names for presentation to the President for appointment, subject to the advice and consent of the Senate, of judges to fill vacancies on the United States Sentencing Commission: Judges Peter Beer (Eastern District of Louisiana), Richard P. Conaboy (Middle District of Pennsylvania), George P. Kazen (Southern District of Texas), Donald E. O'Brien (Northern District of Iowa), Reena Raggi (Eastern District of New York), Gerald Rosen (Eastern District of Michigan), Michael A. Telesca (Western District of New York), and Mark Wolf (District of Massachusetts).

### EXECUTIVE COMMITTEE

#### FISCAL YEAR 1993 FINANCIAL PLAN

In the face of an anticipated shortfall in the 1993 appropriation for fees of jurors and the unlikelihood of enactment of a supplemental appropriation prior to the exhaustion of juror fee funds, the Executive Committee agreed to reserve sufficient funds to continue criminal trials through the end of the fiscal year, and allow the payment of juror fees in civil cases until the remaining funds were depleted. A supplemental appropriation to the fees of jurors account was signed into law on July 2, 1993 (Public Law 103-50).

#### JUDICIAL CONFERENCE COMMITTEE MATTERS

Because of the integral relationship of facilities design and management to court and judicial security, the Executive Committee agreed to merge the Court and Judicial Security Committee and the Space and Facilities Committee. In addition, the Executive Committee discharged the Committee to Review the Criminal Justice Act, which had completed its work.

In order to allow the Committee to Review Circuit Council Conduct and Disability Orders to assume enhanced responsibility for overall administration and evaluation of the Judicial Conduct and Disability Act (28 USC § 372(c)), the Executive Committee amended its jurisdictional statement. The Executive Committee also approved jurisdictional statements for the Committee on International Judicial Relations and the Economy Subcommittee of the Committee on the Budget, both of which were subsequently created by the Conference at this session (see "Committee on International Judicial Relations," *infra* p. 60 and "Economy Subcommittee," *infra* p. 42).

## PILOT PROGRAMS

In order to avoid the situation where a pilot program is funded indefinitely without assessment, the Executive Committee determined that any future request for Judicial Conference approval to conduct a pilot program must include a sunset provision and a plan for evaluation. In addition, each committee currently monitoring or conducting a pilot program should examine the pilot and recommend to the Judicial Conference at its March 1994 session a sunset date, i.e., a date after which the program will be either expanded or terminated.

## THREE BRANCH COORDINATION

The Executive Committee agreed in concept with the idea of holding a national conference with representatives from all three branches to study the problems facing the federal court system and to develop the mission of the federal courts. The end result of the process would be to establish practical guidelines to channel decisions regarding the creation of new federal law and the reform of the federal court system. The Committee further agreed that it would be advisable to meet at least semi-annually with the Attorney General and high level Department of Justice officials.

## RESOLUTION

On recommendation of the Executive Committee, the Judicial Conference adopted the following resolution in recognition of the substantial contributions made by the 11 Conference committee chairs who completed their terms of service in October 1993:

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

Honorable Lloyd D. George  
Committee on the Administration of the Bankruptcy System

Honorable Robert M. Parker  
Committee on Court Administration and Case Management

Honorable C. Arlen Beam  
Committee on Court and Judicial Security

Honorable Vincent L. Broderick  
Committee on Criminal Law

Honorable Julian A. Cook, Jr.  
Committee on Financial Disclosure

Honorable Wayne E. Alley  
Committee on the Administration of the Magistrate Judges System

Honorable Robert E. Keeton  
Committee on Rules of Practice and Procedure

Honorable Kenneth F. Ripple  
Advisory Committee on Appellate Rules

Honorable Edward Leavy  
Advisory Committee on Bankruptcy Rules

Honorable Sam C. Pointer, Jr.  
Advisory Committee on Civil Rules

Honorable Wm. Terrell Hodges  
Advisory Committee on Criminal Rules

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

#### MISCELLANEOUS ACTIONS

The Executive Committee:

- Authorized a six-month video-conferencing pilot program to conduct prisoner hearings in civil cases in the Central District of Illinois;
- Approved Sentencing Institutes for the Tenth Circuit in Denver, Colorado, August 16-18, 1993, and for the Fourth and Sixth Circuits in Durham, North Carolina, on September 8-10, 1993, and approved the agendas for these two Institutes;

- Approved a twelve-month waiver for Midwest flood victims of all miscellaneous bankruptcy fees associated with obtaining copies of discharge orders and other documents required by the Federal Emergency Management Administration in applying for emergency aid;
- Authorized the Administrative Office to seek approval from Congress to use funds from the FY 1994 defender services appropriation for nine additional positions and associated costs required to perform critically needed field oversight for the federal defender program;
- Noting no objections from Conference committee chairs, endorsed the implementation of guidelines for access to, and dissemination of, Judicial Conference reports and materials. These guidelines will be published in the Judges Manual (*Guide to Judiciary Policies and Procedures*, Volume III);
- Delegated to the Director of the Administrative Office the discretion to re-examine the policy of providing security coverage by the U.S. Marshals Service at all Judicial Conference committee meetings and to explore with the Marshals Service less costly options, if appropriate;
- Authorized the Administrative Office to explore legislative options for relocating the operations of the Vaccine Injury Act special masters;
- Supported an amendment to 28 U.S.C. § 251(b) to make the appointment and term of the chief judge of the Court of International Trade consistent with other Article III courts;
- Discussed possible judicial officer appointments to the United States Sentencing Commission (see also "United States Sentencing Commission," *supra* p. 36);
- Endorsed an amendment to 28 U.S.C. § 631, to provide the Judicial Conference with the authority to establish magistrate judge positions in the Districts of Guam and the Northern Mariana Islands;
- Agreed to seek a technical change to draft legislation, the "Indian Tribal Justice Act" (H.R. 1268, 103d Congress), such that the Chief Justice would be designated to make the judicial appointments to a Tribal/Federal Court Review Study Panel;
- Re-authorized courts to utilize existing funds to give cash bonus awards, and authorized the payment of small cash bonuses in FY 1993 to certain employees of the District Court for the District of Kansas for extraordinary actions during a recent security crisis; and

- Agreed to change the date, from August 28 to October 1, that the terms of the district judge representatives to the Judicial Conference begin and end, effective in 1994.

## **COMMITTEE ON THE ADMINISTRATIVE OFFICE**

The Administrative Office Committee reported that it considered a number of topics, including, among others: Administrative Office (AO) support for independent counsels and the District of Columbia Public Defender Service; cost-containment initiatives and proposals for reconfiguring the federal judiciary; legislative activities; relations between the judiciary and other governmental entities; AO management topics; communications with clerks of court and advisory groups; program assessment activities; and long range planning. After consideration of the current and future budget picture for the judiciary and the AO, the Committee endorsed inclusion of funding for the Thurgood Marshall Federal Judiciary Building in the appropriation account used to fund other judiciary buildings.

## **COMMITTEE ON AUTOMATION AND TECHNOLOGY**

### **PROCUREMENT LEGISLATION**

Proposed legislation, the Federal Acquisition Improvement Act of 1993 (H.R. 2238, 103d Congress), which would amend laws relating to federal procurement, provides for an increase in the small purchase threshold for executive branch agencies from \$25,000 to \$50,000, with an indexing adjustment to be made to that amount every five years to maintain the threshold constant in 1990 dollars. The Judicial Conference approved the Automation and Technology Committee's recommendation that legislation be sought to authorize the judiciary likewise to increase the small purchase threshold.

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

### **ADDITIONAL BANKRUPTCY JUDGESHIPS**

The Bankruptcy Committee conducted a comprehensive review of the requests by circuit judicial councils for new bankruptcy judgeships and recommended approval of 19 additional bankruptcy judgeships. The Judicial Conference approved this recommendation as follows:

District	Presently Authorized Judgeships	Additional Judgeships Recommended
New York, Eastern	6	1 permanent
New York, Northern	2	1 temporary
New York, Southern	9	1 permanent 1 temporary
New Jersey	8	1 permanent
Pennsylvania, Eastern	5	1 permanent
Maryland	4	1 permanent
Virginia, Eastern	5	1 permanent
Mississippi, Southern	2	1 temporary
Michigan, Eastern	4	1 permanent
Arizona	7	1 temporary
California, Central	21	4 permanent
California, Eastern	6	1 temporary
California, Northern	9	1 permanent
California, Southern	4	1 temporary
Florida, Southern	5	1 permanent

#### IN FORMA PAUPERIS

Certain members of Congress have expressed an interest in enacting an *in forma pauperis* (IFP) provision for bankruptcy debtors. The Bankruptcy Committee believes that, except in isolated instances, the filing fee requirement has not denied access to the bankruptcy courts, and that an IFP provision in bankruptcy would be disruptive and detrimental to the federal court system as a whole.

Acting on recommendation of the Committee, the Judicial Conference recommended that Congress fund a pilot study to assess accurately the full impact of an *in forma pauperis* provision on the bankruptcy courts, with the understanding that no pilot project could be undertaken unless the Congress provided additional and adequate funding to defray the costs of the study (including the need for additional support staff in the pilot districts) and the loss of revenue to the system resulting from the waiver of filing fees. The Conference expressed its concern about the implementation of an *in forma pauperis* provision in bankruptcy but deferred taking a formal position pending completion of the pilot study or empirical survey.

#### CHANGE OF BANKRUPTCY DUTY STATION

Pursuant to 28 U.S.C. § 152(b)(1), the Judicial Conference is responsible for determining the official duty stations of bankruptcy judges and their places of holding court. At the request of the Bankruptcy Court for the Central District of California and the Judicial Council of the Ninth Circuit and on the recommendation

of the Bankruptcy Committee, the Judicial Conference approved the transfer of three bankruptcy judgeships from Los Angeles to the San Fernando Valley, to be located within a ten mile radius of Van Nuys, California.

#### REAPPOINTMENT OF BANKRUPTCY JUDGES

The Bankruptcy Committee suggested that the process for filling vacancies in bankruptcy judgeships set out in the Bankruptcy Amendments and Federal Judgeship Act of 1984 (Public Law 98-353), may discourage incumbent judges who have served the full 14-year term from re-applying. It might be equally unfair to other potential candidates and to a merit screening committee to put them through a futile exercise if the incumbent were clearly the best person for the job. The Bankruptcy Committee recommended that a procedure similar to that used for magistrate judges, which involves a citizen review panel and an opportunity for comment by the public, would be both fair and practical for the reappointment of bankruptcy judges. The Judicial Conference agreed and will seek legislation to permit a circuit to reappoint an incumbent bankruptcy judge to a 14-year term of office without considering other qualified candidates.

#### COMMITTEE ON THE BUDGET

##### ECONOMY SUBCOMMITTEE

In an effort to respond to Congressional concerns and to establish a more permanent, analytical, and systematic means of developing final budget estimates, the Budget Committee proposed the creation of an Economy Subcommittee. The Judicial Conference endorsed the proposal.

##### ALTERNATIVE BUDGET REQUEST FOR THE FISCAL YEAR 1995

Anticipating the need to reduce the judiciary's budget request below the full funding level in this period of federal deficit reduction initiatives, the Budget Committee recommended, and the Judicial Conference approved alternative, or lower, budget estimates for the fiscal year 1995, subject to amendments necessary as a result of (1) new legislation, (2) actions of the Judicial Conference, or (3) any other reason the Director of the Administrative Office considers necessary and appropriate.

##### UNCLAIMED COURT REGISTRY FUNDS

The Judicial Conference supported a Budget Committee proposal to seek legislation authorizing the judiciary to (1) consolidate unclaimed court registry funds into a single interest-bearing account to be administered by the Administrative Office, and (2) retain interest on those funds consistent with the percentage of interest withheld on other registry funds.

## **COMMITTEE ON CODES OF CONDUCT**

The Committee on Codes of Conduct reported that since its last report to the Conference in March 1993, it received 44 new written inquiries and issued 46 written advisory responses. The Chairman received and responded to 49 telephonic inquiries. In addition, individual Committee members responded to 73 inquiries from their colleagues.

### **ETHICS REFORM ACT**

The Judicial Conference approved the recommendation of the Committee on Codes of Conduct to make technical amendments to the Ethics Reform Act regulations. These amendments include: (1) updating the name of the Court of Federal Claims; (2) clarifying in the Commentary that § 5C(4) of the Code of Conduct for United States Judges is the basis for § 3(a) of the Gift Regulations rather than Canon 4D(5) of the proposed American Bar Association Model Code of Judicial Conduct; and (3) revising the definition of judicial officer or senior employee in § 2(b) of the Outside Earned Income, Honoraria, and Outside Employment Regulations.

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

The Compliance Section of the Code of Conduct for United States Judges generally prohibits part-time judges from practicing law "in the court on which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves." Because this provision is inconsistent with the Conflict-of-Interest Rules for Part-time Magistrate Judges, Rules 1 and 7, which permit part-time magistrate judges to engage in a limited civil practice in the district court to which they are assigned, the Judicial Conference approved a conforming amendment to section A.(2) of the Compliance Section of the Code of Conduct for United States Judges.

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

### **CIVIL JUSTICE REFORM ACT OF 1993**

Section 3 of the recently-introduced Civil Justice Reform Act of 1993 (S. 585, 103rd Congress), while similar to Rule 68 of the Federal Rules of Civil Procedure, differs from the Civil Rule in that it (1) allows any party to an action to make an offer of judgment rather than just the defendant; (2) provides the adverse party 14 days in which to accept the offer before it is deemed withdrawn, rather than the ten days that Rule 68 allows; and (3) requires the payment of an offeror's reasonable attorney fees by an offeree who does not accept an offer and who obtains a final judgment which is not more favorable than the offer. On recommendation of the

Committee on Court Administration and Case Management, the Judicial Conference supported in principle the substance of section 3 of the proposed Act, but referred to the Committee on Rules of Practice and Procedure the issue of whether the matter is more appropriately within the authority of federal rules. The Rules Committee is to report on the matter to the March 1994 session of the Judicial Conference.

The Judicial Conference agreed with the recommendation of the Court Administration and Case Management Committee to support section 5(b) of the proposed Act, which would amend 28 U.S.C. § 1915(d) by adding "failure to state a claim upon which relief can be granted" as a cause for dismissal.

Section 5 of the proposed Civil Justice Reform Act of 1993 would amend the Civil Rights of Institutionalized Persons Act (42 U.S.C. § 1997(e)) to direct the courts to continue any action brought by an inmate pursuant to 42 U.S.C. § 1983 for up to 180 days in order to extend the period required for exhausting administrative remedies. On recommendation of the Committee, which was concerned about the impact of this section on the manner in which many courts process these types of cases, the Conference opposed the amendment. As an alternative, the Conference offered the provisions included in the judiciary's "housekeeping bill," which would allow a case to be continued for up to 120 days rather than the 180 days contemplated by the proposed Act. Further, the housekeeping provisions would allow a judge to determine if the administrative procedures are "otherwise fair and effective," eliminating the need to wait for certification by the Attorney General.

#### MISCELLANEOUS FEE SCHEDULES

At its March 1990 session, the Judicial Conference approved an amendment to the miscellaneous fee schedules for district and bankruptcy courts to provide a fee for electronic access to court data (JCUS-Mar 90, p.21). The Committee on Court Administration and Case Management believed that the policy with respect to fees for similar services in the federal courts should be consistent and, accordingly, there should be a fee for electronic access to court data for the courts of appeals.

However, while the costs of implementing a billing system in the courts of appeals for the Public Access to Electronic Records System (PACER) used by the district and bankruptcy courts (or for a similar alternative public access system) would be modest, only a small number of appellate courts offer PACER, and the usage rates of the appellate PACER system are low. Some appellate courts utilize a very different electronic access system called Appellate Court Electronic Services (ACES) (formerly known as Electronic Dissemination of Opinions System (EDOS)). The Committee determined that, at this time, the costs of implementing and operating a billing and fee collection system for electronic access to the ACES/EDOS system would outweigh the benefit of the revenues to be generated.

Thus, on recommendation of the Committee, the Judicial Conference agreed to amend the miscellaneous fee schedule for appellate courts promulgated under 28 U.S.C. § 1913 to provide a fee for usage of electronic access to court data, but to limit the application of the fee to users of PACER and other similar electronic access systems, with no fee to be applied to users of ACES/EDOS at the present time. The Conference further agreed to delegate to the Director of the Administrative Office the authority to determine the appropriate date to implement the fee, to ensure that usage rates warrant the administrative expense of collecting the fee and that the appropriate software and the billing and fee collection procedures are developed prior to implementation in the appellate courts.

#### INTERPRETER TEST APPLICATION FEES

Since 1985, the Administrative Office, which is responsible under 28 U.S.C. § 1827 for the development and administration of interpreter certification examinations, has contracted with the University of Arizona to perform this function. Due to concerns raised about the legal validity of language in the contract permitting the contractor to collect and budget funds without clear statutory authorization, the Judicial Conference approved a recommendation by the Court Administration and Case Management Committee that legislation be sought to authorize the Administrative Office to prescribe fees for the development and administration of interpreter certification examinations and permit a contractor to collect fees and apply them as payment for services under the contract.

#### FILING BY FACSIMILE

After consideration of the conflicting recommendations of three of its Committees, the Judicial Conference referred to the Committee on Rules of Practice and Procedure, in coordination with the Court Administration and Case Management and the Automation and Technology Committees, the question of whether, and under what technical guidelines, filing by facsimile on a routine basis should be permitted. A report on the issue should be made to the September 1994 Judicial Conference.

#### ARBITRATION

At the request of the Committee on Court Administration and Case Management, the Judicial Conference reconsidered its March 1993 decision not to support legislation authorizing the expansion of mandatory arbitration (JCUS-MAR 93, p. 12). The Conference again declined to support the enactment of legislation that would provide authorization to all federal courts to utilize mandatory arbitration at the courts' discretion.

## VIDEOTAPING OF COURT PROCEEDINGS

From January 1991 until December 1992, a Judicial Conference-approved experiment (JCUS-SEP 88, p. 83) was conducted to determine the viability of videotape as a method of recording court proceedings and for use as the record on appeal. Based on an evaluation of the program conducted by the Federal Judicial Center, the Committee determined that the use of videotape as the record on appeal is neither feasible nor desirable at this time. However, the Committee recommended, and the Conference agreed, that the six district courts which participated in the videotape experiment be permitted to continue to utilize videotape as a method of recording court proceedings without the simultaneous use of other methods and create the record on appeal by transcription of the videotape.

## COMMITTEE ON COURT AND JUDICIAL SECURITY

The Committee on Court and Judicial Security reported that, due to the tight budget situation the Director of the United States Marshals Service anticipates that for fiscal year 1994 there will be no new program expansion above the current level of services and that he has imposed a freeze on all hiring, promotions, and travel in order to fund essential services, such as the protection of the judiciary. The Committee further reported that it has requested that a study be done of the current allocation of court security officers in light of recently-developed staffing standards, for the purpose of formulating a plan for the reallocation of court security officer positions to provide an equitable level of security among the districts.

## COMMITTEE ON CRIMINAL LAW

### MANDATORY MINIMUM SENTENCES

Proposed legislation, the Controlled Substances Minimum Penalty - Sentencing Guideline Reconciliation Act of 1993, presented by the Chairman of the U.S. Sentencing Commission would attempt to reconcile mandatory minimum sentences with the sentencing guidelines. The Committee on Criminal Law believed that, although the proposed legislation would not solve all of the problems associated with mandatory minimum sentences, it addresses the essential incompatibility of mandatory minimums and sentencing guidelines and represents a promising approach. On recommendation of the Committee, the Judicial Conference endorsed the concept contained in the proposed legislation as being consistent with its previous position opposing mandatory minimum penalties.

## ANNUAL REPORT TO THE SENTENCING COMMISSION

Under 28 U.S.C. § 994(o), the Judicial Conference and the United States Probation System are required to submit annually a written report to the United States Sentencing Commission. The Judicial Conference approved the Annual Report of the Judicial Conference to the United States Sentencing Commission for submission to the Commission.

### *PUBLICATION 107, THE PRESENTENCE REPORT*

The Judicial Conference approved Chapter III, "Presentence Report for an Organization Defendant," of *Publication 107, The Presentence Report*, for publication and distribution to probation officers. The chapter sets forth the format of the presentence report and provides direction to probation officers in the preparation of a corporate or organizational report.

### *UNITED STATES PRETRIAL SERVICES SUPERVISION*

The Judicial Conference approved for publication and distribution to pretrial services officers the monograph entitled *United States Pretrial Services Supervision*, which is designed to establish standards for the supervision of defendants while in pretrial status.

### BLOOD-BORNE PATHOGENS POLICY

The judiciary is not bound by standards recently released by the Occupational Safety and Health Administration (OSHA) that are designed to protect employees from occupational exposure to Hepatitis B (HBV) and Human Immunodeficiency Virus (HIV), both of which are blood-borne pathogens. On recommendation of the Committee on Criminal Law, the Judicial Conference agreed to transmit a copy of the OSHA standards, along with a sample exposure control plan, to all chief probation and pretrial services officers, for their utilization in developing an exposure control plan for each urine collection site in their district.

### STATEMENT ON THE PROBATION AND PRETRIAL SERVICES SYSTEM

The Committee on Criminal Law sought and obtained endorsement by the Judicial Conference of a statement entitled "Federal Probation and Pretrial Services System." The statement will be distributed to personnel in probation and pretrial services offices.

## **COMMITTEE ON DEFENDER SERVICES**

### **CRIMINAL JUSTICE ACT GUIDELINES AMENDMENT**

Since 1972, at Judicial Conference direction, the Administrative Office has produced a regular report on Criminal Justice Act (CJA) panel attorneys earning in excess of a certain amount during the reporting period. The amount has been increased four times, and the reporting period has been extended twice, going from quarterly to annually. The Committee on Defender Services determined that expressing the threshold amount in terms of the number of hours of services rendered rather than the amount of compensation paid would eliminate the reporting disparities associated with geographic and in/out-of-court hourly maximums. Such a change could also reduce the need for future adjustments to the reporting requirement, which might otherwise be required if the hourly attorney compensation rates were to be increased. The Judicial Conference agreed and amended its current policy (which had required a report to chief judges of those attorneys receiving more than \$50,000 in CJA compensation in any fiscal year) to require a report to chief judges of those attorneys claiming compensation for more than 1,000 hours of work in any fiscal year. The Conference amended the *Criminal Justice Act Guidelines* to incorporate the revised compensation reporting policy.

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

### **IN-STATE PLAINTIFF DIVERSITY**

The Judicial Conference has a long-standing position supporting the complete abolition of diversity jurisdiction. However, because of the reluctance of Congress to agree to this, the Committee on Federal-State Jurisdiction decided to review more limited proposals to reduce federal civil caseloads. The Committee concluded that it would be beneficial to separate the proposal to eliminate in-state plaintiff jurisdiction from the more comprehensive and controversial issue of complete abolition of diversity jurisdiction. The Judicial Conference approved the Committee's recommendation that the Conference reaffirm its position to seek repeal of in-state plaintiff jurisdiction, transmit the position to Congress separate from its often-stated position of supporting repeal of general diversity jurisdiction, and propose an amendment to 28 U.S.C. § 1332 as follows:

(e) The original jurisdiction of the district courts otherwise conferred by this section may not be invoked if any plaintiff joined in the complaint is a citizen of the state in which is located the district court in which the suit is filed. For purposes of this subsection only, the District of Wyoming shall be deemed located solely within the State of Wyoming. This subsection does not apply to or limit the applicability of the right of removal under section

1441(a) of an action that would otherwise be within the original jurisdiction of the district courts.

## VENUE PROVISIONS

The Judicial Conference endorsed the Federal-State Jurisdiction Committee's recommendation that Congress amend 28 U.S.C. § 1391(a)(3) to clarify that, in a multi-defendant case to which the subsection applies, venue lies so long as any defendant is subject to personal jurisdiction, not only when all defendants are subject to personal jurisdiction. The amendment would delete the words "the defendants are" and substitute the words "any defendant is." The Conference also approved the Committee's recommendation to propose a repeal of 28 U.S.C. § 1392(a) as redundant because of recent amendments to §§ 1391(a)(1) and (b)(1).

## COMMITTEE ON FINANCIAL DISCLOSURE

The Committee on Financial Disclosure reported that as of July 1993, it had received 2,497 financial disclosure reports and certifications for the calendar year 1992, including 1,074 reports and certifications from justices and Article III judges, 285 from bankruptcy judges, 395 from magistrate judges, and 743 from judicial employees.

## COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

The Committee on Intercircuit Assignments reported that during the period January 1, 1993, through June 30, 1993, 92 intercircuit assignments were recommended by the Committee and approved by the Chief Justice to be undertaken by 68 Article III judges.

## COMMITTEE ON THE JUDICIAL BRANCH

### LAW CLERK INTERVIEWS

In an effort to improve the law clerk hiring process, the Judicial Conference voted to recommend to all judicial officers that March 1 of the year before a clerkship begins be the benchmark starting date for law clerk interviews.

## COMMITTEE ON JUDICIAL RESOURCES

### COURT PERSONNEL MANAGEMENT SYSTEM

Noting that the current Judiciary Salary Plan is unduly complex, inflexible, and slow to respond to change and that there are currently no established job evaluation standards or criteria for evaluating differences between, or the relative

worth of, jobs in the courts, the Committee on Judicial Resources proposed that it be replaced by a new Court Personnel Management System (CPMS). The Judicial Conference approved the CPMS, which as proposed applies to all court positions except court unit executives and their seconds-in-command, chambers staff, and court reporters. The Conference further approved decentralization of the CPMS to the unit level and agreed that initially, the Administrative Office will be responsible for classifying positions while participating court sites and the Administrative Office develop operational policies and procedures.

#### LOCALITY PAY

The Federal Employees Pay Comparability Act of 1990 (FEPCA) (Public Law 101-509) provides for a locality pay program for General Schedule (GS) executive branch employees. FEPCA changes the way pay is set for GS employees in the continental United States, and sets January 1994 as the implementation date. On recommendation of the Committee on Judicial Resources, the Judicial Conference approved locality pay for the courts in the same amounts, areas, and at the same time as in the executive branch, with coverage extending to employee groups comparable to those covered in the executive branch.

#### CIRCUIT EXECUTIVE OFFICES

The Judicial Conference approved for inclusion in the fiscal year 1995 budget request three additional permanent positions for circuit executives' offices. Each circuit's request is within the staffing ceiling for its office established by the Judicial Conference in September 1991 (JCUS-SEP 91, p. 63).

#### ADDITIONAL COURT REPORTER POSITIONS

On recommendation of the Committee, the Judicial Conference approved one additional court reporter position for the Eastern District of Wisconsin.

#### GRADES OF CERTAIN COURT UNIT HEADS

Currently, grades for clerks of the district and bankruptcy courts and for chief probation and pretrial services officers are determined annually based on projected workload data (see JCUS-MAR 87, p. 7; JCUS-MAR 89, p. 21; and JCUS-SEP 91, p. 63). Because of problems encountered in using projected data, staffing allocations are made based on actual filings. Recognizing a direct link between the size of the office and the grade of the unit head, the Judicial Conference authorized the Administrative Office to determine the grades of the clerks of the district and bankruptcy courts and the chief probation and pretrial services officers based on the same workload data used to allocate positions to the various court offices.

## GRADES OF DEPUTY CIRCUIT LIBRARIANS

The Judicial Conference disapproved a Judicial Resources Committee recommendation to increase the target grade for deputy circuit librarians to JSP-15.

## COMMITTEE ON LONG RANGE PLANNING

In response to recommendations made by the Long Range Planning Committee, the Judicial Conference took the following actions:

- Reaffirmed the federal judiciary's historical commitment to the principle that the jurisdiction of the federal courts should be limited, complementing and not supplanting the jurisdiction of the state courts.
- Endorsed the principle that the size of the Article III judiciary should be limited to the number necessary to exercise such jurisdiction, thus allowing a policy of carefully controlled growth.
- Reaffirmed the September 1990 position favoring "a relatively small Article III judiciary . . . but oppos[ing] any efforts to set a maximum limit on the number of Article III judgeships" (JCUS-SEP 90, p. 93).
- Requested the Committee on Judicial Resources, assisted by the Federal Judicial Center and the Administrative Office of the United States Courts, to devise expeditiously an updated, comprehensive method for evaluating needs for permanent circuit judgeships, including reexamination of caseload formulas and standards.
- During the period of expedited review and consideration, determined to make no request to the Congress for additional permanent circuit judgeships pending (1) reexamination of the process, including the caseload formula and standards, for requesting new permanent circuit judgeships; and (2) completion of the Long Range Planning Committee's final recommendations on jurisdiction, structure, and size of the federal courts.
- Determined that the nine additional circuit judgeships approved by the Conference in September 1992, but not yet acted upon by the Congress, should be temporary, rather than permanent judgeships, and that ten temporary judgeships for the Ninth Circuit would also be included in this request to Congress.
- Agreed to request, if necessary as an interim emergency measure, a limited number of temporary judgeships to meet an immediate

workload crisis in a court of appeals, based on up-to-date interim criteria developed by the Judicial Resources Committee.

- Agreed to defer requesting replacement of any temporary circuit judgeships with permanent judgeships pending (1) exploration of the existence and feasibility of other means to avoid the need for an increase in permanent judgeships, including the infusion of visiting judges to reduce existing backlogs; and (2) reexamination of the process, including the caseload formula and standards, for requesting new permanent circuit judgeships.

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

### **RECALL OF RETIRED MAGISTRATE JUDGES**

The Judicial Conference of the United States approved amendments to sections 8 and 9 of the "Regulations of the Judicial Conference of the United States Governing the Extended Service Recall of Retired United States Magistrate Judges" and sections 11 and 12 of the "Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Recall of Retired United States Magistrate Judges". The amendments provide flexibility for each court and circuit council to determine whether, and at what level, to provide staff, facilities, lawbooks and supplies to recalled magistrate judges. The amendments make clear that the level of such support is to be tied directly to the volume and nature of the work the recalled magistrate judges are expected to perform.

### **CHANGES IN MAGISTRATE JUDGE POSITIONS**

After consideration of the report of the Committee 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 salaries and arrangements for full-time and part-time magistrate judge positions. Changes with a budgetary impact are to be effective when appropriated funds are available.

#### FIRST CIRCUIT

##### **Maine**

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

New Hampshire

Made no change in the number of positions, or the location or arrangement of the existing magistrate judge position in the district.

SECOND CIRCUIT

Vermont

Made no change in the number of positions, or the location or arrangement of the existing magistrate judge position in the district.

THIRD CIRCUIT

Pennsylvania, Middle

1. Discontinued the part-time magistrate judge position at Stroudsburg on December 31, 1993, as scheduled; and
2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

FOURTH CIRCUIT

Maryland

1. Converted the part-time magistrate judge position at Upper Marlboro to a full-time magistrate judge position at Greenbelt or Prince Georges Plaza;
2. Redesignated the existing full-time magistrate judge position at Prince Georges Plaza as Prince Georges Plaza or Greenbelt;
3. Redesignated, at the court's option, one of the full-time magistrate judge positions at Baltimore as Baltimore or Greenbelt or Prince Georges Plaza; and
4. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

North Carolina, Middle

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

Virginia, Western

Authorized the full-time magistrate judge at Abingdon in the Western District of Virginia to serve in the adjoining Eastern District of Tennessee and in the adjoining Eastern District of Kentucky in accordance with 28 U.S.C. §631 (a).

West Virginia, Northern

1. Increased the salary of the part-time magistrate judge position at Wheeling from \$30,960 per annum to \$41,280 per annum; and
2. Made no change in the number, locations, salaries or arrangements of the other magistrate judge positions in the district.

FIFTH CIRCUIT

Louisiana, Western

Increased the salary of the part-time magistrate judge position at Monroe from \$5,160 per annum to \$10,320 per annum.

Mississippi, Northern

1. Authorized a full-time magistrate judge position at Oxford;
2. Discontinued the clerk/magistrate judge position at Oxford upon the appointment of a full-time magistrate judge at Oxford; and
3. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

Texas, Eastern

1. Discontinued the part-time magistrate judge position at Texarkana upon the expiration of the current term of the incumbent; and
2. Authorized the full-time magistrate judge positions at Sherman and Tyler in the Eastern District of Texas to serve in the adjoining Western District of Arkansas.

SIXTH CIRCUIT

Kentucky, Eastern

Authorized the full-time magistrate judge at Lexington in the Eastern District of Kentucky to serve in the adjoining Eastern District of Tennessee and in the adjoining Western District of Virginia in accordance with 28 U.S.C. § 631 (a).

Tennessee, Eastern

Authorized the full-time magistrate judges at Knoxville, Knoxville or Chattanooga, Chattanooga, and Greeneville in the Eastern District of Tennessee to serve in the adjoining Western District of Virginia and in the adjoining Eastern District of Kentucky in accordance with 28 U.S.C. § 631 (a).

EIGHTH CIRCUIT

Arkansas, Eastern

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

Arkansas, Western

Authorized the full-time magistrate judge position at Hot Springs or El Dorado or Texarkana in the Western District of Arkansas to serve in the adjoining Eastern District of Texas.

North Dakota

1. Authorized a part-time magistrate judge position at Bismarck or Minot with an annual salary of \$51,600 and discontinued the present part-time position at Bismarck upon the appointment of the new magistrate judge;
2. Discontinued the part-time magistrate judge position at Minot upon the appointment of the new magistrate judge; and
3. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

## NINTH CIRCUIT

### Arizona

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

### California, Eastern

1. Increased the salary of the full-time magistrate judge position at Yosemite National Park from \$86,038 to the maximum salary paid to a full-time magistrate judge; and
2. Discontinued the part-time magistrate judge position at Bishop upon the increase in salary of the full-time magistrate judge at Yosemite.

### DESIGNATION OF NEW FULL-TIME MAGISTRATE JUDGE POSITION FOR ACCELERATED FUNDING

The accelerated funding program was established to provide prompt magistrate judge assistance to judicial districts seriously affected by drug filings or the Civil Justice Reform Act. Based on the recommendation of the Committee on the Magistrate Judges System, the Judicial Conference approved the new position in Tucson, Arizona, for accelerated funding in fiscal year 1994.

### COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

The Committee to Review Circuit Council Conduct and Disability Orders reported that the National Commission on Judicial Discipline and Removal, whose work it has been following closely, filed its final report on August 2, 1993. The Commission studied the impeachment process and examined the current judicial disciplinary system, which was developed pursuant to the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 (Public Law 96-458). Its report basically endorsed existing constitutional arrangements in all respects and concluded that the judiciary had, on the whole, utilized the 1980 Act properly and policed itself fairly.

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

### **APPELLATE RULES**

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Rules 1 ("Scope of Rules and Title"), 3 ("Appeal as of Right - How Taken"), 5 ("Appeal by Permission under 28 U.S.C. § 1292(b)"), 5.1 ("Appeal by Permission Under 28 U.S.C. § 636(c)(5)"), 9 ("Release in a Criminal Case"), 13 ("Review of a Decision of the Tax Court"), 21 ("Writs of Mandamus and Prohibition Directed to a Judge or Judges and Other Extraordinary Writs"), 25 ("Filing and Service"), 26.1 ("Corporate Disclosure Statement"), 27 ("Motions"), 28 ("Briefs"), 30 ("Appendix to the Briefs"), 31 ("Filing and Service of a Brief"), 33 ("Appeal Conferences"), 35 ("Determination of Causes by the Court in Banc"), 38 ("Damages and Costs for Frivolous Appeals"), 40 ("Petition for Rehearing"), 41 ("Issuance of Mandate; Stay of Mandate"), and 48 ("Masters") of the Federal Rules of Appellate Procedure. The proposed amendments were accompanied by the Committee notes explaining their purpose and intent. The Conference approved the amendments for transmission to the Supreme Court for consideration, with the recommendation that they be approved by the Court and transmitted to Congress pursuant to law.

### **BANKRUPTCY RULES**

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Bankruptcy Rules 8002 ("Time for Filing Notice of Appeal"), and 8006 ("Record and Issues on Appeal"), together with Committee notes explaining their purpose and intent. These amendments were approved by the Conference, which authorized their transmittal to the Supreme Court for consideration, with the recommendation that they be adopted by the Court and transmitted to Congress pursuant to law.

### **CRIMINAL RULES**

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Criminal Rules 16 ("Discovery and Inspection"), 29 ("Motion for Judgment of Acquittal"), 32 ("Sentence and Judgment"), and 40 ("Commitment to Another District") of the Federal Rules of Criminal Procedure. Advisory notes explaining their purpose and intent were transmitted with the proposals. The Conference approved these amendments and authorized their transmittal to the Supreme Court for consideration, with the recommendation that they be approved by the Court and transmitted to Congress pursuant to law.

## EVIDENCE RULES

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference a proposed amendment to Rule 412 ("Admissibility of Alleged Victim's Sexual Behavior or Alleged Sexual Predisposition") of the Federal Rules of Evidence, together with Committee notes explaining its purpose and intent. The Conference approved the amendment for transmission to the Supreme Court for consideration, with the recommendation that it be approved by the Court and transmitted to Congress pursuant to law.

## COMMITTEE ON SPACE AND FACILITIES

On recommendation of the Space and Facilities Committee, the Judicial Conference amended as follows the *United States Courts Design Guide*, effective with respect to projects in which the concept planning phase of the design will begin on or after October 1, 1993:

- 1) Added and changed language concerning interpretation of the *Guide* and the need to consider fiscal implications of court construction projects;
- 2) Added language concerning space requirements in privately leased buildings, in order to provide maximum flexibility to the General Services Administration (GSA), lessors, and courts when selecting leased space;
- 3) Revised or eliminated certain space standards to avoid duplicate types of spaces throughout a court facility and to minimize cost, where appropriate. These changes include the following:
  - a) Revised the space standard for restroom facilities in judges' chambers suites;
  - b) Eliminated the space standard for meeting/training rooms and added language throughout the *Guide* to emphasize shared use of conference rooms, staff lounges, and staff toilets by court offices;
  - c) Eliminated the requirement for a separate emergency exit stairwell for judicial and prisoner egress;
  - d) Changed the term "galleys" to "service units" throughout the *Guide*;

- e) Eliminated the space standard for a smokers' lounge in jury assembly areas; and
- 4) Added language concerning building signage.

#### JUDICIARY PARKING POLICY

The Committee recommended, and the Judicial Conference approved, revisions to the judiciary's parking policies, including, among other things, more detailed criteria for assigning carpool and vanpool spaces. The revised policy, which will be published in the *Guide to Judiciary Policies and Procedures*, will be applied prospectively, and existing guidelines will continue to apply to all current space assignments.

#### ALTERNATIVE FUNDING ARRANGEMENTS FOR COURTHOUSE CONSTRUCTION

The Judicial Conference approved a Space and Facilities Committee recommendation that the Conference propose to the Congress and other appropriate entities, alternative funding arrangements for courthouse construction so that the housing needs of the judiciary can be realized cost-efficiently and expeditiously.

#### BAN ON SMOKING IN FEDERAL BUILDINGS ACT

The "Ban on Smoking in Federal Buildings Act" (H.R. 881, 103d Congress), currently pending in Congress, would ban smoking in all federal buildings, including the Capitol building, the Supreme Court building, and all courthouses. The Committee on Space and Facilities noted that while it may not be unreasonable to require individuals who choose to be employed in the courts to refrain from smoking in buildings while at work, it is another matter to ask this of jurors who appear involuntarily to serve for several days or weeks. The Committee recommended that the Judicial Conference support in principle the proposed Act, provided that, at the least, discretion be given to individual judicial districts to develop local smoking policies for jurors. The Judicial Conference endorsed the Committee's recommendation, applying its position only to those units of the federal judiciary for which the Conference has policy responsibility.

#### AD HOC COMMITTEE ON GENDER-BASED VIOLENCE

The Ad Hoc Committee on Gender-Based Violence reported that the Violence Against Women Act of 1993 (S.11, 103d Congress) has been reintroduced by Senator Biden, and a companion bill has been introduced in the House (H.R. 1133, 103d Congress). Although the Judicial Conference, in March 1993, took no position on the specific provisions of S. 11 (except for its endorsement of Title V)

(JCUS-MAR. 93, p. 28), it did, at that time, reiterate the concern expressed in its 1991 resolution and its general concerns with the trend in Congress to federalize traditional state crimes and causes of actions (see JCUS-SEP 91, pp. 57-58). The Committee continues to have discussions with Congressional staff regarding these concerns.

### **THE CHIEF JUSTICE'S AD HOC COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS**

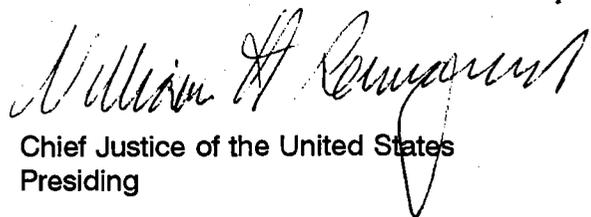
On recommendation of the Chief Justice's Ad Hoc Committee on International Judicial Relations, the Judicial Conference agreed to establish a permanent Judicial Conference Committee on International Judicial Relations. The need for such a Committee results from the large increase in requests for assistance from judiciaries in foreign lands, especially the newly independent states of Eastern and Central Europe and Asia. The Conference agreed that the Committee should be relatively small in size and that its mission should be to coordinate and make recommendations concerning the federal judiciary's relationship with foreign judiciaries (see "Judicial Conference Committee Matters," *supra* p. 36). The Conference also agreed that the Federal Judicial Center, the Office of the Administrative Assistant to the Chief Justice, and the Administrative Office should maintain a strong advisory role, and that the Committee would be staffed through the Executive Secretariat of the Administrative Office.

### **FUNDING**

All of the foregoing recommendations which require the expenditure of funds for implementation were approved by the Conference subject to the availability of funds, and subject to whatever priorities the Conference might establish for the use of available resources.

### **RELEASE OF CONFERENCE ACTION**

The Conference authorized the immediate release of matters considered at this session where necessary for legislative or administrative action.

  
Chief Justice of the United States  
Presiding

December 22, 1993