

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

*MARCH 18, 2003
WASHINGTON, D.C.*

*JUDICIAL CONFERENCE OF THE UNITED STATES
CHIEF JUSTICE WILLIAM H. REHNQUIST,
PRESIDING
LEONIDAS RALPH MECHAM, SECRETARY*

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March 18, 2003

The Judicial Conference of the United States convened in Washington, D.C., on March 18, 2003, 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 Michael Boudin
Judge D. Brock Hornby,
District of Maine

Second Circuit:

Chief Judge John M. Walker, Jr.
Chief Judge Frederick J. Scullin, Jr.,
Northern District of New York

Third Circuit:

Chief Judge Edward R. Becker
Chief Judge Sue L. Robinson,
District of Delaware

Fourth Circuit:

Chief Judge William W. Wilkins
Judge David C. Norton,
District of South Carolina

Fifth Circuit:

Chief Judge Carolyn Dineen King
Judge Martin L. C. Feldman,
Eastern District of Louisiana

Judicial Conference of the United States

Sixth Circuit:

Chief Judge Boyce F. Martin, Jr.
Chief Judge Lawrence P. Zatkoff,
Eastern District of Michigan

Seventh Circuit:

Chief Judge Joel M. Flaum
Judge Marvin E. Aspen,
Northern District of Illinois

Eighth Circuit:

Chief Judge David R. Hansen
Chief Judge James M. Rosenbaum,
District of Minnesota

Ninth Circuit:

Chief Judge Mary M. Schroeder
Chief Judge David Alan Ezra,
District of Hawaii

Tenth Circuit:

Chief Judge Deanell R. Tacha
Chief Judge Frank Howell Seay,
Eastern District of Oklahoma

Eleventh Circuit:

Chief Judge J. L. Edmondson
Judge J. Owen Forrester,
Northern District of Georgia

District of Columbia Circuit:

Chief Judge Douglas H. Ginsburg
Chief Judge Thomas F. Hogan,
District of Columbia

Federal Circuit:

Chief Judge Haldane Robert Mayer

Court of International Trade:

Chief Judge Gregory W. Carman

Circuit Judges Dennis G. Jacobs, Michael J. Melloy, Jane R. Roth, and Anthony J. Scirica, and District Judges Lourdes G. Baird, John G. Heyburn II, John W. Lungstrum, James Robertson, Patti B. Saris, Harvey E. Schlesinger, and Frederick P. Stamp, Jr. attended the Conference session. Betsy Shumaker of the Tenth Circuit represented the circuit executives.

Leonidas 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 for Management and Operations; William R. Burchill, Jr., Associate Director and General Counsel; Karen K. Siegel, Assistant Director, Judicial Conference Executive Secretariat; Michael W. Blommer, Assistant Director, Legislative Affairs; David Sellers, Assistant Director, Public Affairs; and Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat. Judge Fern Smith and Russell Wheeler, Director and Deputy Director of the Federal Judicial Center, were in attendance at the session of the Conference, as was Sally Rider, Administrative Assistant to the Chief Justice. Scott Harris and Tonia Powell, Supreme Court Counsel and Staff Counsel, and the 2002-2003 Judicial Fellows also observed the Conference proceedings.

Senators Orrin G. Hatch and Patrick J. Leahy and Representatives John Conyers, Jr., and Lamar S. Smith spoke on matters pending in Congress of interest to the Conference. Attorney General John Ashcroft addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice.

REPORTS

Mr. Mecham reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office (AO). Judge Smith spoke to the Conference about Federal Judicial Center programs, and Judge

Diana E. Murphy, Chair of the United States Sentencing Commission, reported on Sentencing Commission activities.

ELECTIONS

The Judicial Conference elected to membership on the Board of the Federal Judicial Center, each for a term of four years, District Judges Sarah S. Vance of the Eastern District of Louisiana and James A. Parker of the District of New Mexico to succeed District Judges Jean C. Hamilton of the Eastern District of Missouri and William H. Yohn, Jr. of the Eastern District of Pennsylvania.

EXECUTIVE COMMITTEE

UNITED STATES SENTENCING COMMISSION

On recommendation of the Executive Committee, the Judicial Conference agreed to recommend that the President, with the advice and consent of the Senate, reappoint to the U.S. Sentencing Commission Judges Ruben Castillo of the Northern District of Illinois and William K. Sessions III of the District of Vermont.

FEDERAL COURTS IMPROVEMENT BILL

Every two years, each Conference committee considers legislative initiatives within its jurisdiction that were approved by the Conference but not yet enacted to decide whether those provisions should be pursued in the upcoming federal courts improvement bill or another legislative vehicle, and notifies the Executive Committee of its determinations. At its February 2003 meeting, the Executive Committee reviewed the decisions of the committees on whether pending Conference positions should be pursued in the 108th Congress. With two exceptions (which were referred back to the relevant committees for further consideration), the Executive Committee concurred in the determinations of the committees on whether or not to seek such legislation at this time. The Executive Committee also reviewed any legislative provisions within its own jurisdiction that had not yet been enacted.

MISCELLANEOUS ACTIONS

The Executive Committee—

- Approved adjustments to the judiciary's fiscal year (FY) 2004 budget request, including technical changes necessitated by increases in the federal pay and benefit inflation rates and increased life insurance premiums for Article III judges, and reflecting a lower estimate of the annual recurring costs associated with a proposed court operations support center;
- In light of the fiscal uncertainty created by Congress' failure to pass an FY 2003 appropriations bill before the end of the 107th Congress, authorized the Director of the Administrative Office to issue guidance to court units that receive funding from the Salaries and Expenses account, limiting their rates of operation through December 31, 2002 to 95 percent of their FY 2002 allotment levels;
- Approved a proposed letter for the Chief Justice's signature appealing provisions in the Senate-passed omnibus appropriations bill for FY 2003 that would have provided lower-than-required funding levels, significantly restructured certain judiciary appropriations accounts, and made important policy changes with regard to the provision of judicial security;
- Agreed that the Executive Committee chair should join the Director of the Administrative Office and the chair of the Budget Committee in advising the courts of the severity of the judiciary's budget situation in FY 2004, of the likelihood that the budget crisis will continue in years to come, and of the critical need for the Conference committees and the courts to adjust budget requests and spending plans to reflect this budget environment;
- Upon enactment of a judiciary appropriations bill, approved final financial plans for fiscal year 2003 for the Salaries and Expenses, Defender Services, Fees of Jurors and Commissioners, and Court Security accounts, and reaffirmed its earlier determination to advise courts of the severity of the budget crisis and the likelihood that it will continue in years to come;

Judicial Conference of the United States

- Approved proposed comments, concurred in by the chairs of the Committees on Court Administration and Case Management, Information Technology, and Rules of Practice and Procedure, to be submitted to the Department of Commerce's National Telecommunications and Information Administration, urging retention of the statutory exception for official court documents found in the Electronic Signatures in Global and National Commerce Act (Public Law No. 106-229);
- On recommendation of the Committee on the Administration of the Magistrate Judges System, approved immediate temporary increases in the salaries of two part-time magistrate judges, one in the Eastern District of California and one in the District of North Dakota, and subsequently extended for up to nine months the salary increase for the part-time magistrate judge in North Dakota;
- Approved the public release of a report drafted by the Bankruptcy Committee's Subcommittee on Mass Torts, provided that it contain certain disclaimer language;
- Declined to change the jurisdictional statement of the Committee on Judicial Resources to include oversight of the Federal Law Clerk Information System, but will revisit the issue if the need arises;
- Requested that the Magistrate Judges Committee reconsider its recommendation that the Director of the Administrative Office amend the Regulations of the Director Implementing the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act to exclude mediation and arbitration from the definition of the practice of law;
- Requested that the Court Administration and Case Management Committee, in consultation with the Committee on Information Technology, consider whether to propose regulations to assist the courts in implementing the E-Government Act (Public Law No. 107-347); and
- Determined to allow the annual automatic inflation adjustment to the alternative subsistence rate for reimbursement of judges' travel expenses to take effect.

COMMITTEE ON THE ADMINISTRATIVE OFFICE

COMMITTEE ACTIVITIES

The Committee on the Administrative Office reported that it was briefed on the AO's efforts to obtain funding for the judiciary, to keep Judicial Conference and committee members informed during the uncertain fiscal year 2003 budget situation, and to provide guidance to the courts on spending limitations pending enactment of a judiciary budget. The Committee was also briefed on a study on establishing an off-site court operations support center and on other emergency preparedness efforts, on the activities of the Appellate Court and Circuit Administration Division, and on major AO initiatives including internal control enhancements, benefits initiatives, and a study to be undertaken to identify viable alternatives for the delivery of administrative support services to the courts.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

REVISION OF BANKRUPTCY CODE DOLLAR AMOUNTS

Section 104(a) of the Bankruptcy Code requires the Judicial Conference to transmit to Congress and to the President every six years a recommendation for the uniform percentage adjustment of each dollar amount in the Bankruptcy Code and in 28 U.S.C. § 1930 (which prescribes filing and other fees to be paid in bankruptcy cases). Since § 104(a) was adopted, there have been several statutory changes relating to bankruptcy fee provisions, including authorization for periodic automatic adjustments of numerous specific dollar amounts in the Code (*see* § 104(b) of the Code, added by the Bankruptcy Reform Act of 1994, Public Law No. 103-394). These changes call into question the appropriateness of recommending a uniform percentage increase to all dollar amounts and fees. Moreover, the Court Administration and Case Management Committee is currently conducting a study of court fees and intends to make recommendations to the Judicial Conference for consideration in September 2003. The Conference therefore approved the Bankruptcy Committee's recommendation that Congress and the President be advised, before the May 1,

2003 statutory deadline, that no uniform percentage adjustment should be made at this time to the dollar amounts contained in the Bankruptcy Code or in

28 U.S.C. § 1930, pending review of all fees by the Judicial Conference in September 2003.

COMMITTEE ACTIVITIES

The Bankruptcy Committee reported that it established a subcommittee to work with the Committee on Information Technology to define further functionality in the case management/electronic case files (CM/ECF) system in order to assist judges in using the system. In addition, the Committee considered whether service as an arbitrator or mediator by retired bankruptcy judges should be deemed the practice of law under the Director's retirement regulations; discussed budget contingency planning and efforts to identify and incorporate "better practices" into the court staffing formulae; and received briefings on a wide range of topics, including studies of existing court fees, court sharing of administrative resources, bankruptcy case weights, and venue-related issues in large chapter 11 cases.

COMMITTEE ON THE BUDGET

COURT REGISTRY INVESTMENT SYSTEM

On recommendation of the Budget Committee, the Judicial Conference agreed to seek legislation to allow the Court Registry Investment System (CRIS) to invest in Treasury securities issued under the Government Account Series program. Participation in this program will increase the liquidity of CRIS funds and their income-earning potential because the judiciary will be able to invest daily instead of weekly and avoid certain investment fees.

COMMITTEE ACTIVITIES

The Committee on the Budget reported that it discussed the likelihood of serious budget constraints in future years. The Committee considered short-term and long-term funding issues, including strategies to address increases in future budget requirements that could approach 20 percent

annually. The Committee plans to use the long-range planning process and its summer meeting with the program committee chairs as vehicles to support and encourage program committees in their efforts to examine long-range budget issues and to limit annual budget increases so that requests to Congress can continue to be justified.

COMMITTEE ON CODES OF CONDUCT

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Conference in September 2002, the Committee received 35 new written inquiries and issued 38 written advisory responses. During this period, the average response time for requests was 19 days. The Chairman received and responded to 22 telephone inquiries, and individual Committee members responded to 110 inquiries from their colleagues.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

SUBPOENAS TO JUDGES AND EMPLOYEES

On recommendation of the Committee on Court Administration and Case Management, the Judicial Conference adopted regulations to govern the judiciary's responses to subpoenas issued to federal judges and employees, to be included in the *Guide to Judiciary Policies and Procedures*. These regulations establish procedures for litigants to follow in obtaining testimony of judiciary personnel and production of judiciary records in legal proceedings, as well as procedures for judges and employees to follow if they receive subpoenas. The regulations should, among other things, expedite the response process and minimize the involvement of the federal judiciary in issues unrelated to its mission.

COURT TECHNOLOGY FEES

Section 1920 of title 28, United States Code, allows judges and clerks of court to tax litigants for certain costs of litigation. The Committee on

Court Administration and Case Management was asked to consider whether the list of taxable costs should be amended to include expenses associated with new courtroom technologies. Concluding that adding the full range of such costs might go well beyond the intended scope of the statute, the Committee recommended that the Conference endorse two limited amendments to

28 U.S.C. § 1920, the first to permit taxing the cost of transcripts produced electronically, and the second to permit taxing the costs associated with copying materials whether or not they are in paper form. The Conference adopted the Committee's recommendation and agreed to seek the following amendments to 28 U.S.C. § 1920 (new language is in bold, language to be deleted is struck through):

A judge or clerk of any court of the United States may tax as costs the following:

* * * *

(2) Fees ~~of the court reporter for all or any part of the stenographic transcript~~ **for printed or electronically recorded transcripts** necessarily obtained for use in the case; and

* * * *

(4) Fees for exemplification and ~~copies of papers~~ **the costs of making copies of any materials where the copies are** necessarily obtained for use in the case...

PLACES OF HOLDING COURT

On recommendation of the Committee on Court Administration and Case Management, the Judicial Conference agreed to take the following actions with regard to places of holding court:

- Northern District of Indiana. Rescind its March 1993 endorsement of legislation to amend 28 U.S.C. § 94(a) to alter the name and composition of one of the divisions of the Northern District of Indiana (*see* JCUS-MAR 93, p. 10). The Northern District of Indiana advised the Committee that the provision was no longer necessary.
- Western District of Tennessee. At the request of the Western District of Tennessee and the Sixth Circuit Judicial Council, seek legislation

amending 28 U.S.C. § 123(c) to transfer Dyer County from the Western Division to the Eastern Division of the Western District of Tennessee.

- Eastern District of Texas/Western District of Arkansas. At the request of the Eastern District of Texas and the Western District of Arkansas, as well as the Fifth and Eighth Circuit Judicial Councils, seek amendments to 28 U.S.C. §§ 83(b) and 124(c) to provide that court for the Eastern District of Texas and the Western District of Arkansas may be held anywhere in the federal courthouse that sits astride the Texas-Arkansas state line.

COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported that it considered a wide array of issues, including the current initiative to identify and assess efficient structural options for the delivery of administrative services to the courts; ongoing efforts to clarify the exemption policy set forth in the Judicial Conference's fee schedule for electronic public access to court records; and steps being taken to implement the Judicial Conference's privacy policy for electronic public access to court records and to determine the impact Public Law No. 107-347, the E-Government Act, will have on such implementation.

COMMITTEE ON CRIMINAL LAW

PRESENTENCE INVESTIGATION REPORT MONOGRAPH

On recommendation of the Committee on Criminal Law, the Judicial Conference approved revisions to the *Presentence Investigation Report for Defendants Sentenced Under the Sentencing Reform Act of 1984*, Publication 107, for publication and distribution to the courts. The revisions are intended to provide probation officers with better guidance on issues related to the format and content of the presentence report and the manner in which the presentence investigation should be conducted. In addition, technical revisions were made to reflect changes in case law, legislation, sentencing guidelines, or policy.

POST-CONVICTION SUPERVISION MONOGRAPH

On recommendation of the Committee on Criminal Law, the Judicial Conference approved revisions to the *Supervision of Federal Offenders*, Monograph 109, for publication and distribution to the courts. The revisions reflect changes in statutes, case law, policies, and population trends, and incorporate “best practice” findings from research and other sources.

COMMITTEE ACTIVITIES

The Criminal Law Committee reported that it was briefed on the practices of the Bureau of Prisons with regard to redisclosure of presentence investigation reports provided to the Bureau by probation officers to assist in inmate classification and designation decisions. The Committee learned that the Department of Justice (DOJ) intends to draft DOJ-wide policies and procedures concerning the handling of presentence investigation reports in view of their confidential nature, and the Committee agreed to wait for this policy before proceeding further. The Committee also received reports on actions taken to implement the recommendations of a home confinement program review and on the results of surveys sent to court unit executives examining sharing of administrative functions in the courts. The Committee endorsed efforts of the Committee on Judicial Resources to reestablish a methods analysis program to explore more effective ways of incorporating “better practices” into the staffing requirements process.

COMMITTEE ON DEFENDER SERVICES

COMPUTER-ASSISTED LEGAL RESEARCH

The Committee on Defender Services considered modifications to paragraphs 2.27, 2.31, and 3.15 of the Guidelines for the Administration of the Criminal Justice Act (CJA) and Related Statutes, *Guide to Judiciary Policies and Procedures*, Volume VII, that would simplify and expedite procedures for reimbursing CJA panel attorneys for expenses incurred in conducting computer-assisted legal research. Under these proposed modifications, panel attorney costs in conducting computer research during the course of a CJA representation would be treated more like other reimbursable expenses under existing CJA Guideline 2.27, which provides that “out-of-pocket expenses reasonably incurred may be claimed on the voucher, and must be itemized and reasonably documented.” Claims in excess of \$500 would have to be accompanied by a brief statement of explanation from the attorney. In order

to assess the potential budgetary impact of these new procedures, the
Committee

recommended, and the Conference approved, a pilot program for up to 18 months whereby up to six courts would utilize the modified version of the Guidelines.

COMMITTEE ACTIVITIES

The Committee on Defender Services reported that it was briefed on the status of the Defender Services appropriation and considered ways in which a projected shortfall might be addressed. In addition, it received a report on activities of the Committee on International Judicial Relations relating to defender services in other countries, and designated the Chair of the Defender Services Committee to serve as liaison to the International Judicial Relations Committee. The Committee was also briefed on long-range planning activities for the CJA program and approved revisions to its Outline of the Defender Services Program Strategic Plan. Under its delegated authority from the Judicial Conference (JCUS-MAR 89, pp. 16-17), the Defender Services Committee approved \$596,700 to fund two new community defender organization branch offices, and \$852,500 for capital habeas corpus representations for two federal defender organizations, subject to the availability of FY 2003 funds.

COMMITTEE ON FEDERAL-STATE JURISDICTION

CLASS ACTION LEGISLATION

In 1999, the Judicial Conference expressed its opposition to legislation then pending in the 106th Congress that would have expanded federal jurisdiction over class action litigation by permitting, through the use of minimal diversity of citizenship, the initial filing in or removal to federal court of almost all such actions now brought in state court (JCUS-SEP 99, p. 45). Concern had been expressed that such legislation was inconsistent with principles of federalism and would add substantially to the workload of the federal courts. Similar legislation was introduced in the 107th Congress and is now pending in the 108th Congress. After discussing the problems created by certain class actions, and possible solutions that would be less intrusive and burdensome than the proposed legislation, and after extensive discussions with the Committee on Rules of Practice and Procedure, the Committee on Federal-State Jurisdiction, with the concurrence of the Rules Committee, recommended the following resolution:

The Judicial Conference recognizes that the use of minimal diversity of citizenship may be appropriate to the maintenance of significant multi-state class action litigation in the federal courts, while continuing to oppose class action legislation that contains jurisdictional provisions that are similar to those in the bills introduced in the 106th and 107th Congresses. If Congress determines that certain class actions should be brought within the original and removal jurisdiction of the federal courts on the basis of minimal diversity of citizenship and an aggregation of claims, Congress should be encouraged to include sufficient limitations and threshold requirements so that federal courts are not unduly burdened and states' jurisdiction over in-state class actions is left undisturbed, such as by employing provisions to raise the jurisdictional threshold and to fashion exceptions to such jurisdiction that would preserve a role for the state courts in the handling of in-state class actions. Such exceptions for in-state class actions may appropriately include such factors as whether substantially all members of the class are citizens of a single state, the relationship of the defendants to the forum state, or whether the claims arise from death, personal injury, or physical property damage within the state. Further, the Conference should continue to explore additional approaches to the consolidation and coordination of overlapping or duplicative class actions that do not unduly intrude on state courts or burden federal courts.

After discussion, the Judicial Conference unanimously adopted the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported that it continued its review of possible statutory amendments governing removal and remand to address particular problems that have arisen in federal court. Those proposals are being shared with selected individuals to obtain comments prior to the Committee's June 2003 meeting. In addition, the Committee discussed anticipated legislation regarding asbestos litigation and the implementation of its five initiatives to promote state-federal judicial education, including the website developed

in conjunction with, and maintained by, the Federal Judicial Center to list state-federal judicial education programs.

COMMITTEE ON FINANCIAL DISCLOSURE

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported that as of December 31, 2002, the Committee had received 3,738 financial disclosure reports and certifications for the calendar year 2001, including 1,277 reports and certifications from Supreme Court justices, Article III judges, and judicial officers of special courts; 345 from bankruptcy judges; 523 from magistrate judges; and 1,593 from judicial employees.

COMMITTEE ON INFORMATION TECHNOLOGY

LONG RANGE PLAN FOR INFORMATION TECHNOLOGY

Pursuant to 28 U.S.C. § 612 and on recommendation of the Committee on Information Technology, the Judicial Conference approved a 2003 update to the *Long Range Plan for Information Technology in the Federal Judiciary*. Funds for the judiciary's information technology program will be spent in accordance with this plan.

COMMITTEE ACTIVITIES

The Committee on Information Technology reported that it discussed the progress of an analysis to identify and examine all costs associated with the use of information technology in the judiciary (including personnel and facilities costs), ratified the selection of a server replacement platform for national software applications, and urged that efforts to define an enterprise-wide information technology architecture for the judiciary be expedited. The Committee also received a summary report on implementation of the policy, approved by the Judicial Conference in September 2002, governing personal use of government office equipment and the courts' methods of enforcing that policy.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that during the period from July 1, 2002, to December 31, 2002, a total of 102 intercircuit assignments, undertaken by 70 Article III judges, were processed and recommended by the Committee on Intercircuit Assignments and approved by the Chief Justice. During calendar year 2002, a total of 210 intercircuit assignments were processed and approved, a 27 percent increase over 2001. In addition, the Committee aided courts requesting assistance by both identifying and obtaining judges willing to take assignments. The Committee implemented several changes related to its functions and responsibilities, including its procedures used to process requests for intercircuit 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 activities throughout the world, highlighting those in the Russian Federation, Albania, China, India, Rwanda, Serbia, and Turkey. In recognition of increasing international interest in the United States system of defender services, the Committees on Defender Services and International Judicial Relations intend to collaborate on providing guidance and information to national and international organizations on the development of defender services systems and programs. The Committee also urged the Administrative Office to assume expeditiously ongoing responsibility for the database of federal judges, court administrators, and defenders interested in assisting foreign judiciaries, which was developed by the Federal Judicial Center at the Committee's request.

COMMITTEE ON THE JUDICIAL BRANCH

DEATH BENEFITS FOR ARTICLE III JUDGES

Judges' survivors, unlike the survivors of other federal employees, receive no survivor benefit protection unless the judge elects to

participate in the Judicial Survivors' Annuities System. On recommendation of the Judicial Branch Committee, the Judicial Conference endorsed the concept, proposed by the Director of the Office of Personnel Management, of a government-funded, lump-sum death benefit for Article III judges' survivors, modeled after the Public Safety Officers' Benefit Program.

TRAVEL REGULATIONS FOR UNITED STATES JUSTICES AND JUDGES

Maximum Meals and Incidental Expenses Rate. In order to cover fully the cost of judges' travel expenses and maintain parity with the executive branch, the Committee on the Judicial Branch recommended an increase from \$46 to \$50 in the judges' Meals and Incidental Expenses rate (where expenses are not itemized) provided for in sections E.4.a., E.4.b.(1), and E.4.c. of the Travel Regulations for United States Justices and Judges, *Guide to Judiciary Policies and Procedures*, Vol. III-A, ch. C.V. The Judicial Conference approved the recommendation.

Ceremonial Travel. Under the judges' travel regulations, travel expenses to attend memorial services, funerals, portrait hangings, and groundbreaking ceremonies have generally not been reimbursable as an official travel expense, although a chief judge could designate one judge to represent the court at such events and his or her expenses would be reimbursed. Recognizing the importance of ceremonial events for court morale and public communication, the Committee on the Judicial Branch recommended, and the Conference approved, an amendment to the judges' travel regulations to allow a chief judge to authorize reimbursable travel by more than one judge from the court to memorial services, funerals, portrait hangings, and courthouse groundbreaking and dedication ceremonies.

Senior Judges' Commuting-Type Expenses. On recommendation of the Committee, the Conference approved an amendment to the Travel Regulations for United States Justices and Judges to clarify that reimbursement of transportation expenses for senior judges who commute between their homes and the courthouse should be limited to the commuted mileage or public mass transit fare rate, absent the approval of the circuit judicial council.

COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that it continues to pursue vigorously meaningful salary relief for judges. In recent months, the Committee has sought to focus the attention of the political branches, the media, and legal associations on the findings and recommendations of the National Commission on the Public Service, commonly known as “the Volcker Commission,” which concluded that “judicial salaries are the most egregious example of the failure of federal compensation policies” and recommended that Congress grant an immediate and significant increase in such salaries. The Committee also gave substantial attention to judicial benefits matters, including the status of the judiciary benefits initiative and judicial survivors’ benefits.

COMMITTEE ON JUDICIAL RESOURCES

ARTICLE III JUDGESHIP NEEDS

Additional Judgeships. Utilizing established standards and criteria, the Committee on Judicial Resources considered requests and justifications for additional judgeships in the courts of appeals and the district courts as part of its 2003 biennial judgeship survey process. Based on its review, and after considering the comments of the courts and the circuit councils, the Committee recommended that the Judicial Conference authorize the Administrative Office to transmit to Congress a request for an additional nine permanent and two temporary judgeships in the courts of appeals, an additional 29 permanent and 17 temporary judgeships in the district courts, and conversion to permanent status of five existing temporary judgeships in the district courts. The Committee also recommended that the temporary judgeships be established for a term of ten years from the date of confirmation, under the same terms recently established by the Congress in the 21st Century Department of Justice Appropriations Authorization Act (Public Law No. 107-273). The Conference approved the recommendations, agreeing to transmit the following requests to Congress in lieu of any previously submitted Article III judgeship requests (“**P**” denotes permanent; “**T**” denotes temporary):

Courts of Appeals

First Circuit	1P
Second Circuit	2P
Sixth Circuit	1P
Ninth Circuit	5P, 2T

District Courts

New York (Eastern)	3P, 1T
New York (Western)	1T
South Carolina	1P
Virginia (Eastern)	2P
Illinois (Northern)	1T
Indiana (Northern)	1T
Indiana (Southern)	1T
Iowa (Northern)	1T
Missouri (Eastern)	Convert 1T to P
Missouri (Western)	1P
Nebraska	Convert 1T to P
Arizona	3P
California (Northern)	1P, 1T
California (Eastern)	3P, Convert 1T to P
California (Central)	1P, 2T
California (Southern)	2P, 3T
Hawaii	Convert 1T to P
Idaho	1T
Oregon	1P
Washington (Western)	1P
Colorado	1T
Kansas	Convert 1T to P
New Mexico	2P, 1T
Utah	1T
Alabama (Northern)	1P
Alabama (Middle)	1P
Florida (Middle)	2P, 1T
Florida (Southern)	4P

Judgeship Vacancies. As part of the biennial survey of judgeship needs, workloads in district and appellate courts with low weighted caseloads are reviewed for the purpose of determining whether to recommend that an existing or future judgeship vacancy not be filled. In

March 1999, and again in March 2001, the District Court for the District of Columbia was among those courts in which the Judicial Conference recommended that the next vacancy not be filled (JCUS-MAR 99, pp. 22-23; JCUS-MAR 01, pp. 24-25). Based on new information presented during the 2003 biennial survey indicating that the court was facing singular and burdensome challenges, the Committee recommended that the Judicial Conference amend its March 2001 position, and delete the District Court for the District of Columbia from the list of courts in which a vacancy should not be filled. The Conference adopted the Committee's recommendation, and thus, only the District Court for the District of Wyoming remains on the list of courts in which a vacancy should not be filled. Also, on recommendation of the Committee, the Conference agreed that the request of the District of Columbia District Court to be exempted from the biennial judgeship survey because of the unusual nature of its caseload be denied, as such an exemption would undermine the reasoned and consistent process adopted by the Conference for identifying judgeship needs.

JUDGE-SPECIFIC DATA

Judicial Conference policy prohibits the Administrative Office from releasing judge-identifying information from statistical databases, except to the extent required by law (JCUS-MAR 95, pp. 21-22). On recommendation of the Committee, in the wake of recent requests for court information, the Conference reaffirmed its current policy against the release of judge-specific data, except to the extent required by law.

JUDGE'S NOTIFICATION OF CHANGE IN STATUS

In order to help reduce delays in filling judicial vacancies, in September 1995, as part of the *Long Range Plan for the Federal Courts*, the Judicial Conference adopted language encouraging retiring judges and those taking senior status to provide substantial (i.e., six-month or one-year) advance notice of that action (JCUS-SEP 95, p. 56). This position modified slightly a similar position adopted in March 1988 (*see* JCUS-MAR 88, pp. 31-32). At this session, in order to ensure that the judiciary has taken all reasonable steps to avert or ameliorate any vacancy crisis, the Committee on Judicial Resources recommended that the Conference clarify and strengthen its policy on advance notification of a change in status by a judge by adopting the following language:

The Judicial Conference strongly urges all judges to notify the President and the Administrative Office of the United States Courts as far in advance as possible of a change in status, preferably 12 months before the contemplated date of change in status.

The Conference adopted the Committee's recommendation.

SALARY MATCHING/ADVANCED IN-STEP POLICY

On recommendation of the Judicial Resources Committee, the Judicial Conference **agreed to amend the judiciary's "salary matching/advanced in-step" policy to eliminate the 90-day break in federal government service rule for applicants from outside the judiciary for Court Personnel System (CPS) positions. That rule required a break in federal government service of at least 90 days before a prospective applicant for a CPS position was eligible to be appointed at a level above the first step of the classification level for which the applicant qualified. Revocation of the 90-day rule will give court managers the same compensation flexibility they currently have for non-government applicants, and will provide them with an additional management tool to assist in recruiting top-quality, non-judiciary government applicants.**

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that it endorsed the granting of annual employment cost index increases in salary to court employees, consistent with executive branch employees in terms of amount and timing. The Committee resolved to support a study to identify and assess cost-effective and efficient structural options for the delivery of administrative support services to the courts, with the understanding that the study address the following: (1) prioritizing fairly the needs of all units; (2) maintaining quality services; (3) quantifying the offsetting costs entailed by measures designed to achieve savings; (4) documenting who pays for centralized work and who reaps the savings; and (5) formalizing service delivery agreements. Also, the Committee approved reestablishing a methods analysis program to explore with courts more effective ways to incorporate "better practices" into the staffing requirements process.

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

CHANGES IN MAGISTRATE JUDGE POSITIONS

After consideration of the report of the Committee on the Administration of the Magistrate Judges System and the recommendations of the Director of the Administrative Office, the district courts, and the judicial councils of the circuits, the Judicial Conference approved the following changes in positions, salaries, locations, 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

District of Maine

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

SECOND CIRCUIT

Southern District of New York

Redesignated as Middletown the part-time magistrate judge position previously designated as Newburgh.

Western District of New York

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

FOURTH CIRCUIT

Northern District of West Virginia

Increased the salary of the part-time magistrate judge position at Martinsburg from Level 4 (\$35,854 per annum) to Level 3 (\$47,805 per annum).

SIXTH CIRCUIT

Western District of Michigan

Redesignated as Grand Rapids the magistrate judge position previously designated as Kalamazoo.

SEVENTH CIRCUIT

Southern District of Illinois

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

Southern District of Indiana

1. Increased the salary of the part-time magistrate judge position at New Albany from Level 7 (\$5,974 per annum) to Level 6 (\$11,951 per annum); and
2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

Western District of Wisconsin

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

NINTH CIRCUIT

Eastern District of California

1. Converted the part-time magistrate judge position at Redding to full-time status;
2. Discontinued the part-time magistrate judge position at South Lake Tahoe; and
3. Made no change in the number, locations, or arrangements of the other magistrate judge positions in the district.

TENTH CIRCUIT

District of Colorado

1. Authorized a part-time magistrate judge position at Durango at Level 4 (\$35,854 per annum);
2. Decreased the salary of the part-time magistrate judge position at Grand Junction from Level 2 (\$59,757 per annum) to Level 3 (\$47,805 per annum) upon the appointment of a new part-time magistrate judge at Durango; and
3. Made no change in the number, location, or arrangements of the other magistrate judge positions in the district.

District of Wyoming

1. Increased the salary of the part-time magistrate judge position at Green River from Level 8 (\$3,584 per annum) to Level 7 (\$5,974 per annum); and
2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Magistrate Judges System reported that it reviewed proposed rules changes being considered by the Advisory Committee on Criminal Rules and (a) endorsed promulgation of a new criminal rule that would establish procedures for both non-case-dispositive and case-dispositive matters in felony cases referred to magistrate judges; (b) endorsed inclusion of waiver language in the new rule, provided that the new provision would retain a district judge's discretionary authority to review a magistrate judge's ruling *sua sponte* or at the request of a party, regardless of whether timely objections have been filed; and (c) disagreed with the proposal that acceptance of guilty pleas in felony cases be specified as case-dispositive matters. These views were communicated to the Advisory Committee.

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

COMMITTEE ACTIVITIES

The Committee to Review Circuit Council Conduct and Disability Orders reported that it is monitoring the status of *Spargo v. New York State Commission on Judicial Conduct*, 244 F.Supp. 2d 72 (N.D.N.Y. 2003). That ruling strikes down, as an impermissible prior restraint under the First Amendment, discipline of a New York state judge based on his alleged violation of provisions of the New York Code of Judicial Conduct restricting New York state judges' political activities (apart from their own campaigns for judicial office). The court also found that generally-worded provisions of the New York Code (such as the provision that a judge should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary) were too vague to support discipline for activity otherwise protected by the First Amendment.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure approved for publication proposed amendments to Rule 4008 of the Federal Rules of Bankruptcy Procedure, which would establish a deadline for filing a reaffirmation agreement. The Committee also approved for publication proposed amendments to Rules B and C of the Supplemental Rules for Certain Admiralty and Maritime Claims. These proposed amendments are modest and technical in nature. The Advisory Committees on Bankruptcy, Criminal, and Evidence Rules are reviewing comments from the public submitted on amendments proposed in August 2002 to their respective sets of rules. The Committee also received the report of its Local Rules Project and referred it to the committees' reporters for their review.

COMMITTEE ON SECURITY AND FACILITIES

COURTROOM SECURITY

In 1984, the Conference authorized the presence of a deputy United States marshal in the courtroom based on four levels of anticipated risk set forth in the report of the Attorney General's Task Force on Court Security (**JCUS-SEP 84**, pp. 48-49), and in 1985 the Conference authorized, with some qualifications, the use of court security officers in the courtroom in low-risk proceedings that do not warrant the presence of a deputy marshal under the Attorney General's risk criteria mentioned above (**JCUS-SEP 85**, pp. 45-46). After soliciting comments from **the judicial community, the Committee on Security and Facilities recommended that the Conference amend its 1984 and 1985 policies both to enhance security in the courtroom and to recognize the overarching statutory authority of judges to order the level of security necessary in a particular proceeding. After discussion, the Conference slightly modified and then adopted the Committee's recommendations to—**

- a. **Amend Judicial Conference policy on courtroom security to require:**
 - (1) **A deputy marshal in the courtroom during all criminal proceedings in which a defendant is present, including criminal proceedings before magistrate judges, unless the presiding judge determines one is not required; and**
 - (2) **A court security officer in all civil proceedings in which a party is present, including bankruptcy proceedings, upon the determination of the presiding judge; and**
- b. **Affirm, notwithstanding the policies established above, that the presiding judge may determine the level of security necessary in a particular proceeding pursuant to 28 U.S.C. § 566.**

FIVE-YEAR COURTHOUSE PROJECT PLAN

After considering comments from courts and the circuit judicial councils, the Committee on Security and Facilities recommended, and the Judicial Conference approved, a five-year plan for courthouse construction

projects, which prioritizes in score order the judiciary's housing needs for the fiscal years 2004-2008. With regard to projects planned for FY 2004, funding is requested only for those projects that will be ready for contract award in that year.

HOMELAND SECURITY LEGISLATION

To address concerns that legislation pending in the 107th Congress to create the Department of Homeland Security could impinge upon the authorities of the agencies responsible for the judiciary's security, the Committee on Security and Facilities recommended that the Judicial Conference seek two amendments to the proposed legislation. The first amendment would have ensured that creation of the Department of Homeland Security did not affect the security arrangements for the Third Branch, and the second would have strengthened judicial security by giving the judiciary the statutory authority to determine its own security arrangements. The Conference adopted the Committee's recommendation by mail ballot concluded on November 6, 2002.¹

COMMITTEE ACTIVITIES

The Committee on Security and Facilities reported that it was briefed on the development of an orientation program for chief judges intended to heighten security awareness and re-emphasize the importance of active court security committees in each district. The Committee also considered a study concerning application of the *U.S. Courts Design Guide* standards to renovation and alteration projects, and discussed the need for a supplementary manual for such projects. In addition, the Committee discussed results of an analysis of well size in the courtroom and agreed that the judiciary should focus on flexible ways to provide more space in the courtroom well such as installing movable spectator

¹ Congress failed to include these provision in the legislation, which was enacted on November 25, 2002 (*see* Public Law No. 107-296).

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rails and seats, using only two-tiered jury boxes, and adopting efficient wheelchair ramp designs to serve the judge's bench and witness boxes.

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.

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