

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

September 13, 2011

The Judicial Conference of the United States convened in Washington, D.C., on September 13, 2011, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

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

Second Circuit:

Chief Judge Dennis Jacobs
Chief Judge Carol Bagley Amon,
Eastern District of New York

Third Circuit:

Chief Judge Theodore A. McKee
Judge Harvey Bartle III,
Eastern District of Pennsylvania

Fourth Circuit:

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

Fifth Circuit:

Chief Judge Edith Hollan Jones
Chief Judge Sarah S. Vance,
Eastern District of Louisiana

Sixth Circuit:

Chief Judge Alice M. Batchelder
Judge Thomas A. Varlan,
Eastern District of Tennessee

Seventh Circuit:

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

Eighth Circuit:

Chief Judge William Jay Riley
Judge Rodney W. Sippel,
Eastern District of Missouri

Ninth Circuit:

Chief Judge Alex Kozinski
Judge Robert S. Lasnik,
Western District of Washington

Tenth Circuit:

Chief Judge Mary Beck Briscoe
Judge Robin J. Cauthron,
Western District of Oklahoma

Eleventh Circuit:

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

District of Columbia Circuit:

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

Federal Circuit:

Chief Judge Randall R. Rader

Court of International Trade:

Chief Judge Donald C. Pogue

The following Judicial Conference committee chairs attended the Conference session: Circuit Judges Julia Smith Gibbons, Michael S. Kanne, Diarmuid F. O'Scannlain, Reena Raggi (incoming chair), Jeffrey S. Sutton, and John Walker, Jr.; District Judges Robert Holmes Bell, Rosemary M. Collyer, Joy Flowers Conti, Claire V. Eagan, Sidney A. Fitzwater, Janet C. Hall, D. Brock Hornby, George H. King, Mark R. Kravitz, J. Frederick Motz, Julie A. Robinson, Lee H. Rosenthal, and George Z. Singal; and Bankruptcy Judge Eugene R. Wedoff. Bankruptcy Judge Rosemary Gambardella and Magistrate Judge Thomas C. Mummert, III, were also in attendance, and Cathy Catterson of the Ninth Circuit represented the circuit executives.

James C. Duff, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Jill C. Sayenga, Deputy Director; William R. Burchill, Jr., Associate Director and General Counsel; Laura C. Minor, Assistant Director, and Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat; Cordia A. Strom, Assistant Director, Legislative Affairs; and David A. Sellers, Assistant Director, Public Affairs. District Judge Barbara Jacobs Rothstein, Director, and John S. Cooke, Deputy Director, as well as District Judge Jeremy D. Fogel, incoming Director, Federal Judicial Center, and District Judge Patti B. Saris, Chairman, and Judith W. Sheon, Staff Director, United States Sentencing Commission, were in attendance at the session of the Conference, as was Jeffrey P. Minear, Counselor to the Chief Justice. Scott Harris, Supreme Court Counsel, and the 2011-2012 Supreme Court Fellows also observed the Conference proceedings.

Attorney General Eric H. Holder, Jr., addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice. Senators Patrick J. Leahy, Amy Klobuchar, and Jeff Sessions, and Representatives Lamar S. Smith, John S. Conyers, Jr., Howard Coble, and Steve Cohen spoke on matters pending in Congress of interest to the Conference.

REPORTS

Mr. Duff reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office (AO). Judge Rothstein spoke to the Conference about Federal Judicial Center (FJC) programs, and Judge Saris reported on Sentencing Commission activities. Judge Gibbons, Chair of the Committee on the Budget, presented a special report on the budget outlook.

EXECUTIVE COMMITTEE

RESOLUTIONS

Outgoing chairs. The Judicial Conference approved a recommendation of the Executive Committee to adopt the following resolution recognizing the substantial contributions made by the Judicial Conference committee chairs whose terms of service end in 2011:

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

HONORABLE M. MARGARET MCKEOWN
Committee on Codes of Conduct

HONORABLE JANET C. HALL
Committee on Federal-State Jurisdiction

HONORABLE BOBBY R. BALDOCK
Committee on Financial Disclosure

HONORABLE GEORGE Z. SINGAL
Committee on Judicial Resources

HONORABLE MICHAEL S. KANNE
Committee on Judicial Security

HONORABLE LEE H. ROSENTHAL
Committee on Rules of Practice and Procedure

HONORABLE MARK R. KRAVITZ

Advisory Committee on Civil Rules

HONORABLE RICHARD C. TALLMAN

Advisory Committee on Criminal Rules

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

Director of the Administrative Office. The Judicial Conference approved a recommendation of the Executive Committee to adopt the following resolution to mark the departure of James C. Duff from the position of Director of the Administrative Office of the United States Courts:

The Judicial Conference of the United States recognizes with appreciation, admiration, and respect

JAMES C. DUFF

Director of the Administrative Office
2006-2011

James C. Duff's service as the Director of the Administrative Office (AO) over the last five years is the culmination of many years of distinguished service to the federal judiciary. He began his career in the judiciary as an assistant to Chief Justice Warren E. Burger, serving from 1975-1979, while also attending law school. He returned to the judiciary in 1996 to serve for four years as the Administrative Assistant to Chief Justice William H. Rehnquist, and then again in July 2006, when he was appointed Director of the Administrative Office by Chief Justice John G. Roberts, Jr. As Director of the Administrative Office, Jim Duff has proven to be a tenacious

advocate for the judiciary and for ensuring that the American judicial system maintains its reputation for excellence.

Jim Duff devoted his tenure at the Administrative Office to his goal of making the AO the most effective service organization in government. He worked to strengthen the ties between the AO and the courts it serves by creating exchanges between AO and court staff and by ensuring that the courts have a strong voice on the AO's advisory councils and groups. He focused on teamwork and collaboration both within the AO and between the AO and the agencies with which it partners to administer the nation's judicial system. Under his leadership, the judiciary forged strong working relationships with the General Services Administration and the United States Marshals Service to ensure that the judiciary had adequate facilities to carry out its mission and to secure the safety of the judicial community.

Jim Duff has also been a powerful voice for the judiciary before Congress. By partnering strong advocacy for the judiciary's budgetary and legislative needs with equally strong emphasis on good stewardship in managing the judiciary's resources, he has made sure that the judiciary's requests to Congress are heard. He has also been a champion for maintaining the independence of the Third Branch and preserving the unique aspects of service in the federal judiciary that guarantee its ability to administer fair and impartial justice. As a key part of this effort, he has worked tirelessly to obtain fair compensation for members of the judiciary so that the courts can continue to attract the highest caliber of judges and staff. As a further part of this effort, he has worked to strengthen the judiciary's internal oversight program to ensure the public's continued confidence in the integrity of the judiciary. Under his leadership, the Committee on the Administrative Office was renamed the Committee on Audits and Administrative Office Accountability and restructured to focus on the significant areas of audit, review, and investigative assistance.

Jim Duff has led the Administrative Office during a period of great challenges – workload and security risks in the border

courts, mammoth bankruptcy cases in the wake of the 2008-2009 financial crisis, and an increasingly austere fiscal environment. His great gift as a leader is that he has faced these challenges with grace and optimism, as a consensus builder, a mediator, and a motivator. His warm personal qualities, including his humility, approachability, and sense of humor make working with Jim a true pleasure. His sharp intellect, excellent judgment, and devotion to cause make working with him an honor.

The Judicial Conference expresses its great appreciation to Jim Duff for his strong leadership and dedicated service and wishes the best to him and his family in his new undertakings.

PROFESSIONAL LIABILITY INSURANCE

The Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999, Public Law No. 105-277, as amended by Public Law No. 106-58, requires the judiciary to provide reimbursement for up to one half of the cost of professional liability insurance to certain groups within the judiciary, including supervisors and managers as authorized by the Judicial Conference. In September 1999, the Conference delegated authority to court unit executives and federal public defenders to designate eligible positions in their respective units, consistent with Conference guidelines (JCUS-SEP 99, pp. 61-62, 66-67). At this session, the Conference delegated to the Director of the Administrative Office of the United States Courts, the Director of the Federal Judicial Center, and the Chair of the United States Sentencing Commission the authority to designate supervisors and managers of their respective agencies with regard to eligibility for professional liability insurance reimbursement, and provided that the authority may be re-delegated to executives or human resources officials of the respective judicial branch agencies.

JUDICIAL CONDUCT AND DISABILITY ACT

The Department of Justice has proposed legislation that would loosen the confidentiality requirements of the Judicial Conduct and Disability Act so that information developed in complaint proceedings under the Act could be disclosed to law enforcement officials if it relates to a potential criminal

offense. In July 2011, the Committee on Judicial Conduct and Disability endorsed a recommendation that the Conference support the proposal if it were modified to include protections drawn from the concept of a “reporter’s privilege.” Because the legislation was moving quickly through Congress, the Executive Committee was asked to consider the matter. On recommendation of the Committee on Judicial Conduct and Disability, the Executive Committee adopted the following position on behalf of the Conference:

The Judicial Conference supports amending the confidentiality provisions of the Judicial Conduct and Disability Act to recognize that the judiciary controls the disclosure of information developed in connection with proceedings under the Act (“Act information”) and to permit the disclosure of Act information to a law enforcement agency (a) as pertaining only to possible criminal activity and (b) subject to requirements paralleling those described in the Department of Justice’s “Policy with regard to issuance of subpoenas to members of the news media,” 28 C.F.R. § 50.10. Those requirements include that (1) there must be a compelling need for the Act information for the investigation of a crime reasonably believed to have occurred; (2) the substance of the Act information must be unavailable from other sources; (3) the requester must give reasonable and timely notice of the request and negotiate with the judiciary over the disclosure’s scope, timing, and manner; (4) the Attorney General of the United States or of the applicable state must give permission for the request; and (5) the requester must take effective precautions to prevent the disclosed Act information from being disseminated to unauthorized persons or for improper purposes.

FISCAL YEAR 2012 INTERIM FINANCIAL PLANS

Pending final congressional action on the judiciary’s appropriations for the 2012 fiscal year, the Executive Committee approved fiscal year 2012 interim financial plans for the Salaries and Expenses, Defender Services, Court Security, and Fees of Jurors and Commissioners accounts. The plans reflect many “quick hit” cost-containment items, suggested by Conference committees and others, that will significantly reduce fiscal year 2012 requirements. In approving the interim plan for the Salaries and Expenses

account, the Committee also endorsed a strategy for distributing court allotments among the court programs. In addition, the Committee affirmed that its approval of the interim plans included a determination not to allow step increases and routine promotions, and to allow other promotions only in extraordinary circumstances with approval of the Administrative Office Director, for all circuit unit, court, chambers, and defender organization staff.

MISCELLANEOUS ACTIONS

The Executive Committee —

- On recommendation of the Committee on Rules of Practice and Procedure and on behalf of the Conference, with regard to a proposed package of style amendments to the Federal Rules of Evidence approved by the Conference in September 2010 and pending before the Supreme Court, restored certain language to Rule 408(a)(1) to avoid a risk that the amendment might be interpreted as substantive, and to Rule 804(b)(4) for clarity and completeness;
- Approved final fiscal year 2011 financial plans for the Salaries and Expenses, Defender Services, Court Security, and Fees of Jurors and Commissioners accounts, as well as an allotment distribution strategy for the Salaries and Expenses account;
- Revised the policy related to the locations for Judicial Conference committee meetings to provide that meetings should be held only in hub cities and that committees that meet semi-annually must hold one of those meetings in Washington, D.C.;
- Agreed to ask every circuit to ensure that they have an up-to-date written policy in place for providing staff to senior judges and that the policy is being enforced; and
- Approved on behalf of the Conference resolutions in honor of Judge Barbara Jacobs Rothstein, who is ending her eight-year tenure as Director of the Federal Judicial Center, and William R. Burchill, Jr., who has served the judiciary for 38 years and is retiring from his position as Administrative Office Associate Director and General Counsel.

COMMITTEE ON AUDITS AND ADMINISTRATIVE OFFICE ACCOUNTABILITY

COMMITTEE ACTIVITIES

The Committee on Audits and Administrative Office Accountability reported that it received detailed briefings from three of the judiciary's independent audit firms regarding the following: cyclical financial audits of the courts and federal defender offices, audits of community defender organization grantees, audits of Chapter 7 bankruptcy trustees in bankruptcy administrator districts, and audits of debtors in Chapter 7 and Chapter 11 filings in bankruptcy administrator districts. The Committee considered ways in which the judiciary can ensure that audit issues are addressed and resolved in a timely manner, and it emphasized the importance of appropriate actions by court unit executives, chief judges and circuit judicial councils to address audit findings and recommendations. The Committee also asked the AO to focus on its follow-up efforts and to provide assistance to the courts and federal defender offices when needed. The Committee passed a resolution honoring the service of AO Director James C. Duff.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

OFFICIAL DUTY STATIONS

On recommendation of the Bankruptcy Committee, and in accordance with 28 U.S.C. 152(b)(1), the Conference took the following actions with regard to official duty stations of bankruptcy judges:

- a. Approved a request from the Central District of California and the Ninth Circuit Judicial Council to designate Los Angeles as the official duty station for a vacant bankruptcy judgeship in that district; and
- b. Approved a request from the District of South Carolina and the Fourth Circuit Judicial Council to transfer the official duty station for Chief Judge John E. Waites from Columbia to Charleston.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Bankruptcy System reported that it is exploring ways to more effectively use existing bankruptcy judicial resources to address severe judicial workload pressures occurring in several districts. To assist the judiciary in weathering the projected budgetary shortfall, the Committee examined multiple short- and long-term cost-containment ideas, and provided its views to the Budget Committee. In addition, the Committee informed the Committee on Court Administration and Case Management that it (a) endorses, with several qualifications, recommendations for certain inflationary fee increases; (b) recommends that the two committees work together, with assistance from the Federal Judicial Center, to study the impact and feasibility of implementing additional fees for claims transfers in bankruptcy cases and for filing publicly traded and/or mega cases; and (c) recommends approval of a proposed policy on courtroom sharing in the bankruptcy courts. The Committee also recommended that the Director approve certain reports required by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Public Law No. 111-203.

COMMITTEE ON THE BUDGET

FISCAL YEAR 2013 BUDGET REQUEST

Noting the limited funding that Congress is likely to have available in 2013 and after considering the funding levels proposed by the program committees, the Committee on the Budget recommended to the Judicial Conference a fiscal year 2013 budget request that is 3.3 percent over assumed fiscal year 2012 appropriations. This request is \$118.6 million below the funding requested by the program committees. The Conference approved the budget request subject to amendments necessary as a result of (a) new legislation, (b) actions of the Judicial Conference, or (c) any other reason the Executive Committee considers necessary and appropriate.

BUDGET DECENTRALIZATION RULES

Under existing budget decentralization rules, courts can reprogram funds among court operating funds within their own units, among court units within a judicial district, and among circuit and court of appeals units within a

judicial circuit, which allows these units to share administrative services and maximize resource utilization. However the rules do not permit reprogramming across districts or circuits or even between appellate and district units within a circuit. To achieve additional efficiencies, the Committee recommended expansion of reprogramming authority so that local funds can be reprogrammed among court units regardless of type, geographical location, or judicial district or circuit for voluntary shared services arrangements. The new reprogramming authority would be subject to the approval of the Administrative Office, with semi-annual reports provided to the Budget Committee. The Conference approved the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on the Budget reported that it reviewed over 100 cost-containment ideas that had been generated through the Administrative Office's court advisory process as well as ideas that various Judicial Conference committees are pursuing. The Committee participated in a "summit" of committee chairs held on September 12, 2011 to discuss the significant cost-containment ideas the judiciary must consider as it faces a serious budget crisis. In addition, the Committee discussed efforts to focus its congressional outreach program on key members of the judiciary's appropriations subcommittees and to provide court-specific impacts of the fiscal year 2012 House of Representatives mark to judges and members of Congress.

COMMITTEE ON CODES OF CONDUCT

MODEL FORMS FOR WAIVER OF JUDICIAL DISQUALIFICATION

On recommendation of the Committee on Codes of Conduct, the Judicial Conference approved three versions of a Model Form for Waiver of Judicial Disqualification: one for civil pro se cases, one for other civil cases, and one for criminal cases. These forms replace a form originally adopted in September 1985, commonly known as the "remittal" form, which was used by judges to request a waiver of disqualification under Canon 3D of the Code of Conduct for United States Judges. The Conference delegated to the

Committee the authority to make technical, conforming, and non-controversial changes to the forms, as necessary.

MODEL CONFIDENTIALITY STATEMENT

The Model Confidentiality Statement (Form AO-306) is intended for use by courts and judges to promote awareness among judicial employees of their confidentiality obligations under Canon 3D of the Code of Conduct for Judicial Employees. On recommendation of the Committee, the Judicial Conference approved revisions to the Model Confidentiality Statement to reflect new developments, such as the use by judicial employees of electronic social media, and delegated to the Committee on Codes of Conduct the authority to make technical, conforming, and non-controversial changes, as necessary.

FORM FOR APPROVAL OF COMPENSATED TEACHING

Judges who wish to engage in compensated teaching are required to obtain approval from their circuit chief judge, using Form AO-304, Application for Approval of Compensated Teaching Activities. On recommendation of the Committee, the Conference approved a revised Form AO-304 to clarify that a judge may be compensated for time spent grading examinations and term papers. The Conference also delegated to the Committee on Codes of Conduct the authority to make technical, conforming, and non-controversial changes to the form, as necessary.

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Judicial Conference in March 2011, the Committee received 19 new written inquiries and issued 19 written advisory responses. During this period, the average response time for requests was 13 days. In addition, the Committee chair responded to 135 informal inquiries, individual Committee members responded to 99 informal inquiries, and Committee counsel responded to 381 informal inquiries.

**COMMITTEE ON COURT ADMINISTRATION
AND CASE MANAGEMENT**

FEES

Miscellaneous Fees. The Judicial Conference prescribes miscellaneous fees for the courts of appeals, district courts, United States Court of Federal Claims, bankruptcy courts, and Judicial Panel on Multidistrict Litigation, pursuant to 28 U.S.C. §§ 1913, 1914, 1926, 1930, and 1932, respectively. On recommendation of the Court Administration and Case Management Committee, the Conference determined to raise many of these fees to account for inflation, as set forth below, effective November 1, 2011. These fees have not been adjusted for inflation since 2003.

Court of Appeals Miscellaneous Fee Schedule

<u>Item</u>	<u>Current Fee</u>	<u>New Fee</u>
2. Record Search	\$26	\$30
3. Certification	\$9	\$11
5. Audio Recording	\$26	\$30
6. Record Reproduction	\$71	\$83
7. Record Retrieval	\$45	\$53
8. Returned Check Fee	\$45	\$53
13. Attorney Admission Fee	\$150	\$176
Certificate of Good Standing	\$15	\$18

District Court Miscellaneous Fee Schedule

<u>Item</u>	<u>Current Fee</u>	<u>New Fee</u>
1. Document Filing/Indexing	\$39	\$46
2. Record Search	\$26	\$30
3. Certification	\$9	\$11
5. Reproduction of Proceedings	\$26	\$30
6. Microfiche	\$5	\$6

7. Record Retrieval	\$45	\$53
8. Returned Check Fee	\$45	\$53
9. Misdemeanor Appeal	\$32	\$37
10. Attorney Admission Fee	\$150	\$176
Certificate of Good Standing	\$15	\$18
13. Cuban Liberation Civil Filing Fee	\$5431	\$6355

Bankruptcy Court Miscellaneous Fee Schedule

<u>Item</u>	<u>Current Fee</u>	<u>New Fee</u>
2. Certification	\$9	\$11
Exemplification	\$18	\$21
3. Audio Recording	\$26	\$30
4. Amended Bankruptcy Schedules	\$26	\$30
5. Record Search	\$26	\$30
6. Adversary Proceeding Fee	\$250	\$293
7. Document Filing/Indexing	\$39	\$46
8. Title 11 Administrative Fee	\$39	\$46
12. Record Retrieval Fee	\$45	\$53
13. Returned Check Fee	\$45	\$53
14. Notice of Appeal Fee	\$250	\$293
19. Lift/Stay Fee	\$150	\$176

United States Court of Federal Claims Miscellaneous Fee Schedule

<u>Item</u>	<u>Current Fee</u>	<u>New Fee</u>
3. Certification	\$9	\$11
4. Attorney Admission Fee	\$150	\$176
Certificate of Good Standing	\$15	\$18

5. Sale of Monthly Listing of Court Orders and Opinions	\$19	\$22
7. Returned Check Fee	\$45	\$53
9. Audio Recording	\$26	\$30
10. Document Filing/Indexing	\$39	\$46
11. Record Retrieval Fee	\$45	\$53

Judicial Panel on Multidistrict Litigation Miscellaneous Fee Schedule

<u>Item</u>	<u>Current Fee</u>	<u>New Fee</u>
1. Record Search	\$26	\$30
2. Certification	\$9	\$11
4. Record Retrieval Fee	\$45	\$53
5. Returned Check Fee	\$45	\$53

Electronic Public Access Fees. Pursuant to statute and Judicial Conference policy, the electronic public access (EPA) fee is set to be commensurate with the costs of providing existing services and developing enhanced services. Noting that the current fee has not increased since 2005 and that for the past three fiscal years the EPA program’s obligations have exceeded its revenue, the Committee recommended that the EPA fee be increased from \$.08 to \$.10 per page. The Committee also recommended that the current waiver of fees of \$10 or less in a quarterly billing cycle be changed to \$15 or less per quarter so that 75 to 80 percent of all users would still receive fee waivers. Finally, in recognition of the current fiscal austerity for government agencies, the Committee recommended that the fee increase be suspended for local, state, and federal and government entities for a period of three years. The Conference adopted the Committee’s recommendations.

COURTROOM SHARING

Based on a comprehensive study of district courtroom usage conducted by the FJC at the Committee’s request, the Judicial Conference adopted courtroom sharing policies for senior district judges and magistrate judges in new courthouse and/or courtroom construction (JCUS-SEP 08,

pp. 10-11; JCUS-MAR 09, pp. 14-16; JCUS-SEP 09, pp. 9-11). It also asked the Committee to study the usage of bankruptcy courtrooms, and if usage levels so indicated, to develop an appropriate sharing policy for bankruptcy courtrooms (JCUS-SEP 08, pp. 10-11). At this session, following completion of the bankruptcy study, conducted for the Committee by the FJC, the Court Administration and Case Management Committee in consultation with the Bankruptcy and Space and Facilities Committees recommended a courtroom sharing policy for bankruptcy judges in new courthouse and courtroom construction, for inclusion in the *U.S. Courts Design Guide*. The Conference approved the policy as follows:

SHARING POLICY FOR BANKRUPTCY JUDGES IN NEW COURTHOUSE AND COURTROOM CONSTRUCTION

New courtrooms for bankruptcy judges will be provided as follows:

- a. In court facilities with one or two bankruptcy judges, one courtroom will be provided for each bankruptcy judge.
- b. In court facilities with three or more bankruptcy judges, one courtroom will be provided for every two bankruptcy judges. In court facilities where the application of this formula will result in a fraction (i.e., those with an odd number of bankruptcy judges), the number of courtrooms allocated will remain at the next lower whole number. In addition, one courtroom will be provided for emergency matters, such as Chapter 11 first-day hearings.

Exemption Policy

In the event this sharing arrangement would cause substantial difficulty in the secure, effective and efficient disposition of cases, a court, as a whole, with the approval of its circuit judicial council, may seek an individual exemption to this sharing policy from the Judicial Conference's Space and Facilities Committee. Such exemptions should be considered the exception and not the rule.

In order to be considered for an exemption, a court must first show that the bankruptcy judge's courtroom is in use over 75 percent of the work day for case-related purposes. Thereafter, a court should demonstrate that deviation from the basic sharing policy is necessary, based on the following:

- a. An assessment of the number and type of courtroom events anticipated to be handled by the bankruptcy judge that would indicate that sharing a courtroom would pose a significant burden on the secure, effective and efficient management of that judge's docket.
- b. An assessment of the current complement of courtrooms and their projected use in the facility and throughout the district, to reaffirm the necessity of constructing an additional courtroom.
- c. Whether a special proceedings, visiting judge, or other courtroom is available for the bankruptcy judge's use in the facility.

Many bankruptcy judges are housed in leased facilities where security concerns may arise due to the configuration of the space. Because of this unique situation, an alternative exemption to the sharing policy, notwithstanding the exemption requirements of the previous paragraph, may be considered for bankruptcy judges in leased facilities based on an assessment of the security of a bankruptcy judge's access from chambers to a shared courtroom.

RECORDS DISPOSITION SCHEDULES

Electronic records. The district court records disposition schedule for civil and criminal case files provides for the transfer of electronic records to the National Archives and Records Administration (NARA) three years after case closing. Noting that this is an inadequate amount of time to maintain the records at the court and that further study on disposition of electronic records was needed, the Committee recommended that the three-year transfer reference be removed from the schedule for civil and criminal case files. Once removed, electronic records will be considered unscheduled and can not

be disposed of until a new disposition schedule is adopted. The Conference approved the Committee's recommendation, and the schedule will be transmitted to NARA for acceptance of the change.

Criminal cases. In March 2011, the Judicial Conference approved a revised district court records disposition schedule for criminal cases that, like the schedule for civil cases, sets retention periods largely by case type (JCUS-MAR 11, p. 10). NARA published this proposed schedule for public comment. On recommendation of the Committee, which considered the public comments, the Judicial Conference approved amending the disposition schedule for criminal case files to designate additional non-trial case types – those pertaining to embezzlement, fraud, or bribery by a public official – as permanent. The schedule will be transmitted to NARA for acceptance of the change.

Bankruptcy cases. Similarly, amendments to the bankruptcy court records disposition schedule approved by the Conference in March 2011 were published by NARA for public comment. After consideration of those comments, the Committee recommended that the Judicial Conference approve amending the schedule to classify as permanent a sample of 2.5 percent of non-trial bankruptcy cases¹ and 2.5 percent of temporary adversary proceedings cases retired by each district each year. The amendments would also reduce the retention period for temporary non-trial adversary proceedings cases from 20 to 15 years after case closing. The Conference approved the Committee's recommendation, and the schedule will be transmitted to NARA for acceptance of the change.

PACER ACCESS TO CERTAIN BANKRUPTCY FILINGS

In September 2010, the Judicial Conference adopted a policy limiting public electronic access to bankruptcy records filed before December 1, 2003 that had been closed for more than one year. The policy was intended to prevent the dissemination of personal information that might be contained in documents that were filed before the judiciary's privacy policy for bankruptcy cases was fully implemented. Under the September 2010 policy, the public could access docket sheets through PACER for these older cases, but full

¹This would replace a provision in the existing schedule that designates as permanent 25 percent of non-trial bankruptcy cases retired by nine judicial districts, selected each year on a rotational basis.

documents would be available only at clerks' offices (JCUS-SEP 10, pp. 12-13). At this session, on recommendation of the Committee, the Conference adopted an exception to that policy for counsel or parties who are developing potential class actions, as follows:

Access may be granted pursuant to a judicial finding that such access is necessary for determining class member certification, subject to the following limitations to be set forth in the judge's order:

- a. Access is limited to a particular identified list of cases or a specified universe of cases (e.g., lift stay motions filed by a specified lender in a limited period of time);
- b. Time limitations on the period of access (corresponding to the scope and number of potential cases involved);
- c. Inclusion of a verified statement of counsel that access would be solely for the purpose of determining class member status and that counsel is aware that unauthorized use is prohibited and may result in sanctions; and
- d. Any other conditions, limitations, or direction that the judge deems necessary under the specific circumstances of the request.

SEALING AN ENTIRE CIVIL CASE FILE

On recommendation of the Committee on Court Administration and Case Management, in consultation with the Committee on Rules of Practice and Procedure, the Judicial Conference adopted the following standards for sealing an entire civil case:

An entire civil case file should only be sealed consistent with the following criteria:

- a. Sealing the entire civil case file is required by statute or rule or justified by a showing of extraordinary circumstances and the absence of narrower feasible and

effective alternatives (such as sealing discrete documents or redacting information), so that sealing an entire case file is a last resort;

- b. A judge makes or promptly reviews the decision to seal a civil case;
- c. Any order sealing a civil case contains findings justifying the sealing of the entire case, unless the case is required to be sealed by statute or rule; and
- d. The seal is lifted when the reason for sealing has ended.

COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported that it devoted a significant amount of its June 2011 meeting to cost-containment initiatives for fiscal year 2012 and beyond, and considered more than 40 different ideas and proposals. The Committee also discussed several policy issues related to the development of the Next Generation CM/ECF system to ensure that the system's requirements are synchronized across various court units and court types. The Committee endorsed 14 courts to participate in the pilot project on cameras in the courtroom, which began on July 18, 2011 and selected 14 courts to participate in a 10-year, statutorily required pilot project regarding the assignment of patent cases in U.S. district courts, to begin on September 19, 2011.

COMMITTEE ON CRIMINAL LAW

STANDARD CONDITIONS OF PROBATION AND SUPERVISED RELEASE

A judgment in a criminal case as well as other national forms contains a set of standard conditions that are automatically imposed in probation and supervised release sentences, including one condition that requires offenders to submit a written report to the probation officer within the first five days of each month. However, such reports may not be necessary in all cases because the information is available from other means, and in those cases in which reports are needed, spreading out the submission dates would provide officers with

greater flexibility to manage their caseloads. Noting this, the Committee recommended that the condition be amended in national forms (AO forms 7A, 7A-S, 245, 245B-D, 245I and 246) to state that the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer. The Conference adopted the Committee's recommendation.

RESEARCH AND DATA SHARING

The Administrative Office collects statistical and other information concerning the work of probation officers pursuant to statute and Judicial Conference policy. Criminal justice researchers frequently request this information, as do executive branch agencies such as the Bureau of Prisons. On recommendation of the Committee, the Conference authorized the Director of the AO to adopt proposed regulations governing the disclosure of federal probation system data to outside entities that establish procedures for handling requests for such data, including factors to consider in evaluating the merits of a request and conditions to be imposed to ensure the continued confidentiality of information released.

SUPERVISION OF CONDITIONALLY RELEASED SEXUALLY DANGEROUS PERSONS

The Committee recommended that the Judicial Conference seek legislation that would amend 18 U.S.C. § 3154 (Functions and powers relating to pretrial services) and § 3603 (Duties of probation officers) to specifically authorize probation and pretrial services officers to supervise sexually dangerous persons who have been conditionally released following a period of civil commitment pursuant to 18 U.S.C. § 4248. While §§ 3154 and 3603 both contain a general provision authorizing officers to perform other duties as assigned by the courts, providing explicit authorization will remove any ambiguity about an officer's role and allow for the development of standardized policies and procedures specifically designed for this population. The Conference adopted the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Criminal Law reported that it reviewed and endorsed a new sex offender management procedures manual for probation and pretrial services officers. The manual provides detailed instructions on how officers should investigate and supervise persons charged with or convicted of a sex offense. The Committee also considered the U.S. Sentencing Commission's proposed amendments to the sentencing guidelines manual and submitted testimony supporting the Commission's proposal to apply retroactively the amendments to the drug quantity table that implement the Fair Sentencing Act of 2010. In addition, the Committee discussed and submitted recommendations on various cost-containment proposals under consideration for fiscal years 2012 and 2013.

COMMITTEE ON DEFENDER SERVICES

CRIMINAL JUSTICE ACT GUIDELINES

The Committee on Defender Services recommended revisions to chapters 2 and 3 of the Criminal Justice Act Guidelines (*Guide to Judiciary Policy*, Vol. 7A) to provide principles and procedures on the proration of claims by attorneys and other service providers and on the billing of interpreting services. The Judicial Conference approved the recommendation.

COMMITTEE ACTIVITIES

The Committee on Defender Services reviewed the status of its long-range cost-containment initiatives (including the recently completed circuit case-budgeting pilot project and the ongoing federal defender organization staffing study) and received a report on the shorter-term cost-reduction efforts undertaken over the past six months by strategic planning groups and by program administrators. The Committee reviewed additional short- and longer-term cost-containment ideas that were suggested for its consideration and identified possible new areas to explore. It approved a reduced training plan for FY 2012, which is limited to the FY 2010 Committee-authorized level.

COMMITTEE ON FEDERAL-STATE JURISDICTION

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported that it was updated on the progress of patent reform legislation and discussed jurisdictional provisions in the proposed legislation. The Committee also considered a proposal to amend 28 U.S.C. § 1447(d) to provide for a right of appeal from any order remanding an action to state court and determined not to support a change to existing law. The Committee received a report on discussions involving the Judicial Panel on Multidistrict Litigation, the Federal Judicial Center, the Conference of Chief Justices, and the National Center for State Courts concerning means of promoting cooperation between federal and state judges presiding over related cases filed in multiple jurisdictions.

COMMITTEE ON FINANCIAL DISCLOSURE

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported that on March 29, 2011, it launched the Financial Disclosure Online Reporting System (FiDO). This transition from paper to an exclusively electronic format should significantly reduce judiciary expenses related to the printing, mailing, processing, and records management of financial disclosure reports. As of July 8, 2011, the Committee had received 3,990 financial disclosure reports and certifications for calendar year 2010, including 1,246 reports and certifications from Supreme Court justices, Article III judges, and judicial officers of special courts; 327 reports from bankruptcy judges; 534 reports from magistrate judges; and 1,883 reports 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 the fiscal year 2012 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 endorsed the Judiciary Information Security Framework, which provides a high-level approach to information security risk management, and strongly encourages its use by all courts. The Committee concurred in the recommendation of the Committee on Court Administration and Case Management to raise the judiciary’s electronic public access user fee (*see* “Miscellaneous Fees,” p. 16). The Committee also discussed a number of initiatives that both strengthen the judiciary’s information technology program and promote cost containment, such as the national telephone service on the judiciary’s new communications network.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that 117 intercircuit assignments were undertaken by 90 Article III judges from January 1, 2011, to June 30, 2011. During this time, the Committee continued to disseminate information about intercircuit assignments and aided courts requesting assistance by identifying and obtaining the assistance of judges willing to take assignments.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported on its involvement in rule of law and judicial reform programs throughout the world. The Committee also reported on its continued participation in the rule of law component of the legislative branch’s Open World Program for jurists from Russia, Ukraine, Georgia, Kazakhstan, and Moldova. The Committee received briefings about international rule of law activities involving federal public

defenders, U.S. court administrators, the Federal Judicial Center, the U.S. Department of State, officials from several embassies, the U.S. Department of Justice, the U.S. Agency for International Development, the U.S. Patent and Trademark Office, the World Bank, and the International Association of Judges. In addition, the Committee reported on foreign delegations of jurists and judicial personnel briefed at the Administrative Office.

COMMITTEE ON THE JUDICIAL BRANCH

JUDGES' TRAVEL REGULATIONS

Senior Judges on National Courts. The Committee on the Judicial Branch recommended that the Judicial Conference amend section 220.30.10(g)(3)(B) of the Travel Regulations for United States Justices and Judges, *Guide to Judiciary Policy (Guide)*, Vol. 19, to provide that if a senior judge is commissioned to a court of national jurisdiction and the judge intends to travel a distance of more than 75 miles from his or her residence to hold court or to transact official business for that court and to claim reimbursement for any expenses associated with that travel, such travel must be authorized by the chief judge of the court. The Conference adopted the Committee's recommendation.

Senior Judges' Commuting-Type Expenses. To make consistent certain travel authorization procedures for senior judges, the Committee recommended, and the Conference approved, an amendment to section 220.30.10(g)(3)(A) of the judges' travel regulations, *Guide*, Vol. 19, to require the authorization of the circuit judicial council rather than the chief circuit judge when a senior judge relocates his or her residence outside the district or circuit of the judge's original commission and intends to seek reimbursement for travel back to the court for official business.

Actual Expense Reimbursement for Meals. On recommendation of the Committee and after discussion, the Judicial Conference approved amendments to sections 250.20.20, 250.20.30, 250.20.50, 250.20.60, and 250.40.20 of the judges' travel regulations, *Guide*, Vol. 19, to limit judges' actual expense reimbursement for meals in connection with official travel, and provided that the limits will be subject to annual and automatic adjustment for inflation in the same manner as the judges' alternative maximum subsistence allowance.

COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that it discussed in detail the problem of the recruitment and retention of federal judges. Salary stagnation and salary inversion continue to threaten the federal judiciary's ability to recruit and retain judges. The Committee also reported that it is organizing a program with the Freedom Forum and its First Amendment Center that will bring together a small group of judges and journalism educators to support continued and enhanced education on the coverage of the courts in journalism schools.

COMMITTEE ON JUDICIAL CONDUCT AND DISABILITY

COMMITTEE ACTIVITIES

The Committee on Judicial Conduct and Disability reported that it asked the Executive Committee to act on behalf of the Conference with regard to pending legislation proposed by the Department of Justice that would loosen the confidentiality requirements of the Judicial Conduct and Disability Act so that information developed in proceedings under the Act could be disclosed to law enforcement officers if it related to a potential criminal offense (*see supra*, "Judicial Conduct and Disability Act," pp. 7-8).

COMMITTEE ON JUDICIAL RESOURCES

EXECUTIVE GRADING PROCESS

Court-sizing formulas are used to determine the appropriate grades and salaries of district and bankruptcy clerks of court and chief probation and pretrial services officers. On recommendation of the Committee on Judicial Resources, the Conference agreed to approve a new grading process for determining the target grades for these executives. The new executive grading process consists of two steps: a) applying a formula that includes a constant factor for core competencies that accounts for 70 percent of the formula and

weighted factors that account for 30 percent of the formula;² and b) assigning target grades for these executive positions in Judiciary Salary Plan (JSP) grades 16, 17, and 18, using the 2011 distribution of JSP target grades.

SAVED PAY

The saved pay policy provides salary protection to court employees downgraded through no fault of their own, e.g., when a chambers staff member takes a lower graded position within the judiciary as result of the death of a federal judge. The employee receives the same rate of basic pay that was payable immediately before the reduction to the lower grade or classification level, 50 percent of each employment cost index (ECI) adjustment, and 100 percent of any applicable locality pay increase until the employee's saved rate of pay can be matched in the lower grade or classification level. Noting that the policy can have a negative effect on morale when two employees performing the same job earn different rates of pay and that elimination of the policy would help to contain costs, the Committee recommended that the Judicial Conference eliminate the saved pay policy for the courts, but grandfather for two years any employees currently in a saved pay status under the policy. After two years, the Administrative Office would place those employees who remained in a saved pay status at the top step of their respective grade or classification level. The Conference adopted the Committee's recommendation. The saved pay policy for federal public defender organization personnel is not affected by this change.

TEMPORARY PAY ADJUSTMENTS

An appointing authority may grant a temporary pay adjustment to a non-supervisory Court Personnel System (CPS) employee temporarily assigned leadership responsibilities. Currently, that pay adjustment is set at the lowest step in the employee's current classification level that exceeds the employee's existing rate of pay by three percent. At the time this pay rate was established,

²For district and bankruptcy court clerks' offices, the weighted factors include the number of authorized judgeships (15 percent), the number of authorized staff at 100 percent of formula (10 percent), and total allotments (5 percent). For probation and pretrial services offices, the weighted factors include the number of authorized staff at 100 percent of formula (15 percent) and total allotments (15 percent).

the CPS promotion rate was a flat rate of six percent. Since that time, the CPS promotion rate has been changed to be a range from not less than one percent to not more than six percent, to be applied on a uniform, unit-wide basis. On recommendation of the Committee, the Conference agreed to amend the pay rate for CPS temporary pay adjustments from a flat rate of three percent to a range from one to three percent, to be determined by the appointing authority on a case-by-case basis as set forth below:

An appointing officer may provide a temporary pay adjustment in the full performance range to a Court Personnel System employee who is temporarily in charge of a work project with other employees. A temporary pay adjustment provides for a temporary pay increase within the employee's existing classification level at the lowest step which equals or exceeds the employee's existing rate of pay by anywhere from one to three percent, at the appointing officer's discretion. A temporary pay adjustment may not exceed 52 weeks without re-authorization.

TIME-OFF AWARDS

Time-off awards allow excused absences with pay (*Guide*, Vol. 12, Ch. 8, § 830.35(c)). Considering that the judiciary bases an intermittent employee's pay on hours actually worked with no provision for paid time off, the Committee recommended that the Judicial Conference approve a clarification to the policy for granting awards to court employees to prohibit time-off awards for intermittent employees. The Conference adopted the Committee's recommendation.

TELEWORK

In March 1999, the Judicial Conference adopted a telework policy for the courts that provided for voluntary employee participation in telework (JCUS-MAR 99, p. 28). In 2004, that policy was extended to federal public defender organizations (JCUS-SEP 04, p. 8). In order for courts and federal public defender organizations to have employees available to telework during a continuity of operations (COOP) event or similar emergency situation, on recommendation of the Committee, the Judicial Conference approved a revision to the telework policy to state that a court or federal public defender

organization, at its discretion, may require eligible employees to telework as needed during a continuity of operations event, inclement weather, or similar situation (*Guide*, Vol. 12, Ch. 10, § 1020.20(a)).

TYPE II CHIEF DEPUTY CLERK

In September 2004, the Judicial Conference authorized any unit in a district or bankruptcy court with ten or more authorized judgeships to establish a second JSP-16 Type II deputy position upon notification to the Administrative Office, to be funded with the court's decentralized funds (JCUS-SEP 04, p. 23). The District of Idaho has requested a JSP-16 Type II chief deputy clerk for its consolidated bankruptcy and district court clerk's office even though it does not qualify for one under the policy, citing special circumstances, including the broad span of operational knowledge required in a consolidated court and geographic challenges. The court requested funding, noting that as a small court it does not have the salary flexibility to pay for an additional executive salary. On recommendation of the Committee, the Judicial Conference authorized a second fully funded JSP-16 Type II chief deputy clerk position for the District of Idaho, subject to any budget-balancing reductions.

COURT INTERPRETER POSITION

Using established criteria, the Committee recommended, and the Conference approved, one additional Spanish staff court interpreter position beginning in fiscal year 2013 for the District of Arizona based on the Spanish language interpreting workload in this court. The Conference also approved accelerated funding in fiscal year 2012 for that position.

REALTIME TRANSCRIPT FEES

In March 1999, the Judicial Conference amended the maximum realtime transcript rate policy to include a requirement that a litigant who orders realtime services in the courtroom must also purchase, at the regular rates, a certified transcript (original or copy) of the same pages that were received as realtime unedited transcript (JCUS-MAR 99, p. 25). The policy was adopted to address concerns about the unprofitability of providing realtime services and about the circulation of unedited transcripts that are not backed up

by certified transcripts. At this session, the Committee noted that the requirement has resulted in an increased administrative burden to litigants and court staff, and serves as a disincentive for litigants to use realtime services. Moreover the concerns which led to development of the policy can be addressed through other means. On recommendation of the Committee, the Judicial Conference agreed to eliminate the requirement effective January 1, 2012.

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that it submitted to the Committee on the Budget a fiscal year 2013 budget request derived from existing work measurement data using alternative staffing formulas calculated at the 70 percent level, which would result in a 3.9 percent increase over the assumed 2012 funding levels. The Committee considered short-term and longer-term cost-containment ideas and provided its recommendations to the Budget Committee. The Committee supported requests from the Administrative Office's Bankruptcy and District Clerks Advisory Groups to accelerate by one year the delivery dates of the staffing formula updates for bankruptcy and district clerks' offices. Those updates will now be due to the Committee in June 2012 and June 2013, respectively.

COMMITTEE ON JUDICIAL SECURITY

COMMITTEE ACTIVITIES

The Committee on Judicial Security reported that it decided to convene a cost-containment task force comprised of members of the Committee and the U.S. Marshals Service (USMS) staff to gather data and identify cost-containment initiatives in the short, medium, and long term based on the projected budgetary shortfalls in FY 2012 and beyond. The Committee was also briefed on the status of the perimeter security pilot program at seven courthouses where the USMS has assumed responsibility for perimeter security guarding and equipment. The Committee was informed that a follow-up report on the program would be sent to Congress, and was advised that further congressional direction is required to define the future of the program.

**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, and after discussion on the Conference floor on whether to authorize three new full-time magistrate judge positions, the Judicial Conference approved the following recommendations that involved courts that had requested new magistrate judge positions. Changes with a budgetary impact are to be effective when appropriated funds are available.

THIRD CIRCUIT

District of Delaware

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

FOURTH CIRCUIT

Middle District of North Carolina

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

ELEVENTH CIRCUIT

Middle District of Florida

1. Authorized an additional full-time magistrate judge position at Orlando or Tampa; and

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

Southern District of Georgia

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

The Conference also agreed to make no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the Western District of North Carolina; Middle District of Louisiana; Eastern District of Michigan; District of Alaska; District of Idaho; and Northern District of Alabama.

ACCELERATED FUNDING

On recommendation of the Committee and after discussion on the Conference floor, the Judicial Conference agreed to designate for accelerated funding, effective April 1, 2012, the new full-time magistrate judge positions at Wilmington in the District of Delaware, Durham in the Middle District of North Carolina, and Orlando or Tampa in the Middle District of Florida.

MAGISTRATE JUDGE POSITION VACANCY

The Middle District of Louisiana requested permission to fill an upcoming magistrate judge position vacancy at Baton Rouge. Noting the decline in the court's per judgeship caseload since a third magistrate judge was appointed, the Committee recommended that the Conference not authorize the district to fill the position when it becomes vacant in May 2012. The Conference adopted the Committee's recommendation and declined to approve filling the vacancy.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Magistrate Judges System reported that it considered short-term and longer-term cost-containment ideas. In response to one short-term idea identified for its consideration, involving reducing or discontinuing staff travel to conduct magistrate judge surveys, the

Committee confirmed the value of staff visits to the courts and agreed that the benefits from visits to the courts exceed the relatively small cost. For the longer term, the Committee agreed to explore cost-containment ideas for the magistrate judge recall program and to work with other committees on various other initiatives.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

FEDERAL RULES OF BANKRUPTCY PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Bankruptcy Rules 1007 (Lists, Schedules, Statements, and Other Documents; Time Limits), 2015 (Duty to Keep Records, Make Reports, and Give Notice of Case or Change of Status), 3001 (Proof of Claim), 7054 (Judgments; Costs), and 7056 (Summary Judgment), together with committee notes explaining their purpose and intent. The Judicial Conference approved the proposed rules amendments and authorized their transmission to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

The Committee also submitted to the Judicial Conference proposed revisions to Official Forms 1 (Voluntary Petition), 9A–9I (Notices of Commencement of Case Under the Bankruptcy Code, Meeting of Creditors, and Deadlines), 10 (Proof of Claim), and 25A (Plan of Reorganization in Small Business Case Under Chapter 11) and new Official Forms 10, Attachment A (Mortgage Proof of Claim), 10, Supplement 1 (Notice of Mortgage Payment Change), and 10, Supplement 2 (Notice of Postpetition Mortgage Fees, Expenses, and Charges). The Judicial Conference approved the revised forms to take effect on December 1, 2011.

FEDERAL RULES OF CRIMINAL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Criminal Rules 5 (Initial Appearance), 15 (Depositions), and 58 (Petty Offenses and Other Misdemeanors), and proposed new Rule 37 (Indicative Ruling on a Motion for Relief That is Barred by a Pending Appeal), together with committee notes explaining their purpose and intent. The Judicial Conference approved the

proposed rules amendments and new rule and authorized their transmission to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

PROCEDURES GOVERNING THE WORK OF THE RULES COMMITTEE

On recommendation of the Committee, the Judicial Conference approved revised *Procedures for the Judicial Conference's Committee on Rules of Practice and Procedure and Its Advisory Rules Committees*. The revised procedures take into account the impact of the internet on committee functions, propose ways to make the rules process more efficient, and follow the style protocols used in drafting the rules.

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure reported that it approved publishing for public comment proposed amendments to Appellate Rules 13, 14, 24, 28, and 28.1, and Form 4; Bankruptcy Rules 1007, 3007, 5009, and 9006, and Forms 6C, 7, 22A, and 22C; Civil Rules 37 and 45; Criminal Rules 11, 12, and 34; and Evidence Rule 803. Among the proposals is an amendment to Civil Rule 45, governing both trial and discovery subpoenas, to make the rule clearer and easier to apply; and a proposed amendment to Criminal Rule 12 to address motions that must be raised before trial and the consequences of untimely motions. The proposals were published in August 2011; the comment period closes on February 15, 2012.

COMMITTEE ON SPACE AND FACILITIES

FIVE-YEAR COURTHOUSE PROJECT PLAN

The Committee on Space and Facilities recommended that the Judicial Conference approve the *Five-Year Courthouse Project Plan for Fiscal Years 2013-2017* and grant the Committee authority to remove the Los Angeles project from the *Plan* when appropriate. The Committee indicated that the Los Angeles project requires no additional funding and therefore should be removed from the *Plan* once a contract for design and construction has been awarded. The Conference approved the Committee's recommendation.

FEASIBILITY STUDY

A new courthouse project has been authorized and is underway in Salt Lake City, Utah. The Committee recommended, and the Conference approved, requesting a General Services Administration (GSA) feasibility study for the backfill of the existing Moss Courthouse in Salt Lake City, contingent upon final court approval of the District of Utah long-range facilities plan.

U.S. COURTS DESIGN GUIDE

Over the last several years, the Judicial Conference has adopted a number of policies that affect the planning and design of new courthouses and courtrooms, including asset management planning (a new long-range facilities planning methodology), the circuit rent budget (CRB) program, and courtroom sharing policies for senior and magistrate judges. These policies, as well as the new planning approach discussed immediately below, supersede a number of factors and planning assumptions in the *U. S. Courts Design Guide*. On recommendation of the Committee, the Judicial Conference agreed to update the *Design Guide* to reflect the changes made by these policies.

PLANNING THE SIZE OF NEW COURTHOUSES

On recommendation of the Committee, the Judicial Conference agreed to adopt a new approach to planning the size of new courthouses that reassesses the manner in which space is planned for projected judgeships. The approach includes the following assumptions:

New courthouse construction projects will be designed to provide space for the existing circuit, district, bankruptcy and magistrate judges (including vacant judgeship positions), and senior judges, as well as space to account for judges who will be eligible for senior status within the 10-year planning period for the project consistent with Judicial Conference policy and congressional direction.

Space for Judicial Conference-approved judgeships not yet created by Congress will be taken into consideration at the design concept phase in that the architects will show how space for these judgeships could fit into the design. Architects will not, however, complete a detailed design that includes space for these judgeships because they have not yet been created by Congress. Should the positions be created by Congress during the design phase, the design documents would be amended to include the new positions and space would be constructed for them.

Space for judgeships that the judiciary projects will be needed, but that have not yet been recommended to the Judicial Conference for approval, will be considered by GSA as part of future expansion plans for the building. Space will not be designed for these projected positions.

COMMITTEE ACTIVITIES

The Committee on Space and Facilities reported that with regard to the circuit rent budget program, it approved 17 Component B requests, and that due to the delay in the approval of a fiscal year 2011 budget, circuits will be allowed to extend the availability of fiscal year 2011 Component C funding through FY 2013 on a one-time basis. The Committee discussed potential short- and long-term cost-containment initiatives involving the space and facilities program, and determined to gather the data necessary to quantify the cost savings and determine the operational impact of the proposed initiatives. In addition, the Committee was updated on the efforts underway to develop an implementation strategy for the Capital Security Program, should that program be funded by Congress in FY 2012 or in subsequent years. The program is intended to assist courts at locations that have security deficiencies, but that may not qualify for a new building.

FUNDING

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

Chief Justice of the United States
Presiding