

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

**September 18, 2007**

The Judicial Conference of the United States convened in Washington, D.C., on September 18, 2007, 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 Ernest C. Torres,  
District of Rhode Island

Second Circuit:

Chief Judge Dennis Jacobs  
Chief Judge Kimba M. Wood,  
Southern District of New York

Third Circuit:

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

Fourth Circuit:

Chief Judge Karen J. Williams  
Judge David C. Norton,  
District of South Carolina

Fifth Circuit:

Chief Judge Edith Hollan Jones  
Judge Glen H. Davidson,  
Northern District of Mississippi

Sixth Circuit:

Chief Judge Danny J. Boggs  
Judge Charles R. Simpson III,  
Western District of Kentucky

Seventh Circuit:

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

Eighth Circuit:

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

Ninth Circuit:

Chief Judge Mary M. Schroeder  
Judge Charles R. Breyer,  
Northern District of California

Tenth Circuit:

Chief Judge Deanell Reece Tacha  
Judge Alan B. Johnson,  
District of Wyoming

Eleventh Circuit:

Chief Judge J. L. Edmondson  
Chief Judge Robert L. Hinkle,  
Northern District of Florida

District of Columbia Circuit:

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

Federal Circuit:

Chief Judge Paul R. Michel

Court of International Trade:

Chief Judge Jane A. Restani

The following Judicial Conference committee chairs and incoming committee chairs attended the Conference session: Circuit Judges Julia Smith Gibbons, Roger L. Gregory, Robert H. Henry, David Bryan Sentelle, Carl E. Stewart, Richard C. Tallman, and Ralph K. Winter, Jr., and District Judges Joseph F. Bataillon, Paul G. Cassell, Dennis M. Cavanaugh, W. Royal Furgeson, Jr., John Gleeson, D. Brock Hornby, Mark R. Kravitz, Barbara M.G. Lynn, Howard D. McKibben, Gordon J. Quist, Lee H. Rosenthal, George Z. Singal, Ortrie D. Smith, John R. Tunheim, Thomas I. Vanaskie, and Thomas S. Zilly. Bankruptcy Judge A. Thomas Small and Magistrate Judge John M. Roper, Sr., were also in attendance. Gregory A. Nussel of the Fifth 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 Jeffrey A. Hennemuth and Wendy Jennis, Deputy Assistant Directors, Judicial Conference Executive Secretariat; Cordia A. Strom, Assistant Director, Legislative Affairs; and David A. Sellers, Assistant Director, Public Affairs. District Judge Barbara Jacobs Rothstein and John S. Cooke, Director and Deputy Director of the Federal Judicial Center, and District Judge Ricardo H. Hinojosa and Judith W. Sheon, Chair and Staff Director of the United States Sentencing Commission, were in attendance at the session of the Conference, as was Jeffrey P. Minear, Administrative Assistant to the Chief Justice. Scott Harris, Supreme Court Counsel, and the 2007-2008 Supreme Court Fellows also observed the Conference proceedings.

Acting Attorney General Peter D. Keisler and Solicitor General Paul D. Clement addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice. Senators Patrick J. Leahy and Jeff Sessions and Representative John Conyers, Jr., spoke on matters pending in Congress of interest to the Conference.

## **REPORTS**

Mr. Duff reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office (AO). Judge Rothstein spoke to the Conference about Federal Judicial Center (FJC) programs, and Judge Hinojosa reported on Sentencing Commission activities. Judge Hornby, Chair of the Committee on the Judicial Branch, presented a report on the judicial salary restoration initiative, and Chief Judge Bataillon, Chair of the Committee on Space and Facilities, reported on the Los Angeles courthouse construction project.

## **ELECTION**

The Judicial Conference elected to membership on the Board of the Federal Judicial Center Judge William B. Traxler, Jr., of the Court of Appeals for the Fourth Circuit, to fill the unexpired term of Chief Judge Karen J. Williams of the same court.

## **EXECUTIVE COMMITTEE**

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### **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 2007:

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

**HONORABLE MARJORIE O. RENDELL**

Committee on the Administration of the Bankruptcy System

**HONORABLE HOWARD D. McKIBBEN**

Committee on Federal-State Jurisdiction

**HONORABLE W. ROYAL FURGESON, JR.**

Committee on Judicial Resources

**HONORABLE DAVID F. LEVI**  
Committee on Rules of Practice and Procedure

**HONORABLE THOMAS S. ZILLY**  
Advisory Committee on Bankruptcy Rules

**HONORABLE LEE H. ROSENTHAL**  
Advisory Committee on Civil Rules

**HONORABLE SUSAN C. BUCKLEW**  
Advisory Committee on Criminal Rules

**HONORABLE JERRY E. SMITH**  
Advisory Committee on Evidence 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.

Memorial Resolution. The Judicial Conference approved a recommendation of the Executive Committee to adopt the following resolution in memory of Karen Siegel, former Administrative Office Assistant Director for the Office of Judicial Conference Executive Secretariat.

The Judicial Conference of the United States notes with sadness the death of Karen K. Siegel on June 5, 2007, in North Bethesda, Maryland. At the time of her retirement in January 2005, Karen was serving at the Administrative Office as Assistant Director for the Office of Judicial Conference Executive Secretariat.

The Judicial Conference secretariat was created in 1987 to help implement the Conference's restructuring and committee reorganization, and Karen was selected to head the new office.

With a relatively new Chief Justice and AO Director, this was a period of transition for the Conference that required a fresh look at how the AO would provide staff support to the Conference and its committees. Karen developed a system of internal AO coordination and review to ensure that Conference sessions would run smoothly and committee staff support would be of the highest caliber. Through her leadership, commitment to the institution, unfailing energy, and hard work, this system – which she honed regularly as Conference procedures became increasingly complex – has been an unqualified success. Each Judicial Conference session reflected the exceptional level of care and concern with which Karen attended to its details.

As part of her responsibilities, Karen served as principal staff and counsel to the Executive Committee of the Judicial Conference. Members of that committee relied on her extraordinary intelligence, excellent judgment, and depth of institutional knowledge, and saw her contributions to their work as invaluable. Respect for her keen insight and intuition extended beyond the members of that committee, and her counsel was sought frequently by judges, including many Conference members and committee chairs, and others in the judicial system. But it was Karen’s personal warmth, spirit, and lack of pretense that turned these working relationships into enduring friendships.

Members of the Judicial Conference will miss this friend and advisor. As a sign of its admiration, affection, and respect, the Judicial Conference conveys its heartfelt sympathies to Karen’s family – her husband, Mark, and daughters, Andrea and Joanna.

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## **MISCELLANEOUS ACTIONS**

The Executive Committee also—

- Approved, on behalf of the Judicial Conference and on recommendation of the Committee on Court Administration and Case Management and the Committee on Information Technology, an annual report on deferred court compliance with section 205 of the

E-Government Act of 2002, Public Law No. 107-347, and authorized its transmittal to Congress;

- Approved, on behalf of the Judicial Conference, a recommendation to the President of the United States that District Judge Ricardo H. Hinojosa (S.D. Tex.) be reappointed as Chair of the United States Sentencing Commission for a six-year term;
- Agreed, on behalf of the Conference and on recommendation of the Court Administration and Case Management Committee, to oppose a Government Accountability Office proposal that would require the judiciary to provide to the Department of Health and Human Services certain personal information of individual bankruptcy filers, on the ground that providing such information would be inconsistent with the judiciary's role as an objective adjudicator of creditors' claims and because the information could be obtained from another executive branch agency, the Executive Office for U.S. Trustees, in the Department of Justice;
- Agreed, on behalf of the Conference and on recommendation of the Committee on Judicial Resources, that Congress should be asked not to include the judicial branch in pending legislation (the Telework Enhancement Act of 2007, S. 1000, 110<sup>th</sup> Congress) that would redefine telework as it applies to federal employees and would change eligibility and other requirements of the national telework program, and that the Conference's statement to Congress should emphasize the judiciary's support for the program and offer continued assessments and reports on the judiciary's current telework program;
- Acted on behalf of the Judicial Conference and on recommendation of the Committee on Space and Facilities to approve, under the budget check process (JCUS-SEP 04, pp. 35-36; JCUS-MAR 06, p. 27), requests for court space in Rochester, New York; Syracuse, New York; and Terre Haute, Indiana, with the understanding that the respective projects will fit within the Conference's 4.9 percent annual rent budget cap;
- Approved, on behalf of the Conference and on recommendation of the Committee on Space and Facilities, the request of the Eleventh Circuit Judicial Council to close the non-resident facility at Thomasville in the Middle District of Georgia;

- Pending final congressional action on the judiciary's appropriations for fiscal year 2008, approved interim financial plans for fiscal year 2008 for the Salaries and Expenses, Defender Services, Fees of Jurors and Commissioners, and Court Security accounts, and endorsed a strategy for distributing court allotments among the court programs;
- Agreed to encourage openness among Conference committees and urge committees to share their agenda materials with other committees, upon request or in areas of mutual interest, except where confidentiality is required;
- Asked the Committee on the Judicial Branch to develop a simplified set of reporting requirements with respect to judges' non-case related travel, referred to the Committee on Judicial Resources a proposal to revisit the September 2005 Judicial Conference policy limiting court executive salaries to the salary paid to district judges (*see* JCUS-SEP 05, p. 29), and asked the Committee on Defender Services to consider whether it would be appropriate to develop nationwide standards or guidelines for payments under the Criminal Justice Act for expert services in capital cases; and
- Approved technical revisions to *The Judicial Conference of the United States and its Committees*, a document codifying Conference and committee practices and procedures.

## COMMITTEE ON THE ADMINISTRATIVE OFFICE

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### COMMITTEE ACTIVITIES

The Committee on the Administrative Office reported that it reviewed actions taken to strengthen judicial compliance with ethical obligations, and firmly reiterated its position that the judiciary's strong oversight systems obviate the need for an inspector general. The AO Director discussed with the Committee the important role it plays in overseeing the judiciary's audit, review, and investigative assistance functions. In addition, the Committee was briefed on significant issues and initiatives in the facilities and security programs. After reviewing nominations submitted by judges, court managers, and AO managers, the Committee selected two AO employees to receive the Leonidas Ralph Mecham Award for Exemplary Service to the Courts.



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

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### **MEGA CASE CLAIMS PROCEDURES**

Section 156(c) of title 28, United States Code, permits a court to utilize facilities or services, either on or off the court's premises, to provide notices, dockets, calendars, and other administrative information to parties in bankruptcy cases, as long as the costs of the facilities and services are borne by the estate. Questions have been raised about whether claims must be filed with the clerk of court pursuant to Bankruptcy Rule 5005(a)(1) before being transmitted to the third-party processor. Noting that such an interpretation would prevent full effectuation of the statutory authority granted in 28 U.S.C. § 156(c), the Committee on the Administration of the Bankruptcy System recommended that the Judicial Conference amend its guidelines<sup>1</sup> to clarify that claims in bankruptcy mega cases may be filed directly with a third party processor employed at the expense of the estate. The Conference adopted the Committee's recommendation.

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### **COMMITTEE ACTIVITIES**

The Bankruptcy Committee reported that it endorsed tools recommended by the AO Director's bankruptcy staffing working group that may assist clerks in adjusting staffing levels as necessary in the aftermath of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, and it reemphasized support for maintaining the bankruptcy clerks' staffing structure. In addition, the Committee expressed support for the rapid development and deployment of a new bankruptcy administrator automated case management system (BACMS) and approved a recommendation that the AO Director exercise his delegated authority (JCUS-MAR 06, p. 9) to revise the judiciary's guidelines for consumer credit counseling applications to permit bankruptcy administrators to require applicants to waive confidentiality of any proceeding before the Internal Revenue Service concerning their tax-exempt status.

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<sup>1</sup>The relevant provisions, entitled "Guidelines on Use of Outside Facilities and Services," can be found in the *Guide to Judiciary Policies and Procedures*, vol. 5, ch. 19, at ex. 1. They were adopted by the Conference in March 1989 (JCUS-MAR 89, p. 9).

## **COMMITTEE ON THE BUDGET**

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### **FISCAL YEAR 2009 BUDGET REQUEST**

After careful consideration of the funding levels proposed by the program committees and the continuing constrained budget environment, the Budget Committee recommended to the Judicial Conference a fiscal year 2009 budget request to Congress that is 6.2 percent above assumed appropriations for fiscal year 2008. The Conference approved the budget request subject to amendments necessary as a result of (a) new legislation, (b) actions of the Judicial Conference, or (c) any other reason the Executive Committee considers necessary and appropriate.

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### **BUDGET CAPS**

In an effort to contain costs, over the last two years the Judicial Conference has approved budget caps on annual growth in space rental costs (JCUS-SEP 06, p. 10) and on overall annual growth in the Salaries and Expenses account (JCUS-MAR 07, p. 10). At this session, on recommendation of the Budget Committee, the Conference continued this effort. For fiscal years 2010 through 2017, it set a cap on defender services requirements, excluding panel attorney rate increases above annual inflation, at an average annual growth rate of 7.5 percent, to bring the defender services requirements from approximately \$780 million in fiscal year 2007 to \$1.6 billion in fiscal year 2017. Also for fiscal years 2010-2017, it set a cap on court security requirements at an average annual growth rate of 6.6 percent.

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### **COMMITTEE ACTIVITIES**

The Committee on the Budget reported that it approved a resolution commending the program committees for their work on cost containment. In addition, the Committee approved updates to non-salary funding formulas for the courts. The Budget Committee was briefed by Chief Judge Joseph Bataillon, Chair of the Space and Facilities Committee, on the Los Angeles courthouse project.

## **COMMITTEE ON CODES OF CONDUCT**

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### **CERTIFICATE OF DIVESTITURE REGULATIONS**

The Tax Relief and Health Care Act of 2006, Public Law No. 109-42, permits judges (and certain of their relatives and trustees) who divest property in order to comply with conflict of interest requirements to elect to postpone the tax recognition of resulting capital gains by investing in qualified replacement property within a 60-day period. To qualify for the tax deferral, judges must first obtain a certificate of divestiture from the Judicial Conference or its designee. In December 2006, the Executive Committee, on behalf of the Conference, designated the Supreme Court to issue certificates for the Chief Justice and associate justices and the Codes of Conduct Committee to issue certificates for all other covered judges (JCUS-MAR 07, p. 6). At this session, on recommendation of the Committee on Codes of Conduct, the Judicial Conference approved regulations establishing procedures for the issuance of certificates of divestitures. These regulations are based in large part on regulations developed by the Office of Government Ethics for the executive branch.

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### **COMMITTEE ACTIVITIES**

The Committee on Codes of Conduct reported that since its last report to the Judicial Conference in September 2006, the Committee received 37 new written inquiries and issued 36 written advisory responses. During this period, the average response time for requests was 19 days. In addition, the Committee chair received and responded to 44 informal inquiries from colleagues, and individual Committee members responded to 204 such inquiries.

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

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### **ELECTRONIC TRANSCRIPTS**

In September 2003, the Judicial Conference adopted a policy requiring courts that make electronic documents remotely available to the public also to make prepared electronic transcripts of court proceedings available remotely (JCUS-SEP 03, pp. 16-17). In September 2005, after studying the potential

impact of the policy on court reporter compensation, the Conference adopted an implementation plan that, upon passage of authorizing legislation, would have raised the Public Access to Court Electronic Records (PACER) fee for access to transcripts and allocated a portion of that fee to court reporters who create the transcripts (JCUS-SEP 05, pp. 15-16). At this session, noting that the legislation needed to effectuate the plan has yet to be enacted, thereby thwarting implementation of the program, the Committee on Court Administration and Case Management, in consultation with the Committees on Judicial Resources, Information Technology, and Defender Services, and with input from several Administrative Office advisory groups, recommended that the Conference approve a new implementation plan as follows:

- a. A transcript provided to a court by a court reporter or transcriber will be available at the office of the clerk of court for inspection only, for a period of 90 days after it is delivered to the clerk;
- b. During the 90-day period, a copy of the transcript may be obtained from the court reporter or transcriber at the rate established by the Judicial Conference, the transcript will be available within the court for internal use, and an attorney who obtains the transcript from the court reporter or transcriber may obtain remote electronic access to the transcript through the court's CM/ECF system for purposes of creating hyperlinks to the transcript in court filings and for other purposes; and
- c. After the 90-day period has ended, the filed transcript will be available for inspection and copying in the clerk's office and for download from the court's CM/ECF system through the judiciary's PACER system.

The Conference approved the plan as well as the Committee's recommendation that the Conference (a) delegate to the Committee the authority to revise existing Conference policies to conform with this policy and (b) direct the Administrative Office to issue guidance to the courts on implementation of the policy.

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## **PACER**

The Federal Depository Library program, administered by the Government Printing Office (GPO), provides free public access to government information at over 1000 designated federal depository libraries located throughout the United States and its territories. In response to a request from the GPO, the Committee recommended that the Conference

approve the establishment of a joint pilot project between the GPO and the AO, for a period not to exceed two years, that would provide free public access to court records through the PACER system at approximately 15 depository libraries and allow an opportunity to assess the impact of this access on PACER revenues. The Committee noted that providing such availability is consistent with the mission of the judiciary's Electronic Public Access (EPA) program to facilitate electronic public access to documents at a reasonable cost. The Conference adopted the Committee's recommendation.

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### **ELECTRONIC PUBLIC ACCESS FEE EXEMPTION**

On recommendation of the Committee, the Conference agreed to amend the Electronic Public Access Fee Schedule to include court-appointed *pro bono* attorneys among those individuals who may, upon a showing of cause, be exempted from EPA fees when acting in the matter to which they have been appointed. Since a court-appointed *pro bono* attorney is usually provided with a free copy of the case file through the mail, which requires the clerk's office to download, sort, and package the materials, granting the attorneys PACER access to the case file could result in a cost savings to the judiciary.

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### **JURY ADMINISTRATION**

Jury Service. The Judicial Conference adopted a Court Administration and Case Management Committee recommendation to encourage district courts to examine how jurors are summoned in their districts and to consider adopting changes, if local circumstances permit, regarding how long jurors are on call and/or how frequently jurors are required to serve, so as to make service on juries less burdensome.

Employer Retaliation. To emphasize the serious nature of jury service, the Committee recommended that the Judicial Conference seek an amendment to 28 U.S.C. § 1875(b)(3) to increase from \$1,000 to \$5,000 the maximum amount of the civil penalty that may be imposed on employers who retaliate against employees for performing jury duty, and to include an option for community service. The Conference adopted the Committee's recommendation.

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## **PLACES OF HOLDING COURT**

At the request of the District of Minnesota and the Eighth Circuit Judicial Council, and on recommendation of the Committee, the Judicial Conference agreed to seek legislation to amend 28 U.S.C. § 103(6) to add Bemidji as a place of holding court in the Sixth Division of the District of Minnesota.

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## **COMMITTEE ACTIVITIES**

The Committee on Court Administration and Case Management reported that it considered the impact the E-Government Act of 2002 and pending federal rules relating to privacy protections for electronic case files will have on existing Conference policy. In addition, the Committee is seeking the views of interested groups, including courts, media, law enforcement, and prosecution and defense attorneys, on whether restrictions should be placed on the electronic availability of plea agreements through the PACER system. The Committee also recommended a proposed budget for law books and computer assisted legal research for fiscal year 2009, and had an extensive discussion relating to the congressionally mandated courtroom usage study, which is being conducted by the Federal Judicial Center at the request of this Committee.

## **COMMITTEE ON CRIMINAL LAW**

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### **COMMITTEE ACTIVITIES**

The Committee on Criminal Law reported that, building upon earlier discussions, it viewed a demonstration of an automated statement of reasons prototype, developed by the Eastern District of North Carolina. The Committee also discussed ways to draw upon empirical research and cost-benefit analyses in preparing the Committee's budget request and in making programmatic resource decisions. Finally, the Committee began consideration of possible modifications to the search and seizure guidelines for probation officers promulgated by the Judicial Conference in 1993 (JCUS-MAR 93, p. 13), based on preliminary recommendations of the Search and Seizure Working Group, a group comprised of chief and deputy chief probation and pretrial services officers.

## COMMITTEE ON DEFENDER SERVICES

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### DEATH PENALTY AUTHORIZATION

In order to reduce unnecessary costs associated with death-eligible cases in which the Department of Justice ultimately recommends that the death penalty not be sought, the Committee recommended that the Judicial Conference amend chapter VI of the Guidelines for the Administration of the Criminal Justice Act and Related Statutes, vol. 7, *Guide to Judiciary Policies and Procedures*, to add a guideline encouraging district courts to set deadlines for stages of the death penalty authorization process. The proposed guideline was developed in consultation with the Department of Justice. The Conference approved the recommendation.

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### COMMITTEE ACTIVITIES

The Committee on Defender Services reported that it considered a Budget Committee proposal for establishing a specific cap on growth of the Defender Services appropriation (*see supra*, “Budget Caps,” p. 10). In addition, the Defender Services Committee supported two proposals from the Committee on Judicial Resources: a 10-percent increase in transcript rates and a new intermediate rate for 14-day delivery of transcripts (*see infra*, “Transcript Rates,” pp. 23-24). The Defender Services Committee also endorsed a policy that personnel benefits for community defender organization (CDO) employees should be comparable to those provided to federal public defender organization (FPDO) employees, and that requires CDOs to conform their leave, holiday, and work week policies to those applicable to FPDOs. The Committee also approved federal defender organization budgets and grants under its delegated authority from the Judicial Conference (JCUS-MAR 89, pp. 16-17).

## COMMITTEE ON FEDERAL-STATE JURISDICTION

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### JURISDICTIONAL IMPROVEMENTS PROJECT

The Committee on Federal-State Jurisdiction recommended that the Judicial Conference seek legislation to correct two anomalies in the jurisdictional statutes as part of the Committee’s continuing jurisdictional improvements project.

Derivative Removal Jurisdiction. In 1986, Congress amended 28 U.S.C. § 1441 to provide that a state court’s lack of jurisdiction does not bar the removal of any civil action otherwise within the jurisdiction of the federal district courts. When the provision was subsequently renumbered in 2002, the phrase “under this section” was added, suggesting that removal under other statutes might be barred if the state court lacked jurisdiction. Believing that this substantive change was an unintended consequence of a minor language change, the Committee recommended that the Conference seek legislation to clarify that a state court’s lack of jurisdiction does not bar the removal of any civil action otherwise within the jurisdiction of the federal district courts, whether removal is sought under 28 U.S.C. § 1441 or any other federal statute. The Conference adopted the Committee’s recommendation.

Class Action Fairness Act of 2005. Similarly, in order to correct what it believed was a drafting error in the Class Action Fairness Act of 2005, the Committee recommended that 28 U.S.C. § 1453(c) be amended to clarify that the time for the filing of an appeal from an order remanding a class action to state court under the Act is “not more than” (rather than “not less than”) seven days after the remand order is entered. The Conference agreed to seek legislation to accomplish this end.

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## COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported that it reviewed several proposed legislative provisions, including a provision related to venue in patent cases to address perceived problems of forum shopping, a provision addressing jurisdiction over interlocutory appeals of district court determinations regarding the construction of claims in infringement actions, and judicial review provisions included in pending immigration reform legislation. In addition the Committee discussed and, based on existing Conference positions, determined to express opposition to, provisions included in whistleblower legislation that would eliminate the exclusive jurisdiction of the United States Court of Appeals for the Federal Circuit over review of final decisions of the Merit Systems Protection Board involving whistleblower claims under 5 U.S.C. § 7703(b). The Committee also received a report on the priorities of the state courts and was briefed on preliminary findings of the capital habeas corpus study being undertaken by the Administrative Office and the Federal Judicial Center.



## COMMITTEE ON FINANCIAL DISCLOSURE

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### REDACTION REGULATIONS

The Judicial Disclosure Responsibility Act, Public Law No. 110-24, enacted in May 2007, reinstated through December 31, 2009, the Judicial Conference's authority to redact personal and sensitive information from financial disclosure reports. It also expanded the number of items the judiciary is required to report annually to Congress regarding the use of this redaction authority, and explicitly provided the same redaction protection to a filer's family as was heretofore provided to the filer. On recommendation of the Committee, the Judicial Conference adopted conforming amendments to the Regulations of the Judicial Conference of the United States on Access to Financial Disclosure Reports Filed by Judges and Judiciary Employees Under the Ethics in Government Act of 1978, as Amended. The Conference also removed a provision from the regulations referring to a redaction review panel whose term had expired and has not been renewed.

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### COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported on its efforts to secure legislation restoring the judiciary's redaction authority (*see* above) and addressing the legitimate security concerns of the judiciary regarding the public dissemination of personal information. The Committee concluded an Executive Committee-requested review of overlapping judicial branch reporting requirements relating to judicial attendance at expense-paid private seminars and published a comparative analysis chart outlining those requirements. As of July 6, 2007, the Committee had received 3,950 financial disclosure reports and certifications for calendar year 2006, including 1,271 reports and certifications from Supreme Court justices, Article III judges, and judicial officers of special courts; 349 reports from bankruptcy judges; 528 reports from magistrate judges; and 1,802 reports from judicial employees.

## COMMITTEE ON INFORMATION TECHNOLOGY

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### ***LONG RANGE PLAN FOR INFORMATION TECHNOLOGY IN THE FEDERAL JUDICIARY***

Pursuant to 28 U.S.C. § 612 and on recommendation of the Committee on Information Technology, the Judicial Conference approved the fiscal year 2008 update to the *Long Range Plan for Information Technology in the Federal Judiciary*. Funds for the judiciary's information technology program will be spent in accordance with this plan.

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### **COMMITTEE ACTIVITIES**

The Committee on Information Technology reported that it endorsed a collaboration between the Federal Judicial Center and the Administrative Office to provide and support a network of local information technology trainers. With respect to implementation of the Report on Network Privacy and Security (JCUS-SEP 05, p. 27), the Committee endorsed a policy to ensure the security of the judiciary's Data Communications Network when wireless technologies are being used and a policy for handling security incidents. The Committee also endorsed, for public comment, a draft network management policy that would enable cost-effective use of the judiciary's networks while ensuring privacy and security of court information. The Committee reviewed fiscal year 2008 and 2009 resource requirements for the Judiciary Information Technology Fund and urged that the flexibility inherent in the fund be employed so that unobligated funds in the current and following fiscal years are used to finance a portion of any future unfunded requirements.

## COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

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### **COMMITTEE ACTIVITIES**

The Committee on Intercircuit Assignments reported that 90 intercircuit assignments were undertaken by 66 Article III judges (including a retired associate justice) from January 1, 2007 to June 30, 2007. The Committee disseminated information about intercircuit assignments to increase awareness and facilitate the use of visiting judges and aided courts requesting assistance by identifying and obtaining judges willing to take assignments.

## COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

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### COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported on its involvement in rule of law and judicial reform activities throughout the world, highlighting those in Africa, Asia and the Pacific Basin, Central Asia, Eastern Europe, Latin America, the Middle East, and the Russian Federation. A representative from the State Department's Bureau of Democracy, Human Rights and Labor reported to the Committee about the progress of the National Strategic Dialogue in Saudi Arabia in which an Article III judge is participating. The Committee also received a report from an American Bar Association representative about the World Justice Project initiative to create a multi-national movement "mainstreaming" the rule of law into the operation, development, and planning of other disciplines.

## COMMITTEE ON THE JUDICIAL BRANCH

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### JUDGES' TRAVEL

Reconciliation of Travel Advances. On recommendation of the Committee on the Judicial Branch, the Judicial Conference approved an amendment to section C.2. of the Travel Regulations for United States Justices and Judges, *Guide to Judiciary Policies and Procedures*, vol. 3, ch. C-5, ex. A, to include an express requirement that a judge repay the portion of a travel advance that is in excess of the judge's substantiated expenses. Although such repayments are presumably made as a matter of course, an explicit provision in an employer's travel expense reimbursement plan is required to comply with income tax laws.

Technical Corrections. The Judicial Conference also adopted, on recommendation of the Committee, two technical corrections to the judges' travel regulations. Section E.3.d. of the regulations was amended to replace an inadvertent reference to the General Services Administration (GSA) locality per diem and meals and incidental expenses (M&IE) rates with the correct reference to the Judicial Conference's flat rate M&IE allowance. In addition, section F of the regulations was amended to delete an anachronistic requirement for judges to submit duplicate copies of their completed travel vouchers.

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## **MENTAL HEALTH PROFESSIONALS**

In its September 2006 report, the Judicial Conduct and Disability Act Study Committee (Breyer Committee), established by Chief Justice William H. Rehnquist to study the implementation of the Judicial Conduct and Disability Act of 1980, recommended the establishment of a program to make mental health professionals available to assist with problems of judicial conduct or disability. The Judicial Conference, on recommendation of the Committee on the Judicial Branch, responded by asking the Director of the Administrative Office to work cooperatively with circuit judicial councils to make such professional assistance available (1) to chief judges nationally, regionally, locally or using already existing state or federal programs, when these chief judges confront problematic behavior among colleagues, and (2) to judges who may become disabled or have other problems affecting their work.

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## **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 inform the political branches, legal associations, and other diverse outside organizations on the impact the declining value of judges' pay is having on judicial independence, as well as on the morale and retention of judicial officers. The Committee resolved to continue working closely with the First Amendment Center on planning and conducting regional programs for judges and journalists. In addition, the Committee continues to monitor the implementation of the Judicial Conference policy on privately funded seminars.

## **COMMITTEE ON JUDICIAL CONDUCT AND DISABILITY**

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### **JUDICIAL CONDUCT AND DISABILITY ACT STUDY**

Following the issuance of the Breyer Committee's report discussed above, the Executive Committee asked the Judicial Conduct and Disability Committee to review and make recommendations to the Conference regarding implementation of the recommendations in that report (JCUS-MAR 07, p. 7). At this session, the Judicial Conduct and Disability Committee recommended that the Judicial Conference direct the circuit judicial councils to take

whatever action is necessary and appropriate, and to order the courts within their circuits as needed, to implement the following Breyer Committee recommendations:

- a. Recommendation 5: The judicial councils should ask courts in the circuits to encourage the creation of committees of local lawyers whose senior members can serve as intermediaries between individual lawyers and the formal complaint process.
- b. Recommendation 6: Judicial councils should require all courts covered by the Act to provide information about filing a complaint on the homepage of the court website and take other steps to publicize the Act.
- c. Recommendation 7: Circuit councils, through their circuit executives or the clerks of court, should take steps to ensure the submission of timely and accurate information about complaint filings and terminations.

The Conference adopted the Committee's recommendation.

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## **COMMITTEE ACTIVITIES**

The Committee on Judicial Conduct and Disability reported that it has two petitions for review under advisement concerning circuit council conduct and disability proceedings. In addition, the Committee released for public comment a draft set of Rules Governing Judicial Conduct and Disability Proceedings.

## **COMMITTEE ON JUDICIAL RESOURCES**

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### **SAVED GRADE AND SAVED PAY PLAN**

The Saved Grade and Saved Pay Plan was designed to offer salary and grade protection to employees who are downgraded through no fault of their own. In 2004, the plan was eliminated, prospectively, in the course of formulating a short- and long-term cost-containment strategy for the judiciary and the fiscal year 2006 budget request (JCUS-SEP 04, pp. 6-7, 10). At this session, the Conference adopted a recommendation of the Committee on

Judicial Resources to reinstate the saved pay provisions of the plan to provide courts and federal public defender organizations flexibility to restructure, as necessary, to become more efficient and effective without negatively affecting the salaries of their employees.

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## **BONUSES**

Staffing Bonus. On recommendation of the Committee, the Judicial Conference approved a centrally funded staffing bonus of up to 15 percent of basic pay (which includes base pay and locality pay), not to exceed \$10,000, for employees in courts staffed over a target level who relocate to take positions in courts in a different commuting area that are staffed under the target level. Similar to a bonus program in effect during the period of downsizing in the courts in fiscal years 1994 and 1995 (JCUS-MAR 94, p. 4; JCUS-SEP 94, p. 60), such bonuses are intended to minimize the impact of possible staff reductions on court operations and staff.

Recruitment, Retention and Relocation Bonuses. The recruitment and retention bonus program approved by the Judicial Conference in 2001 applies only to key Court Personnel System (CPS) information technology positions in the courts (JCUS-MAR 01, p. 26). At this session, on recommendation of the Committee, the Conference agreed to extend the program to hard-to-fill CPS positions generally, to be paid for with decentralized funds. In addition, the Committee recommended, and the Conference approved, establishing relocation bonuses for hard-to-fill CPS positions, also using decentralized funds.

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## **BACKGROUND CHECKS AND INVESTIGATIONS**

Federal Public Defenders. The September 2002 Judicial Conference policy on background checks and investigations for courts and federal public defender organizations (FPDOs) requires that federal public defender background investigations, conducted both prior to appointment and as part of five-year reinvestigations, be performed by the Office of Personnel Management (OPM) (JCUS-SEP 02, pp. 52-53). Noting that, unlike other court and FPDO personnel, federal public defenders are not provisionally appointed pending completion of background investigations, and that the time OPM was taking to complete the pre-appointment investigations caused hardship both to the individuals being investigated and to the FPDOs, the Judicial Resources Committee, at the request of the Defender Services

Committee, recommended that the Conference modify the policy to authorize the Federal Bureau of Investigation (or another suitable vendor) to conduct initial background investigations for new federal public defender selectees. The Conference approved the Committee's recommendation.

Contractors. The General Services Administration requires that all contractors performing cyclical facilities maintenance and moving services in court facilities either have a background check or be escorted by a court employee. Previously, GSA had arranged to have a National Agency Check and Inquiries (NACI) background check conducted for each such contractor hired by the courts. Since GSA no longer arranges for these checks, and these contractors are not covered by the Conference's September 2002 policy on background checks and investigations, on recommendation of the Committee, the Conference agreed to modify the policy to authorize background checks for contractors who perform cyclical facilities maintenance and moving services, and to permit the NACI to be used as the background check for these contractors.

Selection of Vendors. The Committee recommended that the Conference delegate to the Administrative Office the authority to select the most appropriate vendor(s) to conduct background checks and investigations in the future. This would allow the AO the flexibility to select the vendor who can provide the best level of services for courts and federal public defender organizations. The Conference adopted the Committee's recommendation.

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## **TRANSCRIPT RATES**

Rate Increase. Federal official court reporter compensation derives from both a base salary and the income generated by sale of original transcripts and copies. In order to ensure that court reporter income keeps pace with inflation, the Committee recommended, and the Conference approved, an increase of 10 percent to original and copy transcript fee rates to be effective in fiscal year 2008, subject to the availability of funding.

New 14-Day Delivery Rate. Because of the wide gap between ordinary (30-day) and expedited (7-day) transcript delivery times, the Committee recommended that the Conference adopt an additional category for the delivery of transcripts within 14 days, with the rate set at the mid-point between the rates authorized for expedited and ordinary delivery. The

Conference adopted the Committee's recommendation, to be effective in fiscal year 2008.

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## **COURT INTERPRETERS**

Based on established criteria, the Committee recommended, and the Conference approved, two additional Spanish staff court interpreter positions for the Southern District of California and one additional Spanish staff court interpreter position for the District of New Mexico for fiscal year 2009. Accelerated funding in fiscal year 2008 was authorized for the additional Spanish staff court interpreter position for the District of New Mexico. Also on recommendation of the Committee, the Conference declined to authorize one Spanish staff court interpreter position for the Southern District of Iowa.

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## **COURT COMPENSATION**

As part of the judiciary's long-term cost-containment strategy approved by the Judicial Conference in September 2004, the Judicial Resources Committee conducted a study to explore reasonable opportunities to limit future compensation growth in the federal courts. The study covered biweekly-paid employees in the Judiciary Salary Plan (JSP) and the Court Personnel System.<sup>2</sup> In an effort to ensure full transparency, during the conduct of the study the Committee obtained extensive input from judges and court personnel, and the proposed recommendations were twice posted for comment from the courts before they were finalized. The Committee noted that in making its recommendations set forth below, it considered over two thousand comments and made every effort to balance the need to contain future salary costs with the need to attract and maintain a highly qualified work force.

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<sup>2</sup> The Committee also looked at the court reporter pay system, but because that system has a unique compensation structure that includes both salary and transcript income, the Committee decided not to review it at this time. A later study is contemplated. In addition, the Committee on Defender Services is conducting a separate study of compensation in defender offices.



Court Personnel System Benchmarks. The Committee recommended replacing existing CPS benchmarks<sup>3</sup> with new benchmarks that more accurately reflect the current job duties and responsibilities performed in the courts. The Committee noted that accurate benchmarks are critical to an equitable, prudent, and competitive compensation structure. The proposed benchmarks were developed through extensive surveys, focus groups, and discussions that included peer groups of employees, court managers, and judges and were vetted throughout the judiciary. The Conference adopted the Committee's recommendation.

CPS Salary Progression Policy and Funding/National Performance Guidelines. When allocating decentralized funds to court units, a standard formula is used that adds 1 percent to each court's salary budget allocation to be applied to salary increases. These funds allow court units to, among other things, pay for default step increases that are given as a matter of course to employees performing at acceptable levels. The Committee recommended that the standard formula amount allocated to the courts for salary increases be reduced to .75 percent, resulting in an immediate savings of .25 percent of each unit's budget. It further recommended that the number of automatic default step increases be reduced, thereby slowing automatic salary progression, but that unit executives be given greater discretion to grant step increases based upon each employee's overall contribution, allowing highly contributing employees to move toward the top of their grades more rapidly. Finally, the Committee recommended that national performance guidelines be developed to assist executives in making decisions about pay increases. The Conference adopted the Committee's recommendations.

Leave Act Coverage for New Term Chambers Law Clerks. For law clerks covered by the Leave Act (5 U.S.C. ch. 63), the court is required to account for their daily hours of work and absences, and at the conclusion of their terms, pay them for any unused annual leave. In 1988, Congress enacted legislation giving the judiciary the authority to exclude law clerks from Leave Act coverage. The legislation provided that law clerks were exempt from provisions of the Act unless specifically included by the appointing judge or local rule of court (*see, e.g.*, 28 U.S.C. § 752, governing law clerks for district

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<sup>3</sup>Benchmarks are standards of measurement that describe a specific CPS classification level and serve as "notches on a ruler." Courts classify their positions above, equal to, or below the benchmarks, and they assign classification levels accordingly.

judges). On recommendation of the Committee, the Conference agreed to discourage Leave Act coverage for new term chambers law clerks (i.e., those whose appointments are effective October 1, 2007, or later).

Career Law Clerks. In 1978 the Judicial Conference adopted a resolution stating that the best interests of the judiciary are served through continuation of the traditional practice of appointing recent graduates as law clerks for periods of one to two years (JCUS-SEP 78, p. 49). At this session, the Committee reported that, since that time, there has been substantial growth in the number of career law clerks within the judiciary, resulting in increased salary and benefit expenses, greater disparity in costs from one chambers to another, fewer opportunities to promote diversity, and fewer opportunities for new lawyers to experience service in the judiciary early in their careers. To address these issues, the Committee recommended that, subject to certain terms and conditions, all judges in the federal courts be limited to one full-time equivalent (FTE) career law clerk per chambers. After discussion and modification of some of the terms and conditions, the Conference agreed, effective September 18, 2007, to limit judges to one FTE career law clerk per chambers, subject to the following:

- a. In a chambers where there is currently more than one FTE career law clerk, those law clerks will be able to retain career status, with the assent of the judge, as long as they continue to work in the chambers where they are currently employed.
- b. Any part-time career law clerk whose hours are subsequently increased (further exceeding the one FTE) will revert to a term designation at that time.
- c. No individual will be permitted to serve in the judiciary for more than four years in a term law clerk capacity.
- d. Commitments made to specific individuals prior to September 18, 2007, that explicitly state in writing a commitment to career law clerk status will be honored.
- e. These limitations shall not prevent a judge who has one FTE career law clerk from hiring, as an additional career law clerk, a person who, as of September 18, 2007, is serving as a career law clerk to another judge when that judge dies, retires from office, or otherwise becomes ineligible to employ the career law clerk.

Pay Parity Based on Experience. Chambers law clerks hired with experience gained outside the judiciary are often able to earn significantly more than clerks who gained their work experience within the judiciary because the former group is eligible for salary matching when they enter judicial service. In order to achieve salary parity between these two groups and recognize the value of public service, the Committee recommended that the Conference replace law clerk salary matching with pay parity based on experience, with the provisos that incoming law clerks who have prior federal experience may be eligible to match their highest rate of federal pay and that commitments made to specific individuals prior to September 18, 2007, that explicitly stated in writing a commitment to an advanced step salary, will be honored. After discussion, the Conference adopted the Committee's recommendation with an effective date of September 18, 2007.

Chambers-Level Budgets. In response to a motion made on the Conference floor during the discussion of the terms and salaries of chambers law clerks, the Conference agreed to direct the appropriate Judicial Conference committee(s) to study the establishment of chambers-level budgets as a long-term court compensation measure that would accord judges discretion in determining their staffing needs.

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## **COMMITTEE ACTIVITIES**

The Committee on Judicial Resources reported that it endorsed the use of the Online System for Clerkship Application and Review (OSCAR) as a non-mandatory, automated, national law clerk hiring program and the incorporation of the existing Federal Law Clerk Information System into OSCAR. The Committee requested that the Administrative Office conduct simultaneously a work measurement study of the pro se law clerk program and the district court clerks' offices and develop a revised pro se law clerk staffing formula with options to include and not include social security appeals. The Committee also requested that the Administrative Office conduct a study of judiciary employment dispute resolution (EDR) plans that contain variations from the Model EDR Plan in order to determine a strategy for assisting courts in ensuring that their plans are aligned with the original intent of the Model EDR Plan.

## COMMITTEE ON JUDICIAL SECURITY

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### COURT SECURITY COMMITTEES

The Committee on Judicial Security recommended that the Judicial Conference modify its policy on the composition and mission of court security committees to (1) clarify and increase the membership; (2) clearly define the mission statement; and (3) encourage more frequent meetings. Specifically, the Committee recommended, and the Conference agreed to, the following:

- a. that the membership list of court security committees be amended to—
  - (1) designate the chief district judge (or judge designee) as chair;
  - (2) state that each court of appeals and each bankruptcy court be represented by a judge or judge designee;
  - (3) provide that a designee may represent the United States attorney; and
  - (4) include as members the federal public defender, the chief probation officer, and the chief pretrial services officer, or their respective designees, and a Federal Protective Service government-employee representative.
- b. that the mission of court security committees—
  - (1) include three focus areas: assessing the adequacy of district-wide court security, ensuring the effective and efficient use of court security resources while preserving the right to a public trial, and ensuring oversight of the court’s emergency preparedness program; and
  - (2) provide that committees meet as often as necessary to ensure that they identify and address security problems before an emergency occurs and that a minimum of two formal meetings per calendar year is highly recommended.

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## COMMITTEE ACTIVITIES

The Committee on Judicial Security reported that it discussed the Budget Committee's request to impose a cap on the court security account. The Committee recommended that the Budget Committee propose a budget cap of 8.8 percent for fiscal year 2009 and a budget cap of 6.6 percent for fiscal years 2010 through 2017 to the Judicial Conference (*see supra*, "Budget Caps," p. 10). The Committee was also briefed by the United States Marshals Service on the status of a pilot project to study the feasibility and costs of the Marshals Service assuming, as appropriate, the court security functions currently performed by the Federal Protective Service in courthouses, as well as the associated funding.

## COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

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### SELECTION AND APPOINTMENT REGULATIONS

To conform with the principles embodied in the judiciary's Model Equal Employment Opportunity and Employment Dispute Resolution Plans, the Committee on the Administration of the Magistrates Judges System recommended that the Conference amend Section 3.03(d) of the Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Appointment and Reappointment of United States Magistrate Judges, as follows:

Sec. 3.03(d). The panel shall examine all applications and may, in its discretion, personally interview applicants. The panel shall make an affirmative effort to identify and give due consideration to all qualified applicants ~~including women and members of minority groups~~ *without regard to race, color, age (40 and over), gender, religion, national origin, or disability.*

The Conference adopted the Committee's recommendation.

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## **CHANGES IN MAGISTRATE JUDGE POSITIONS**

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

### **FIRST CIRCUIT**

#### District of Massachusetts

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

#### District of Maine

Discontinued the clerk-magistrate judge position in the district.

### **SECOND CIRCUIT**

#### District of Connecticut

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

### **THIRD CIRCUIT**

#### Middle District of Pennsylvania

1. Increased the salary of the part-time magistrate judge position at Williamsport from Level 6 (\$12,755 per annum) to Level 5 (\$25,512 per annum); and
2. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

**FOURTH CIRCUIT**

Northern District of West Virginia

1. Converted the part-time magistrate judge position at Martinsburg to full-time status; and
2. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

**EIGHTH CIRCUIT**

District of Minnesota

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

**NINTH CIRCUIT**

Northern District of California

Increased the salary of the part-time magistrate judge position at Eureka from Level 2 (\$63,786 per annum) to Level 1 (\$70,165 per annum).

**TENTH CIRCUIT**

Eastern District of Oklahoma

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

## **ELEVENTH CIRCUIT**

### Middle District of Florida

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

### Southern District of Florida

1. Discontinued the part-time magistrate judge position at Key West; and
2. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

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## **ACCELERATED FUNDING**

On recommendation of the Committee, the Judicial Conference agreed to designate for accelerated funding in fiscal year 2008 the new full-time magistrate judge positions at Martinsburg, West Virginia, and Minneapolis or St. Paul, Minnesota.

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## **COMMITTEE ACTIVITIES**

The Committee on the Administration of the Magistrate Judges System reported that, pursuant to the September 2004 Judicial Conference policy regarding the review of magistrate judge position vacancies (JCUS-SEP 04, p. 26), during the period between the Committee's December 2006 and June 2007 meetings, the Committee chair approved filling nine existing or upcoming vacancies in eight district courts, and, at its June 2007 meeting, the full Committee determined that one magistrate judge position vacancy should be filled. The Committee adopted revised strategic issues for the magistrate judges system to help focus future deliberations and planning. In furtherance of the Committee's long-range goal of voting membership of magistrate judges at all levels of the court governance structure, the Committee recommended that the membership of magistrate judges be increased on certain Judicial Conference committees.



## COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

### FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rules. The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Bankruptcy Rules 1005 (Caption of Petition), 1006 (Filing Fee), 1007 (Lists, Schedules, Statements, and other Documents; Time Limits), 1009 (Amendments of Voluntary Petitions, Lists, Schedules, and Statements), 1010 (Service of Involuntary Petition and Summons; Petition For Recognition of a Foreign Nonmain Proceeding), 1011 (Responsive Pleading or Motion in Involuntary and Cross-Border Cases), 1015 (Consolidation or Joint Administration of Cases Pending in Same Court), 1017 (Dismissal or Conversion of Case; Suspension), 1019 (Conversion of a Chapter 11 Reorganization Case, Chapter 12 Family Farmer's Debt Adjustment Case, or Chapter 13 Individual's Debt Adjustment Case to a Chapter 7 Liquidation Case), 1020 (Small Business Chapter 11 Reorganization Case), 2002 (Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief is Sought in Ancillary and Other Cross-Border Cases, United States, and United States Trustee), 2003 (Meeting of Creditors or Equity Security Holders), 2007.1 (Appointment of Trustee or Examiner in a Chapter 11 Reorganization Case), 2015 (Duty to Keep Records, Make Reports, and Give Notice of Case or Change of Status), 3002 (Filing Proof of Claim or Interest), 3003 (Filing Proof of Claim or Equity Security Interest in Chapter 9 Municipality or Chapter 11 Reorganization Cases), 3016 (Filing of Plan and Disclosure Statement in a Chapter 9 Municipality or Chapter 11 Reorganization Case), 3017.1 (Court Consideration of Disclosure Statement in a Small Business Case), 3019 (Modification of Accepted Plan in a Chapter 9 Municipality or Chapter 11 Reorganization Case), 4002 (Duties of Debtor), 4003 (Exemptions), 4004 (Grant or Denial of Discharge), 4006 (Notice of No Discharge), 4007 (Determination of Dischargeability of a Debt), 4008 (Filing of Reaffirmation Agreement; Statement in Support of Reaffirmation Agreement), 5001 (Courts and Clerks' Offices), 5003 (Records Kept By the Clerk), 6004 (Use, Sale, or Lease of Property), 7012 (Defenses and Objections — When and How Presented — By Pleading or Motion — Motion for Judgment on the Pleadings), 7022 (Interpleader), 7023.1 (Derivative Actions), 8001 (Manner of Taking Appeal; Voluntary Dismissal; Certification to Court of Appeals), 8003 (Leave to Appeal), 9006 (Time), 9009 (Forms), and 9024 (Relief from Judgment or Order) and new Bankruptcy Rules 1021 (Health Care Business Case), 2007.2 (Appointment of Patient Care Ombudsman in a Health Care Business Case), 2015.1 (Patient Care Ombudsman), 2015.2 (Transfer of Patient in Health Care Business Case),

2015.3 (Reports of Financial Information on Entities in Which a Chapter 11 Estate Holds a Controlling or Substantial Interest), 5008 (Notice Regarding Presumption of Abuse in Chapter 7 Cases of Individual Debtors), and 6011 (Disposal of Patient Records in Health Care Business Case). These amendments and new rules were accompanied by committee notes explaining their purpose and intent. Most of the amendments and new rules are based on interim bankruptcy rules, which were distributed to the courts in 2005 with the recommendation that they be adopted locally to implement the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Pub. L. No. 109-8) until the Federal Rules of Bankruptcy Procedure could be amended. A handful of additional amendments and new rules were submitted to address provisions of the 2005 Act that did not require immediate implementation. The Judicial Conference approved the proposed amendments and new rules and authorized their transmission to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

Bankruptcy Official Forms. The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed revisions to Bankruptcy Official Forms 1 (Voluntary Petition), 3A (Application to Pay Filing Fee in Installments), 3B (Application for Waiver of the Chapter 7 Filing Fee for Individuals Who Cannot Pay the Filing Fee in Full or in Installments), 4 (List of Creditors Holding 20 Largest Unsecured Claims), 5 (Involuntary Petition), 6 (Schedules), 7 (Statement of Financial Affairs), 9A-I (Notice of Bankruptcy Case, Meeting of Creditors, & Deadlines), 10 (Proof of Claim), 16A (Caption (Full)), 18 (Discharge of Debtor), 19 (Declaration and Signature of Non-Attorney Bankruptcy Petition Preparer), 21 (Statement of Social-Security Number or Individual Taxpayer-Identification Number (ITIN)), 23 (Debtor's Certification of Completion of Postpetition Instructional Course Concerning Personal Financial Management), and 24 (Certification to Court of Appeals by All Parties), together with committee notes explaining their purpose and intent. Most of the revisions to the Official Forms are technical and conforming to the 2005 Act. The Judicial Conference approved the revised Official Forms with an effective date of December 1, 2007.

The Committee also submitted to the Judicial Conference proposed new Bankruptcy Official Forms 25A ([Name of Proponent]'s Plan of Reorganization, Dated [Insert Date]), 25B ([Name of Proponent]'s Disclosure Statement, Dated [Insert Date]), 25C (Small Business Monthly Operating Report), and 26 (Periodic Report Regarding Value, Operations and Profitability of Entities in which the Estate of [Name of Debtor] Holds a Substantial or Controlling Interest) with a recommendation that they be

approved to take effect on December 1, 2008, to coincide with the above-mentioned rules amendments, which are anticipated to take effect on the same day. The Conference adopted the Committee's recommendation.

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## **FEDERAL RULES OF CRIMINAL PROCEDURE**

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Criminal Rules 1 (Scope; Definitions), 12.1 (Notice of an Alibi Defense), 17 (Subpoena), 18 (Place of Prosecution and Trial), 32 (Sentencing and Judgment), 41 (Search and Seizure), 45 (Computing and Extending Time), 60 (Victims' Rights), and new Criminal Rule 61 (Title), together with committee notes explaining their purpose and intent. The proposed amendments and new rule (with the exception of the amendment to Criminal Rule 41 and technical amendment to Criminal Rule 45) implement the Crime Victims' Rights Act (18 U.S.C. § 3771). The Judicial Conference approved the amendments and new rule and authorized their transmittal to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

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## **FEDERAL RULES OF EVIDENCE**

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed new Evidence Rule 502 (Attorney-Client Privilege and Work Product; Limitations on Waiver), together with a committee note explaining its purpose and intent. The Committee proposed Evidence Rule 502 after the chairman of the House Judiciary Committee requested that the Judicial Conference initiate the rulemaking process to address concerns about privilege waivers. Since any rule creating, establishing, or modifying an evidentiary privilege requires legislation (28 U.S.C. § 2074(b)), the Committee recommended that the Judicial Conference transmit proposed Rule 502 directly to Congress with a recommendation that it be enacted into law. The Conference adopted the Committee's recommendation.

The Committee on Rules of Practice and Procedure also submitted to the Judicial Conference a proposed report to Congress on the necessity and desirability of amending the Federal Rules of Evidence to codify a "harm to child" exception to the marital privileges, in accordance with the Adam

Walsh Child Protection and Safety Act of 2006 (Pub. L. No. 109-248). The Conference approved the report and authorized its transmittal to Congress.

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## COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure reported that it approved for publication proposed amendments to simplify and reduce inconsistencies in the computation of time periods under more than 90 time-counting provisions in the Federal Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure. The Committee also approved for publication proposed amendments and/or additions to the Appellate Rules, Bankruptcy Rules and Official Forms, Civil Rules, Criminal Rules, Rules Governing § 2254 Cases, and Rules Governing § 2255 Proceedings. The comment period for all the proposed changes expires on February 15, 2008.

## COMMITTEE ON SPACE AND FACILITIES

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### RENT BUDGET ALLOTMENTS

In September 2004, the Judicial Conference adopted a space budget check process as an interim rent cost-control mechanism for all pending space requests until implementation of a rent budget cap could be completed (JCUS-SEP 04, pp. 35-36). In September 2006, the Judicial Conference approved a provisional rent budget cap allowing an average annual rate of growth of 4.9 percent in rent payments to the General Services Administration for fiscal years 2009 through 2016 (JCUS-SEP 06, p. 10), but a mechanism to implement the cap in each circuit was still needed. At this session, the Committee recommended adoption of a circuit-level rent budget allotment methodology that would enable the judiciary to translate the annual 4.9 percent cap into circuit-level rent budgets and replace the interim budget process. On recommendation of the Committee, and in lieu of the interim budget check process, the Conference—

- a. Approved a rent allotment methodology consisting of three components (A, B, and C).
- b. Delegated to the Committee on Space and Facilities the authority to establish and amend business rules that would govern the rent allotment methodology approved by the Judicial Conference.

- c. Agreed that all newly constructed courthouses or annexes, build-to-suit lease projects, requests for General Services Administration feasibility studies, and prospectus-level repair and alteration projects must have the approval of the Committee and Conference as Component B projects.
- d. Agreed that requests for Component B funding for necessary chambers and courtrooms for judges taking senior status, replacement judges, and new (additional) judgeships must have the approval of the Committee.
- e. Agreed that non-prospectus projects that will utilize Component C funds are not subject to Committee and Conference approval unless the circuit judicial council's space action involves an exception to *U.S. Courts Design Guide* standards.

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## **FIVE-YEAR COURTHOUSE PROJECT PLAN**

In March 2007, the Judicial Conference approved a Five-Year Courthouse Project Plan for FYs 2008-2012 (JCUS-MAR 07, p. 31). Noting that there was an immediate need for expansion space for judges at the courthouse in Greenbelt, Maryland, the Committee recommended that the Conference endorse adding an annex for that courthouse to the Five-Year Courthouse Project Plan. The Conference adopted the Committee's recommendation.

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## **BUDGET CHECK PROCESS**

Pursuant to the budget check process discussed above (*see* "Rent Budget Allotments," pp. 36-37), and on recommendation of the Space and Facilities Committee, in consultation with the Budget Committee, the Conference approved 13 space requests. The annual rent to be generated by these requests will be charged against, and is anticipated to fit within, the 4.9 percent annual budget cap on space rental growth adopted by the Conference.

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## **COMMITTEE ACTIVITIES**

The Committee on Space and Facilities reported that it endorsed a space and facilities budget request for FY 2009 in the amount of \$1.1 billion.

The amount requested for GSA rent is approximately two percent below the 4.9 percent rent budget cap. In addition, in response to a request from the court in Birmingham, Alabama, the Committee agreed to consider at its December 2007 meeting whether it should ask the Conference to revisit its September 2005 decision (JCUS-SEP 05, p. 41) to terminate the judiciary's participation in the building management delegation program.

## **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