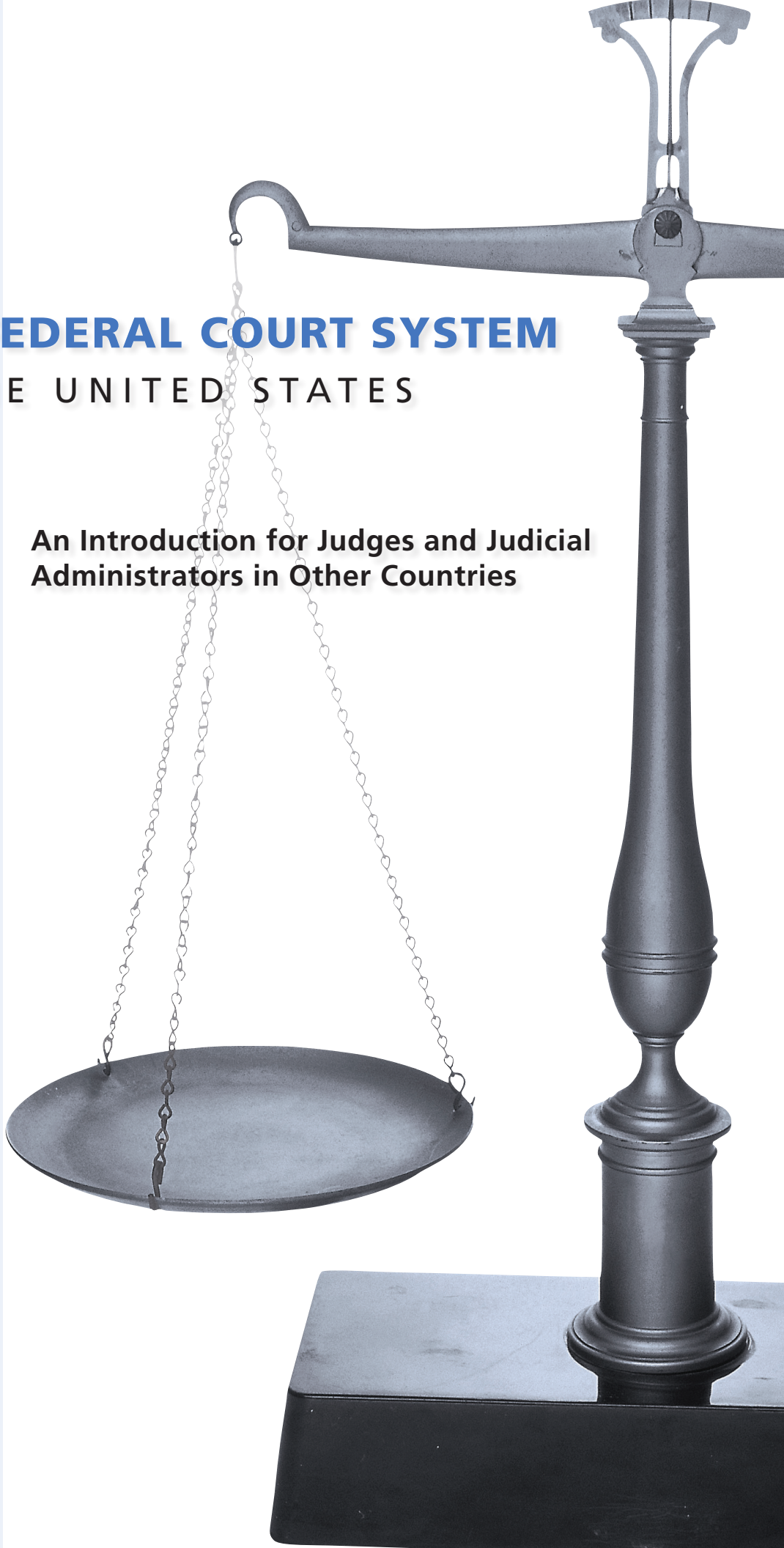
THE FEDERAL COURT SYSTEM
IN THE UNITED STATES

An Introduction for Judges and Judicial Administrators in Other Countries



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Administrative Office
of the U.S. Courts

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An Introduction for Judges and Judicial Administrators in Other Countries

Article III Judges Division

Office of Judges Programs

Administrative Office of the U.S. Courts

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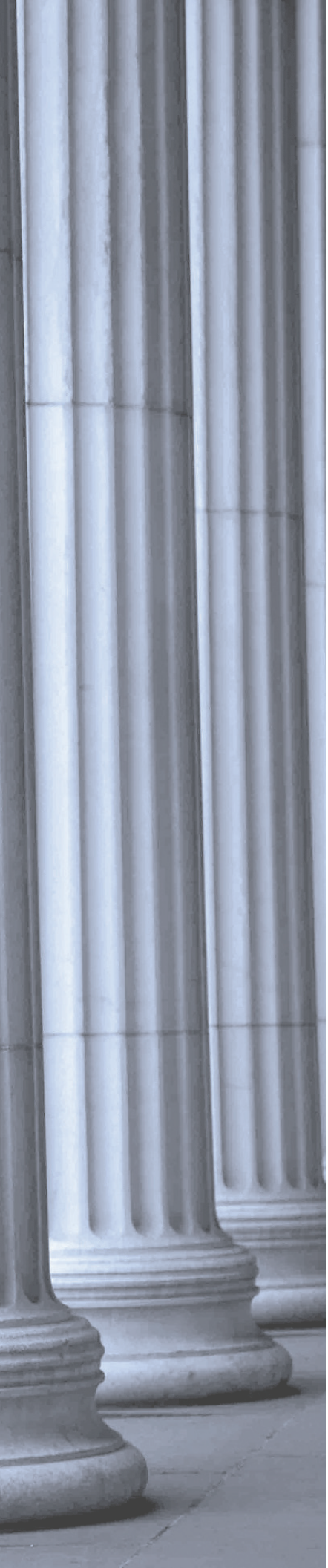
This publication was developed by the Administrative Office of the United States Courts to provide an introduction to the federal judicial system, its organization and administration, its relationship to the legislative and executive branches of the federal government, and its relationship to the state court systems. The Administrative Office is the judicial branch's central support agency responsible for providing a broad range of management, legal, technical, communications, and other support services for the administration of the federal courts.



PREFACE

This booklet is designed to introduce judges and judicial administrators in other countries to the United States federal judicial system, its organization and administration, and its relationship to the legislative and executive branches of the government. It was developed by the Office of Judges Programs of the Administrative Office of the United States Courts at the request of the Judicial Conference Committee on International Judicial Relations.

The Judicial Conference of the United States is the national policy-making body of the federal courts. Authorized by statute, it is presided over by the Chief Justice of the United States and composed of 26 additional judges—the chief judge of each of the 13 federal courts of appeals, one district (trial) judge elected from each of the 12 geographic circuits, and the chief judge of the Court of International Trade.

The Judicial Conference is assisted in its work by more than 25 committees, whose members are appointed by the Chief Justice. The Committee on International Judicial Relations is composed of several federal judges, a liaison member from the State Department and an academic member. Its mission, among other things, includes the following functions:

- Coordinating the federal judiciary's relationship with foreign judiciaries and other organizations interested in international judicial relations and the establishment and expansion of the rule of law.

- Serving as a conduit for communication on matters of mutual concern between the Chief Justice, the Judicial Conference, the federal judiciary, and foreign courts and international judicial organizations.

LIST OF FEATURES

THE UNITED STATES CONSTITUTION AND THE FEDERAL GOVERNMENT

The United States Constitution, adopted in 1789 and amended only rarely since then, is the supreme law of the United States. It established a republic under which the individual states retain considerable sovereignty and authority. Each state, for example, has its own elected executive (governor), legislature, and court system. The federal, or national, government is one of strong, but limited, powers. It may exercise only the powers specified in the Constitution itself. All other powers are reserved by the Constitution to the states and the people. This system of divided powers between the national and state governments is known as "federalism."

The Bill of Rights is set forth as the first ten amendments to the Constitution. It guarantees fundamental rights to the people and protects them against improper acts by the government. The rights protected include such matters as free speech, freedom of assembly, freedom to seek redress of grievances, freedom from unreasonable searches and seizures, due process of law, protection against compelled self-incrimination, protection against seizure of property without just compensation, a speedy and public trial in criminal cases, trial by jury in both criminal and civil cases, and assistance of counsel in criminal prosecutions.

The Constitution established three separate branches of government—Legislative (Article I), Executive (Article II), and Judicial (Article III). The three branches of the federal government operate within a constitutional system known as "checks and balances." Each branch is formally separate from the other two, and each has certain constitutional authority to check the actions of the others.

Two central features of the government established under the United States Constitution are

· Federalism, and

· Checks and balances among the three separate branches of the government.

THE LEGISLATIVE BRANCH

Congress, the national legislature of the United States, is composed of two houses or chambers—the Senate and the House of Representatives. Each state has two Senators who are elected for six-year terms. One-third of the Senate is elected every two years. Members of the House of Representatives are elected from local districts within states. Each state receives a number of Representatives in proportion to its population. The entire House is elected every two years.

To become law, proposed legislation must be passed by both houses and approved by the President. If the President does not sign, or vetoes, a bill, it may still be enacted, but only by a two-thirds vote of each house of Congress.

The Constitution did not establish a parliamentary or cabinet system of government, as in the United Kingdom and many other democracies around the world. Under the United States Constitution, the President is both the head of state and the head of the government. The President appoints a cabinet—consisting of the heads of major executive departments and agencies—but neither the President nor any member of the cabinet sits in the Congress. The President's political party, moreover, does not need to hold a majority of the seats in the Congress to stay in office. In fact, it is not unusual for one or both houses of the Congress to be controlled by the opposition party.

Each house of the Congress has committees of its members, organized by subject matter, that draft laws, exercise general oversight over government agencies and programs, enact appropriation bills to fund government operations, and monitor the operation of federal programs. The federal courts, for example, maintain regular communications with the Judiciary Committees and the Appropriations Committees of the Senate and the House of Representatives.

THE EXECUTIVE BRANCH

The President is elected every four years, and under the Constitution may serve no more than two terms in office. Once elected, the President selects a cabinet, each member of which must be confirmed by a majority vote in the Senate. Each cabinet member is the head of a department in the executive branch. The cabinet includes, for example, the Secretary of State, the Secretary of Defense, the Secretary of the Treasury, and the Attorney General.

The President, his cabinet, and other members of the President's administration are responsible for operating the executive branch of the federal government and for executing and enforcing the laws. The Attorney General, who is head of the Department of Justice, is responsible for all criminal prosecutions, for representing the government's legal interests in civil cases, and for administration of the Bureau of Prisons, the Federal Bureau of Investigation, the Marshals Service, the Immigration and Naturalization Service, and certain other law enforcement organizations. At the local level, the chief prosecutor in each of the 94 federal judicial districts is the United States attorney, who is appointed by the President and reports to the Attorney General.

The Department of Justice plays no role in administration or budgeting for the federal courts. The judiciary communicates separately and directly to the Congress on legislative and appropriations matters.

THE JUDICIAL BRANCH

The federal judiciary is a totally separate, self-governing branch of the government. The federal courts often are called the guardians of the Constitution because their rulings

protect the rights and liberties guaranteed by the Constitution. Through fair and impartial judgments, they determine facts and interpret the law to resolve legal disputes.

The courts do not make the laws. That is the responsibility of the Congress. Nor do the courts have the power to enforce the laws. That is the role of the President and the many executive branch departments and agencies. But the judicial branch has the authority to interpret and decide the constitutionality of federal laws and to resolve other disputes over federal laws.

The framers of the Constitution considered an independent federal judiciary essential to ensure fairness and equal justice to all citizens of the United States. The Constitution they drafted promotes judicial independence in two principal ways. First, federal judges appointed under Article III of the Constitution can serve for life, and they can be removed from office only through impeachment and conviction by Congress of "Treason, Bribery, or other high Crimes and Misdemeanors." Second, the Constitution provides that the compensation of Article III federal judges "shall not be diminished during their Continuance in Office," which means that neither the President nor Congress can reduce the salaries of most federal judges. These two protections help an independent judiciary to decide cases free from popular passion and political influence.

U.S. Constitution, Article III

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance In Office.

THE ROLE OF THE FEDERAL COURTS IN AMERICAN GOVERNMENT

THE FEDERAL COURTS AND CONGRESS

Congress has three basic responsibilities under the Constitution that determine how the federal courts will operate.

First, it authorizes the creation of all federal courts below the Supreme Court, defines the jurisdiction of the courts, and decides how many judges there should be for each court.

Second, through the confirmation process, the Senate determines which of the President's judicial nominees ultimately become federal judges.

Third, Congress approves the federal courts' budget and appropriates money for the judiciary to operate. The judiciary's budget is a very small part—about two-tenths of one percent—of the entire federal budget.

THE FEDERAL COURTS AND THE EXECUTIVE BRANCH

Under the Constitution, the President nominates Article III constitutional judges to a lifetime appointment, subject to approval by majority vote of the Senate. The President usually consults senators or other elected officials concerning potential candidates for vacancies on the federal courts.

The President's power to appoint new federal judges is not the judiciary's only interaction with the executive branch. The Department of Justice, which is responsible for prosecuting federal crimes and for representing the government in civil cases, is the most frequent litigator in the federal court system. Several other executive branch agencies are involved with court operations. The United States Marshals

Service, for example, provides security for federal courthouses and judges, and the General Services Administration builds and maintains federal courthouses.

Within the executive branch there are military courts and a number of other specialized subject-matter tribunals and administrative agencies that adjudicate disputes in the first instance involving specific federal laws and benefits programs, such as the tax laws, patent and copyright laws, labor laws, social security statutes and regulations, approval of radio and TV licenses, and the like. Although these executive branch bodies are not part of the judiciary established under Article III of the Constitution, appeals of their final decisions typically may be taken to the Article III courts.

THE FEDERAL COURTS AND THE PUBLIC

With certain very limited exceptions, each step of the federal judicial process is open to the public. Federal courthouses are designed to inspire in the public a respect for the tradition and purpose of the American judicial process, and many courthouses are historic buildings.

A citizen who wishes to observe a court in session may go to a federal courthouse, check the court calendar, which is posted on a bulletin board or television monitor, and watch any proceeding. Anyone may review the file and papers in a case by going to the clerk of court's office and asking to review or copy the appropriate case file. Increasingly, court schedules, dockets, judgments, opinions, and pleadings are being made available to the public in electronic format through the Internet. Unlike most of the state courts, however, the federal courts do not permit television or radio coverage of trial court proceedings.

The right of public access to court proceedings is partly derived from the Constitution and partly from court and common-law tradition. By conducting their judicial work in public view, judges enhance public confidence in the courts, and they allow citizens to learn firsthand how our judicial system works.

In a few, limited situations the public may not have full access to court records and court proceedings. In a high-profile trial, for example, there may not be enough space in the courtroom to accommodate everyone who would like to observe. Access to the courtroom also may be restricted for security or privacy reasons, such as the protection of a juvenile or a confidential informant. Finally, certain documents may be placed under seal by the judge, meaning that they are not available to the public. Examples of sealed information include certain types of confidential business records, certain law enforcement reports, juvenile records, and cases involving national security issues.

THE STRUCTURE OF THE FEDERAL COURTS

The United States Federal Courts

Supreme Court

United States Supreme Court

Appellate courts

United States Courts of Appeals (12 Regional Courts of Appeals and the Court of Appeals for the Federal Circuit)

Trial courts

United States District Courts (94 judicial districts and the United States Bankruptcy Courts)

Court of International Trade

Court of Federal Claims

Other federal tribunals that are not within the judicial branch

Military Courts (trial and appellate)

United States Court of Veterans Appeals

United States Tax Court

Administrative agency offices and boards

With certain notable exceptions, the federal courts have jurisdiction to hear a broad variety of cases. The same federal judges handle both civil and criminal cases, public law and private law disputes, cases involving individuals and cases involving corporations and government entities, appeals from administrative agency decisions, and law and equity matters. There are no separate constitutional courts, because all federal courts and judges may decide issues regarding the constitutionality of federal laws and other governmental actions that arise in the cases they hear.

TRIAL COURTS

The United States district courts are the principal trial courts in the federal court system. The district courts have jurisdiction to hear nearly all categories of federal cases. There are 94 federal judicial districts, including one or more in each state, the District of Columbia, Puerto Rico, and the overseas territories.

Each federal judicial district includes a United States bankruptcy court operating as a unit of the district court. The bankruptcy court has nationwide jurisdiction over almost all matters involving insolvency cases, except criminal issues. Once a case is filed in a bankruptcy court, related matters pending in other federal and state courts can be removed to the bankruptcy court. The bankruptcy courts are administratively managed by the bankruptcy judges.

Two special trial courts within the federal judicial branch have nationwide jurisdiction over certain types of cases. The Court of International Trade addresses cases involving international trade and customs issues. The United States Court of Federal Claims has jurisdiction over disputes involving federal contracts, the taking of

private property by the federal government, and a variety of other monetary claims against the United States.

Trial court proceedings are conducted by a single judge, sitting alone or with a jury of citizens as finders of fact. The Constitution provides for a right to trial by a jury in many categories of cases, including: (1) all serious criminal prosecutions; (2) those civil cases in which the right to a jury trial applied under English law at the time of American independence; and (3) cases in which the United States Congress has expressly provided for the right to trial by jury.

APPELLATE COURTS

The 94 judicial districts are organized into 12 regional circuits, each of which has a United States court of appeals. A court of appeals hears appeals from the district courts located within its circuit, as well as appeals from certain federal administrative agencies. In addition, the Court of Appeals for the Federal Circuit has nationwide jurisdiction to hear appeals in specialized cases, such as those involving patent laws and cases decided by the Court of International Trade and the Court of Federal Claims.

There is a right of appeal in every federal case in which a district court enters a final judgment. The courts of appeals typically sit in panels of three judges. They are not courts of cassation, and they may review a case only if one or more parties files a timely appeal from the decision of a lower court or administrative agency. When an appeal is filed, a court of appeals reviews the decision and record of proceedings in the lower court or administrative agency. The court of appeals does not hear additional evidence, and generally must accept the factual findings of the trial judge. If additional fact-finding is necessary, the court of appeals may remand the case to the trial court or administrative agency. Remand is unnecessary in most cases, however, and the court of appeals either affirms or reverses the lower court or agency decision in a written order or written opinion.

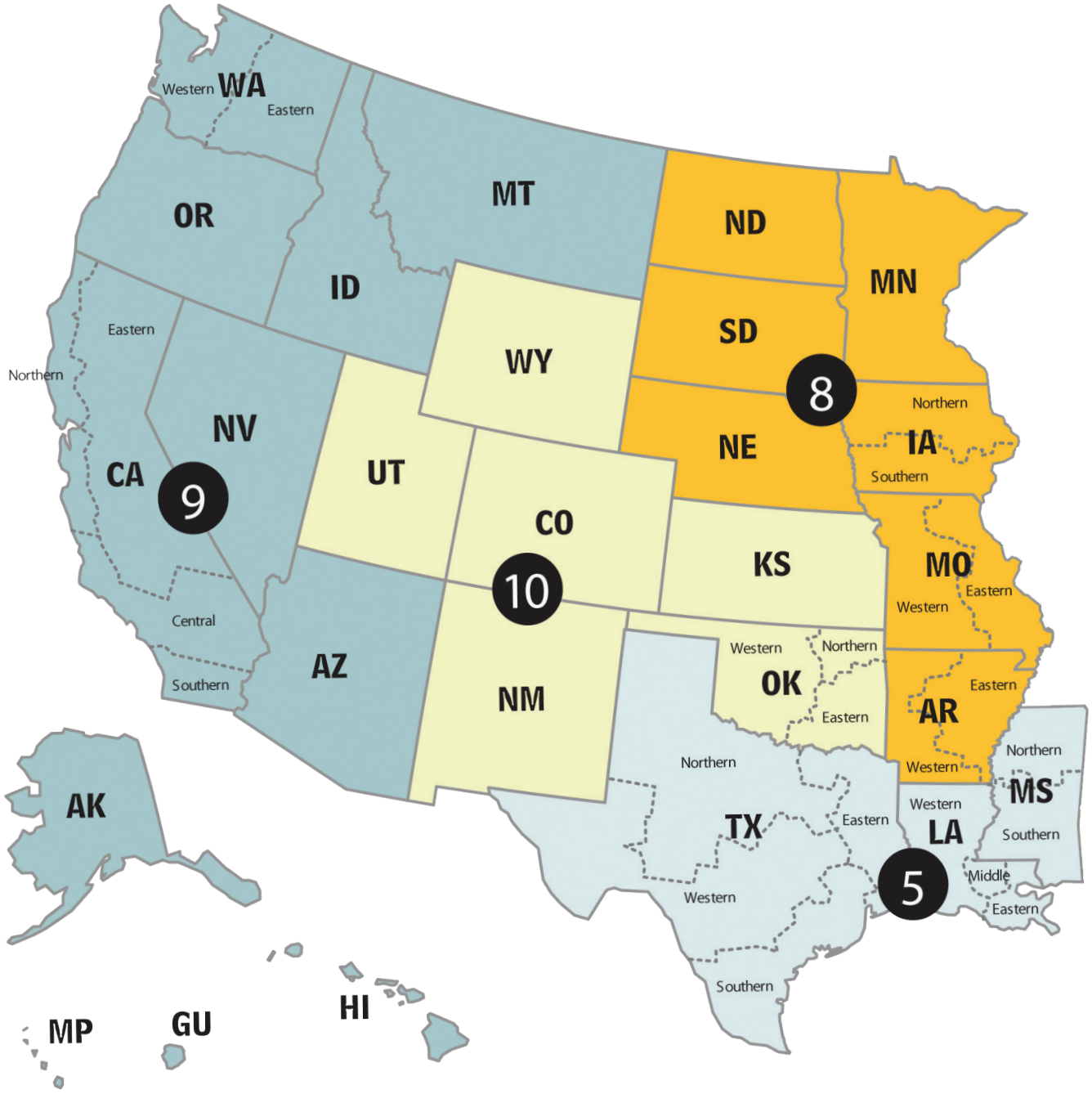
In cases of unusual importance, a court of appeals may sit "en banc"—that is, with all the appellate judges in the circuit present—to review the decisions of a three-judge panel. The full court may affirm or reverse the panel decision.

THE UNITED STATES SUPREME COURT

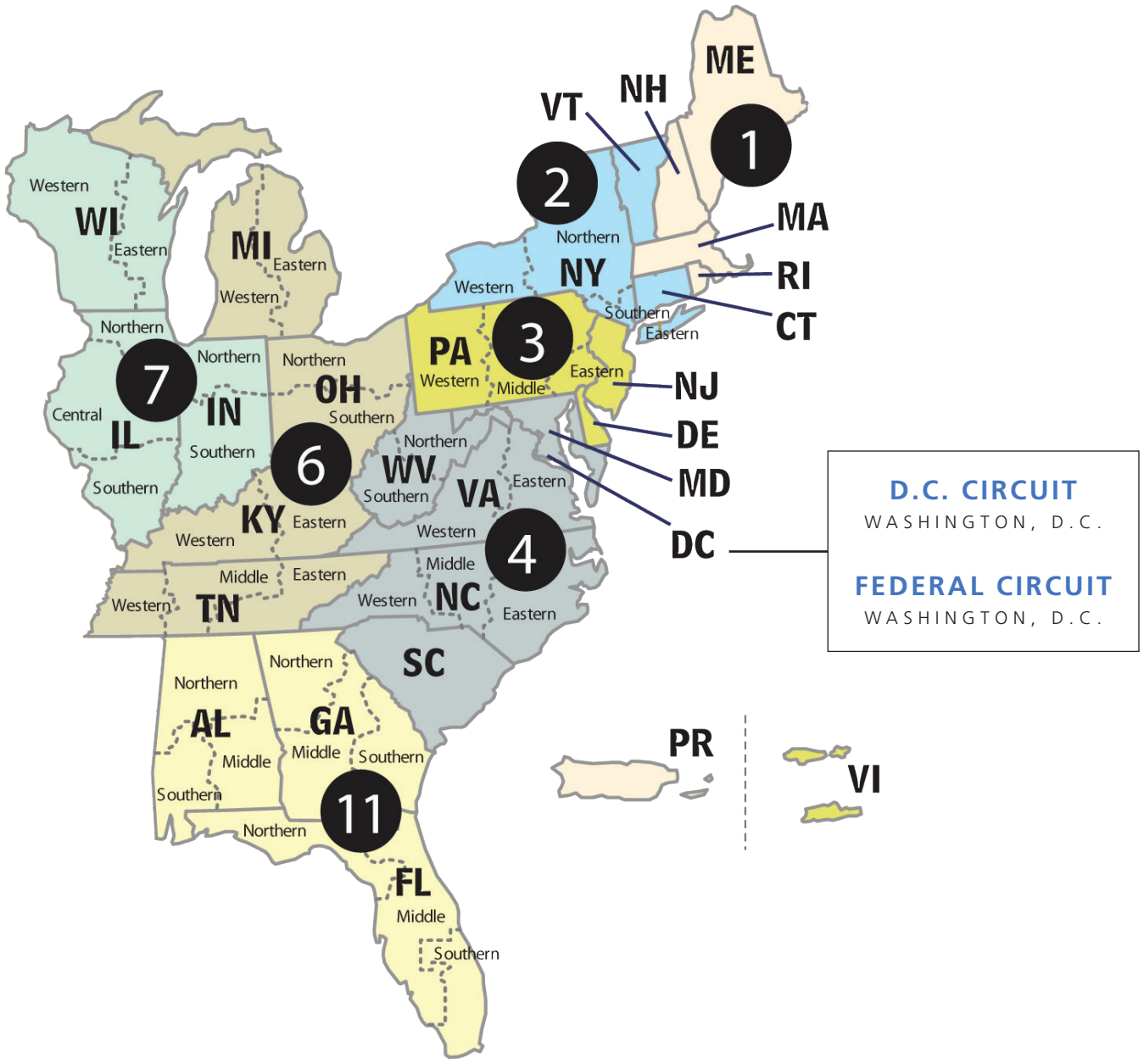
The United States Supreme Court is the highest court in the federal judiciary. It consists of the Chief Justice of the United States and eight associate justices. The court always sits en banc, with all nine justices hearing and deciding all cases together. The jurisdiction of the Supreme Court is almost completely discretionary, and, to be exercised, requires the agreement of at least four justices to hear a case. (In a small number of special cases, such as boundary disputes between the states, the Supreme Court acts either as the court of first instance or exercises mandatory appellate review). As a general rule, the Court only agrees to decide cases where there is a split of opinion among the courts of appeals or where there is an important constitutional question or issue of federal law that needs to be clarified.

GEOGRAPHIC BOUNDARIES OF THE

UNITED STATES COURTS OF APPEALS



AND THE **UNITED STATES DISTRICT COURTS**



THE JURISDICTION OF THE FEDERAL COURTS

RELATIONSHIP BETWEEN THE STATE COURTS AND THE FEDERAL COURTS

Although federal courts are located in every state, they are not the only forum available to litigants. In fact, the great majority of legal disputes in American courts are addressed in the separate state court systems established in each of the 50 states. Most state court systems, like the federal judiciary, have trial courts of general jurisdiction, intermediate appellate courts, and a state supreme court. They may also have specialized lower-level courts, county courts, municipal courts, small claims courts, or justices of the peace to handle minor matters.

The state courts have jurisdiction over a wider variety of disputes than the federal courts. State courts, for example, have jurisdiction over virtually all divorce and child custody matters, probate and inheritance issues, real estate questions, and juvenile matters, and they handle most criminal cases, contract disputes, traffic violations, and personal injury cases.

In general, federal courts may decide cases that involve the United States government or its officials, the United States Constitution or federal laws, or controversies between states or between the United States and foreign governments. A case also may be filed in federal court—even if no question arising under federal law is involved— if the litigants are citizens of different states or the dispute arises between citizens of the United States citizens and those of another country.

In the initial stages of any lawsuit, the plaintiff must assert the legal basis for the court's jurisdiction over the case, and the court must make an independent determination that it has jurisdiction to address the case. If a case is filed initially in a federal court, but the court determines that it lacks jurisdiction to adjudicate, the case must be dismissed. Under certain circumstances, a case that was improperly filed in federal court may be "remanded" to a state court that has jurisdiction to hear the case. Conversely, a case that was filed in a state court may, if certain conditions are met, be "removed" to a federal court.

The federal and state courts are required to extend "full faith and credit" to each other's respective judgments. Under the Supremacy Clause of the Constitution, however, a federal law preempts any state law that is in conflict with it.

TYPES OF CASES THAT MAY BE FILED IN THE FEDERAL AND STATE COURTS

The table to the right gives some examples of the cases that may be addressed exclusively in the state courts or in the federal courts, as well as some examples of concurrent jurisdiction (cases that may be heard in either state or federal court).

EXAMPLES OF JURISDICTION IN THE FEDERAL AND STATE COURTS

State Courts

crimes under state legislation

state constitutional issues and cases involving state laws or regulations

family law issues

real property issues

landlord and tenant disputes

most private contract disputes (except those resolved under bankruptcy law)

most issues involving the regulation of trades and professions

most professional malpractice issues

most issues involving the internal governance of business associations, such as partnerships and corporations

most personal injury lawsuits

most workers' injury claims

probate and inheritance matters

most traffic violations and registration of motor vehicles

Federal Courts

crimes under statutes enacted by Congress

most cases involving federal laws or regulations (for example: tax, Social Security, broadcasting, civil rights)

matters involving interstate and international commerce, including airline and railroad regulation

cases involving securities and commodities regulation, including takeovers of publicly held corporations

admiralty cases

international trade law matters

patent, copyright, and other intellectual property issues

cases involving rights under treaties, foreign states, and foreign nationals

state law disputes when "diversity of citizenship" exists

bankruptcy matters

disputes between states

habeas corpus actions

traffic violations and other misdmeanors occurring on certain federal property

State or Federal Courts

crimes punishable under both federal or state law

federal constitutional issues

certain civil rights claims

"class action" cases

environmental regulation

certain disputes involving federal law

UNITED STATES FEDERAL JUDGES

APPOINTMENT OF JUDGES
ARTICLE III JUDGES

Justices of the Supreme Court, judges of the courts of appeals and the district courts, and judges of the Court of International Trade, are appointed under Article III of the Constitution. They are nominated and appointed by the President of the United States and must be confirmed by a majority vote of the Senate. Article III judges are appointed for life, and they can only be removed by the Congress through the impeachment process specified in the Constitution. The judiciary plays no role in the nomination or confirmation process.

The primary criterion for appointment to a federal judgeship is a person's total career and academic achievements. No examinations are administered to judicial candidates. Rather, a person seeking a judgeship is required to complete a lengthy set of forms that set forth in detail his or her personal qualifications and career accomplishments, including such matters as academic background, job experiences, public writings, intellectual pursuits, legal cases handled, and outside activities. Candidates also are subject to extensive interviews, background investigations, and follow-up questioning.

Politics is an important factor in the appointment of Article III judges. Candidates are normally selected by the President from a list of candidates provided by the Senators or other office holders from the President's own party within the state in which the appointment is to be made. In addition, the President's nominee must appear in person at a hearing before the Judiciary Committee of the Senate, and the Senate must vote to confirm each judge. Article III judges are usually nominated by the President from among the ranks of prominent practicing lawyers, lower federal court judges, state court judges, or law

professors who reside within the district or circuit where the court sits.

Each federal judge is appointed to fill a specific, authorized judgeship in a specific district or circuit. Judges have no authority to hear cases in other courts unless they are formally designated to do so. Because of heavy caseloads in certain districts, judges from other courts are often asked to hear cases in these districts.

OTHER FEDERAL JUDGES

Bankruptcy judges and magistrate judges are judicial officers of the district courts, but they are not Article III judges. They are not appointed under a political process, and the President and Senate play no role in their selection. Rather, they are appointed by the courts of appeals and the district courts, respectively, with the assistance of merit selection panels composed of local lawyers and other citizens.

Bankruptcy judges are appointed by the judges of the courts of appeals for 14-year terms. Magistrate judges are appointed by the judges of the district court for eight-year terms. Before reappointing a bankruptcy judge or a magistrate judge to an additional term, the appointing court must publish a public notice seeking comments on the incumbent's performance and convene a merit panel to recommend to the court whether the incumbent should be reappointed.

Judges of the Court of Federal Claims are appointed for terms of 15 years by the President, subject to confirmation by a majority of the Senate.

STATE JUDGES

State judges handle most cases in the United States, but they are not part of the federal court system. Rather, they serve in the state court systems established by state governments. Like federal judges, state judges are required to support the federal Constitution and may invalidate state laws that they find inconsistent with the Constitution. State judges are selected in several ways, according to state constitutions and statutes. Most are either elected by the public in general elections or are appointed by the governor of the state for an original term and may be retained for additional terms by popular vote in a general election.

FEDERAL JUDICIAL ETHICS

By statute, federal judges may not hear cases in which they have either personal knowledge of the disputed facts, a personal bias concerning a party to the case, any earlier involvement in the case as a lawyer, or a financial interest in any party or subject matter of the case. Federal judges also are subject to the Code of Conduct for United States Judges, a set of ethical principles and guidelines adopted by the Judicial Conference of the United States. The Code of Conduct—and the opinions interpreting it—provide guidance for judges on issues of judicial integrity and independence, judicial diligence and impartiality, permissible extra-judicial activities, and the avoidance of impropriety or even its appearance.

Judges may receive guidance on ethical issues through the Judicial Conference's Codes of Conduct Committee. That committee of judges is authorized both to draft the codes of conduct and to render written advisory opinions to judges and court employees. It also publishes selected advisory opinions based on the facts presented in a specific request. The published opinions do not identify the particular judge or judges requesting the advisory opinion, and they are made available within the judiciary in both paper and electronic form.

In order to avoid financial conflicts of interest, a federal statute requires all judges—as well as other high-level government officials—to file annual financial disclosure statements that list their assets, liabilities, positions, gifts, and reimbursements (and those of their spouses and minor children). The disclosure statements for federal judges and certain judicial branch officials are maintained by the Administrative Office of the United States Courts and are available to the public on request.

Judges may not engage in political activity, the practice of law, or business activity (except investments). But they may devote time to public service and educational activities. Indeed, federal judges have a distinguished history of service to the legal profession through their writing, speaking, and teaching. This important role is recognized in the Code of Conduct, which encourages judges to engage in activities to improve the law, the legal system, and the administration of justice. Income from outside activities such as teaching is limited to approximately 15% of the judge's salary.

JUDGES' COMPENSATION

Federal judges receive salaries and benefits that are set by Congress. Judicial salaries and employment benefits are comparable to those received by Members of Congress and other senior government officials. The Constitution provides that the compensation of an Article III federal judge may not be reduced during the judge's service.

SENIOR AND RETIRED JUDGES

Court of appeals, district court, and Court of International Trade judges have life tenure

The Code of Conduct for United States Judges

· A judge should uphold the integrity and independence of the judiciary.

· A judge should avoid impropriety and the appearance of impropriety in all activities.

· A judge should perform the duties of the office impartially and diligently.

· A judge may engage in extra-judicial activities to improve the law, the legal system, and the administration of justice.

· A judge should regulate extra-judicial activities to minimize the risk of conflict with judicial duties.

· A judge should regularly file reports of compensation received for law-related and extra-judicial activities.

· A judge should refrain from political activity.

under the Constitution. They are, therefore, not required to retire at any age. But they may elect voluntarily to retire from active service on full salary if they are at least 65 years old and meet certain years of service requirements. Most Article III judges who retire continue to hear cases on a full or part-time basis as "senior judges" without additional compensation. Retired bankruptcy judges, magistrate judges, and Court of Federal Claims judges also may be "recalled" to active service. Without the service donated by senior and retired judges, the judiciary would need many more judges to handle its cases. Senior judges, for example, typically handle about 15-20% of the total appellate and district court workloads in the federal courts.

JUDICIAL EDUCATION

The Federal Judicial Center, an organization within the judicial branch, is the principal research and training resource for federal judges. It conducts a variety of educational programs for judges on substantive legal topics, the art of judging, and case management. In addition to attending an orientation training program shortly after they are first appointed, all judges are invited periodically by the Center to attend workshops that focus on new legislation, developments in case law, and specific judicial skills. The Center has also developed a number of special focus programs, often in conjunction with law schools, that address specific areas of the law in depth, such as intellectual property or the use of scientific evidence. In addition to live seminars and workshops, the Center produces a wide variety of videotapes, audiotapes, manuals, and other publications to assist judges in performing their duties.

The Administrative Office conducts training programs for judges on the use of computers and on such administrative matters as pay and benefits, hiring staff, judicial branch organization and governance, judicial ethics, and personal security. The Administrative Office also offers special orientation programs on management and operational topics for new chief judges of district courts, courts of appeals, and bankruptcy courts.

The Federal Judicial Center, the Administrative Office, and the United States Sentencing Commission jointly operate a television network that broadcasts daily education and information programs for judges and court staff. In addition, several individual courts conduct in-house orientation and mentoring programs for new judges, as well as roundtable discussions or other substantive programs for all judges.

JUDGES' STAFF

In addition to court-wide staff who are appointed by the court as a whole, each judge is allowed to hire a small personal staff, known as "chambers" staff. Judges may hire a secretary to help them with administrative matters and law clerks to help them research legal issues and draft papers. Chambers staff are subject to the ethical restrictions contained in the Code of Conduct for Judicial Employees.

The duties of chambers staff vary depending on the particular work and management preferences of each judge or court. Judges carefully supervise and review the work of their chambers staff. By using their staff to conduct legal research and other tasks that do not involve exercising the discretionary powers of a judge, each judge is better able to perform the tasks of judging.

DISTINCTIVE FEATURES OF THE AMERICAN JUDICIAL SYSTEM

THE ADVERSARY SYSTEM

The litigation process in United States courts is referred to as an "adversary" system because it relies on the litigants to present their dispute before a neutral fact-finder. According to American legal tradition, inherited from the English common law, the clash of adversaries before the court is thought most likely to allow the jury or judge to determine the truth and resolve the dispute. In some other legal systems, judges or magistrates conduct investigations to find relevant evidence or obtain testimony from witnesses. In the United States, however, the work of collecting evidence and preparing to present it to the court is accomplished by the litigants and their attorneys, normally without assistance from the court. The essential role of the judge is to structure and regulate the development of issues by the adversaries and to make sure that the law is followed and that fairness is achieved.

THE COMMON LAW SYSTEM

The American judicial process is based largely on the English common law system. Common law is law that is developed and interpreted by judges, rather than a fixed body of legal rules such as the codes of a civil law system. A basic feature of the common law is the doctrine of "precedent," under which judges use the legal principles established in earlier cases to decide new cases that have similar facts and raise similar legal issues. Judges of the lower courts are required to follow the decisions of the higher courts within their jurisdiction.

In most areas of federal law, Congress in the past century has passed elaborately detailed

statutes, sometimes referred to as "codes," that establish fundamental legal principles in particular fields of law. These bodies of statutory law include, for example, the Bankruptcy Code, the Internal Revenue Code, the Social Security Act, the Securities Act, and the Securities Exchange Act. In addition, the individual states have adopted various comprehensive codes, such as the Uniform Commercial Code. These statutes are often further developed and interpreted by regulations adopted by federal and state administrative agencies.

Despite the growth of statutory law over the last century, however, American statutes and regulations, even when called "codes," continue to be interpreted by the courts in common-law, or "precedent" fashion. Thus, for example, a bankruptcy court applying the Bankruptcy Code will consult relevant case law to determine whether there are Supreme Court or court of appeals rulings applying the particular code section in similar factual situations. Lawyers who argue the question before the court will not only dispute whether the situation is governed by a particular section of the statute, but whether it should be governed by an earlier court ruling in a purportedly similar case.

All judges in the United States, regardless of the level of the court in which they sit, exercise the power of judicial review. While judges will normally presume the laws or actions that they are reviewing to be valid, they will invalidate statutes, regulations, or executive actions that they find to be clearly inconsistent with the Constitution. They are required to abide by a hierarchy of the laws that places the United States Constitution above all other laws. Judges will therefore not only abide by precedent in interpreting statutes, regulations, and actions by members of the executive branch, but will seek to interpret them consistently with the Constitution.

FEES AND COSTS OF LITIGATION

Another characteristic of the American judicial system is that litigants typically pay their own costs of litigation whether they win or lose. The federal courts charge moderate fees that are mostly set by Congress. Other costs of litigation, such as attorneys' and experts' fees, are more substantial. Civil plaintiffs who cannot afford to pay court fees may seek permission from the court to proceed without paying those fees. In some categories of civil cases, including certain civil rights violations, a winning plaintiff may recover attorney costs from the defendant. In criminal cases, the government pays the costs of investigation and prosecution. The government also provides a lawyer without cost for any criminal defendant who is unable to afford one.

EXECUTION OF JUDGMENTS

Execution and enforcement of judgments is the responsibility of the parties to the litigation, not the courts. In criminal cases, the United States marshal (an employee of the Department of Justice) is responsible for keeping a prisoner in custody. If the court has ordered the payment of criminal fines, the clerk of court is responsible for receiving money and distributing it as directed by the court. The Department of Justice is responsible, however, for enforcement of the court's order and collection of money and assets if the defendant fails to pay the required fines.

In civil cases, the parties themselves are responsible for executing court orders, although the courts maintain a record of all judgments for public inspection. Many money judgments are covered by various forms of insurance, and in those cases the insurance companies resolve the details of enforcement of a civil judgment. A winning party may obtain the assistance of

the court in examining the debtor and taking certain actions to protect property in the debtor's possession. A winning party may also apply to a state court for assistance in enforcing a federal court judgment through state law remedies such as garnishing the wages or attaching the assets of the losing party. In general, a civil judgment becomes a lien attached to any real property of the losing party, and the judgment earns interest at a specified rate of return until it is collected.

PROCEDURAL RULES FOR CONDUCTING LITIGATION

In accordance with the Rules Enabling Act of 1934, the federal judiciary itself is responsible for issuing the rules of procedure and evidence that govern all federal court proceedings. Under this authority, the judiciary has established federal rules of evidence, and rules of civil, criminal, bankruptcy, and appellate procedure. The rules are designed to promote simplicity, fairness, and the just determination of litigation, and to eliminate unjustifiable expense and delay. They are drafted by committees of judges, lawyers, and professors appointed by the Chief Justice. They are published widely by the Administrative Office for public comment, approved by the Judicial Conference of the United States, and promulgated by the Supreme Court. The rules become law unless Congress votes to reject or modify them.

REPORTING OF JUDICIAL PROCEEDINGS

All trial and pretrial proceedings conducted in open court are written down by a court reporter or recorded by sound equipment. The court reporter is a person specially trained to record all testimony and produce a word-for-word account

called a transcript. A transcript may be prepared if necessary for an appeal of a court's decision, or upon request by one of the litigants or another person.

PUBLICATION OF COURT OPINIONS

Because common-law courts rely on judicial precedent to interpret and apply the law, it is vital for judicial opinions on current legal issues to be readily available to courts and lawyers facing similar issues. As a result, nearly all opinions and orders are open public records. Access to these records is constantly improving as a result of technology. The courts now prepare and enter most orders and opinions electronically, allowing attorneys to routinely accept official notice of court actions via system-generated email and facilitating next day electronic publication.

The federal courts' electronic docketing also allows the public to access court records in multiple ways. The Judiciary's Internet based system, Public Access to Court Electronic Records (PACER, www.pacer.gov), is an on-line service that allows users to obtain free access to orders and opinions from federal appellate, district and bankruptcy courts, or to search a national index of case and party names. Additional case and docket information on PACER can be accessed for a nominal fee. Many courts also make their opinions available directly by posting them to the local court's public website. Most documents are also still available for review and copying at the courthouse and the courts continue to formally publish select opinions, usually through a private company.

In addition to court initiated distribution, private lawbook publishing companies and computerized legal research services, such as Westlaw and Lexis/Nexis, make court opinions, statutes, and other legal materials available to the bar and public on a commercial basis. Law schools and other organizations also collect court opinions, mainly from the courts of appeals, and make them available on the Internet. Examples of collections of Supreme Court and Courts of Appeals opinions include:

www.findlaw.com/casecode/
www.law.cornell.edu
law.justia.com/

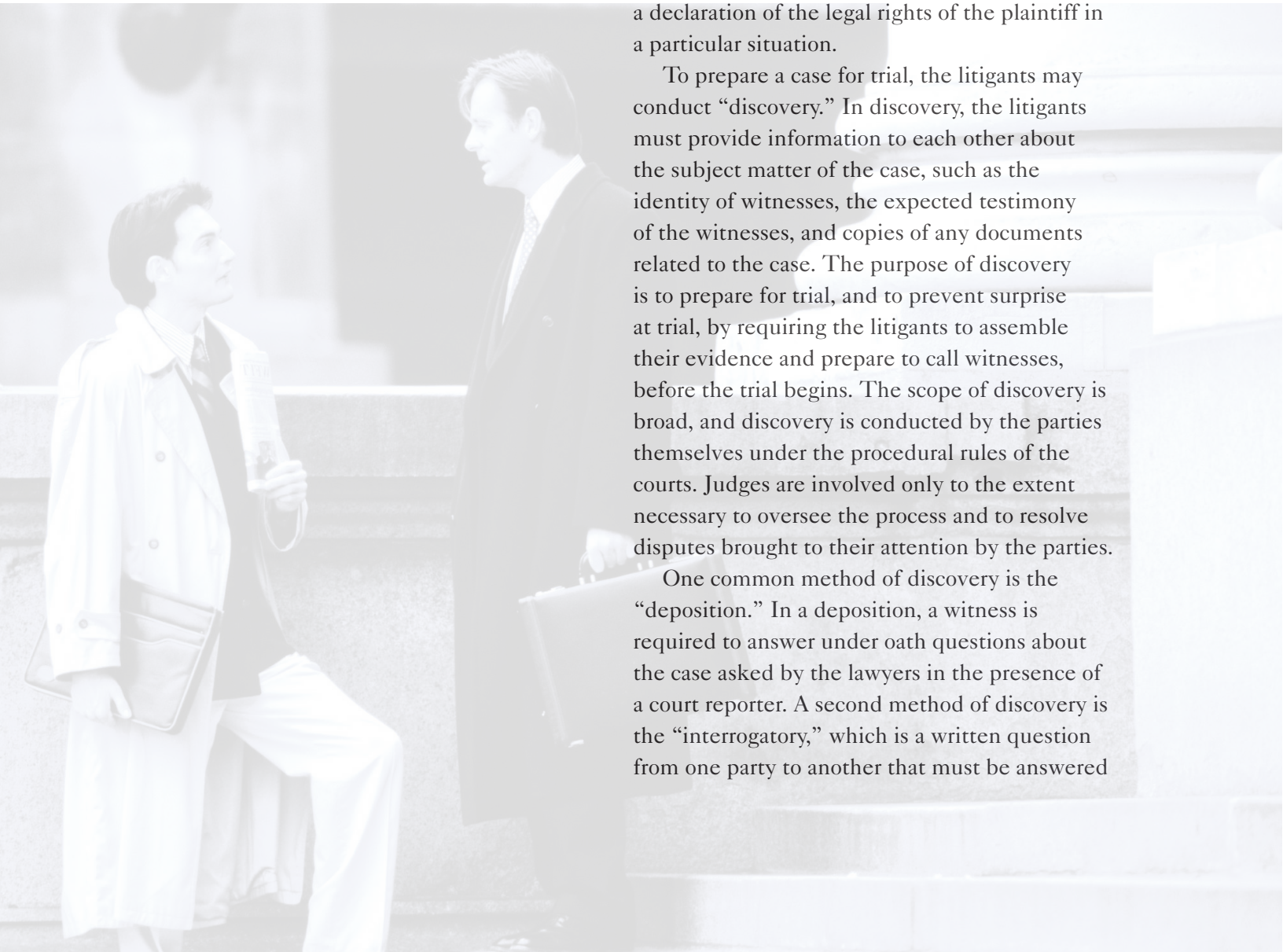
THE FEDERAL JUDICIAL PROCESS IN BRIEF

CIVIL CASES

A federal civil case involves a legal dispute between two or more parties. To begin a civil lawsuit in a federal court, the plaintiff files a document called a "complaint" with the court and "serves" a copy of the complaint on the defendant. The complaint is a short statement that describes the plaintiff's injury or other legal claim, explains how the defendant caused the injury, and asks the court to order relief. A plaintiff may seek money to compensate for the injury or ask the court to order the defendant to stop the conduct that is causing the harm. The court may also order other types of relief, such as a declaration of the legal rights of the plaintiff in a particular situation.

To prepare a case for trial, the litigants may conduct "discovery." In discovery, the litigants must provide information to each other about the subject matter of the case, such as the identity of witnesses, the expected testimony of the witnesses, and copies of any documents related to the case. The purpose of discovery is to prepare for trial, and to prevent surprise at trial, by requiring the litigants to assemble their evidence and prepare to call witnesses, before the trial begins. The scope of discovery is broad, and discovery is conducted by the parties themselves under the procedural rules of the courts. Judges are involved only to the extent necessary to oversee the process and to resolve disputes brought to their attention by the parties.

One common method of discovery is the "deposition." In a deposition, a witness is required to answer under oath questions about the case asked by the lawyers in the presence of a court reporter. A second method of discovery is the "interrogatory," which is a written question from one party to another that must be answered



under oath. A third method allows a party to require another party to produce documents and other materials within its custody or control, or to enter on another party's property for inspection or other purposes relating to the litigation.

Each side may file requests, or "motions," with the court seeking rulings on various legal issues. Some motions ask for a ruling that determines whether the case may proceed as a matter of law. A "motion to dismiss," for example, may argue that the plaintiff has not stated a claim under which relief may be granted under the law, or that the court does not have jurisdiction over the parties or the claim at issue, and therefore lacks the power to adjudicate. A "motion for summary judgment" argues that there are no disputed factual issues for a jury to resolve, and urges the judge to decide the case based solely on the legal issues. Other motions focus on the discovery process, addressing disputes over what information is subject to the discovery rules, protecting the private or privileged nature of certain information, or urging the court to preserve evidence for use at trial. Other motions address procedural issues such as the proper venue for the case, the schedule for discovery or trial, or the procedures to be followed at trial.

To avoid the expense and delay of having a trial, judges encourage the litigants to reach an agreement resolving their dispute. Most judges conduct settlement conferences with the parties, and they may refer a case to a trained mediator or arbitrator to facilitate an agreement. As a result, litigants often decide to resolve a civil lawsuit with an agreement known as a "settlement." Most civil cases are terminated by settlement or dismissal without a trial.

If a case is not settled, the court will proceed to a trial. In a wide variety of civil cases, either side is entitled under the Constitution to request a jury trial. If the parties waive their right to a jury, the case will be heard by a judge without a jury.

If a trial is conducted, witnesses testify under oath and respond to questions asked by the attorneys. Testimony is conducted under the supervision of the judge, and it must comply with formal rules of evidence designed to assure fairness, reliability, and the accuracy of testimony and documents. At the conclusion of the evidence, each side gives a closing argument. If a case is tried before a jury, the judge will instruct the jury on what the law is and will tell the jury what facts and issues it must resolve. If the case is tried by a judge without a jury, the judge will decide both the facts and the law in the case. In a civil case, the burden of proof lies with the plaintiff, who must convince the jury (or the judge if there is no jury) by a "preponderance of the evidence," i.e., that it is more likely than not that the defendant is legally responsible for any harm that the plaintiff has suffered.

CRIMINAL CASES

The judicial process in a criminal case differs from a civil case in several important ways. The parties in the case are the United States attorney (the prosecutor representing the Department of Justice) and the defendant or defendants. Criminal investigations are conducted by the Department of Justice and other law enforcement agencies, which are both part of the executive branch. The court plays no role in criminal investigations. Its role in the criminal justice process is to apply the law and make legal and factual decisions.

Three main levels of federal criminal offenses have been defined by Congress. Felony offenses are the most serious crimes and may be punished by more than one year in prison. Misdemeanor

offenses are less serious and may be punished by up to one year in prison. The least serious offenses, known as petty offenses, may be punished by up to six months imprisonment. Most petty offenses are addressed through fines rather than a prison sentence.

After a person is arrested, a pretrial services officer or probation officer of the court immediately interviews the defendant and conducts an investigation of the defendant's background. The information obtained by the pretrial services officer or probation officer will be used to help a judge decide whether to release the defendant into the community before trial and whether to impose conditions of release.

At an initial appearance, a judge (normally a magistrate judge) advises the defendant of the charges filed, considers whether the defendant should be held in custody until trial, and determines whether there is "probable cause" to believe that an offense has been committed and the defendant has committed it. Defendants who are unable to hire their own attorney are advised of their right to a court-appointed attorney. Each district court, by statute, is required to have in place a plan for providing competent attorneys to represent defendants who cannot afford their own attorneys. The court may appoint a federal public defender (a full-time federal official appointed by the court of appeals), a community public defender (a member of a community-based legal aid organization funded by a grant from the judiciary), or a private attorney who has agreed to accept such appointments from the court. In all these types of appointments, the attorney who represents the defendant is paid by the court from funds appropriated to the judiciary by Congress. Defendants released into the community before trial may be required to obey certain restrictions, such as home confinement or drug testing, and to make periodic reports to a pretrial services officer to ensure appearance at trial.

Under the Constitution, a felony criminal case may only proceed beyond the initial stages if the defendant is indicted by a grand jury. The grand jury reviews evidence presented to it by the United States attorney and decides whether there is sufficient evidence to require a defendant to stand trial.

The defendant enters a plea to the charges brought by the United States attorney at a hearing known as an arraignment. Most defendants— more than 90%—plead guilty rather than go to trial. If a defendant pleads guilty in return for the government agreeing to drop certain charges or to recommend a less severe sentence, the agreement often is called a "plea bargain." If the defendant pleads guilty, the judge may impose a sentence at that time, but more commonly will schedule a hearing to determine the sentence at a later date. If the defendant pleads not guilty, the judge will proceed to schedule a trial.

Criminal cases include a limited amount of pretrial discovery proceedings similar to those in civil cases, with substantial restrictions to protect the identity of government informants and to prevent intimidation of witnesses. The attorneys also may file motions, which are requests for rulings by the court before the trial. For example, defense attorneys often file a motion to suppress evidence, which asks the court to exclude from the trial evidence that the defendant believes was obtained by the government in violation of the defendant's constitutional rights.

In a criminal trial, the burden of proof is on the government. Defendants do not have to prove their innocence. Instead, the government must provide evidence to convince the jury of the defendant's guilt. The standard of proof in a criminal trial is much higher than in a civil

case. It must be beyond a reasonable doubt," which means the evidence must be so strong that there is no reasonable doubt that the defendant committed the crime. The judge instructs the jury on the law and the decisions that the jury must make.

If a defendant is found not guilty, the defendant is released and the government may not appeal. Nor can the person be charged again with the same crime in a federal court. The Constitution prohibits "double jeopardy," or being tried twice for the same offense.

In determining the defendant's sentence, the judge must consult special federal sentencing guidelines issued by the United States Sentencing Commission, an organization within the judicial branch. The sentencing guidelines are designed to:

- incorporate the purposes of sentencing (i.e., just punishment, deterrence, incapacitation, and rehabilitation);

- provide certainty and fairness in sentencing by avoiding unwarranted disparity among offenders with similar characteristics convicted of similar criminal conduct, while permitting some judicial flexibility to take into account relevant aggravating and mitigating factors;

- reflect, to the extent practicable, advancement in the knowledge of human behavior as it relates to the criminal justice process.

The sentencing guidelines provide federal judges with consistent sentencing ranges that take into account both the seriousness of the criminal conduct and the defendant's criminal record. Based on the severity of the offense, the guidelines assign most federal crimes to one of 43 "offense levels." Each offender is also assigned to one of six "criminal history categories" based upon the extent and recency of his or her past misconduct. The point at which the offense level and criminal history category intersect on the Commission's sentencing table determines an offender's guideline range. In order to provide flexibility, the top of each guideline range exceeds the bottom by six months or 25 percent (whichever is greater).

Ordinarily, the judge is advised to choose a sentence from within the guideline range unless the court identifies a factor that the Sentencing Commission failed to consider that should result in a different sentence. However, the judge must in all cases provide the reasons for the sentence. Sentences outside the guideline range are subject to review by the courts of appeals for "unreasonableness," and all sentences can be reviewed for incorrect application of the relevant guidelines or law.

In most felony cases the judge waits for the results of a presentence investigation report, prepared by the court's probation office, before imposing a sentence. The presentence investigation report summarizes for the court the background information needed to determine the appropriate sentence, including a thorough exploration of the circumstances of the offense and the defendant's criminal background and characteristics. The report applies the sentencing guidelines to the individual defendant and the crimes for which he or she has been found guilty. During sentencing, the court may consider not only the evidence produced at trial, but all relevant information that may be provided by the pretrial services officer, the United States attorney, and the defense attorney. In unusual circumstances, the court may depart from the sentence calculated according to the sentencing

guidelines.

A sentence may include time in prison, a fine to be paid to the government, community service, and restitution to be paid to crime victims. If the convicted defendant is released, the court's probation officers assist the court in enforcing any conditions that are imposed as part of a criminal sentence. The supervision of offenders also may involve services such as substance abuse testing and treatment programs, job counseling, and alternative detention options.

JURY SERVICE

Perhaps the most important way individual citizens become involved in the federal judicial process is by serving as jurors. There are two types of juries serving distinct functions in the federal trial courts: trial juries (also known as petit juries), and grand juries.

A civil trial jury typically consists of 6 to 12 persons. In a civil case, the role of the jury is to listen to the evidence presented at a trial, to decide whether the defendant injured the plaintiff or otherwise failed to fulfill a legal duty to the plaintiff, and to determine what the compensation or penalty should be. A criminal trial jury is usually made up of 12 members. Criminal juries decide whether the defendant committed the crime as charged. The sentence usually is set by a judge. Verdicts in both civil and criminal cases must be unanimous, although the parties in a civil case may agree to a non-unanimous verdict. A jury's deliberations are conducted in private, out of sight and hearing of the judge, litigants, witnesses, and others in the courtroom.

A grand jury, which normally consists of 16 to 23 members, has a more specialized function. The United States attorney, the prosecutor in federal criminal cases, presents evidence to the grand jury for them to determine whether there is "probable cause" to believe that an individual has committed a crime and should be put on trial. If the grand jury decides there is enough evidence, it will issue an indictment against the defendant. Grand jury proceedings are not open for public observation.

Potential jurors are selected from any source that will yield a representative sample of the population at large. Most often jurors are chosen from a jury pool generated by random selection of citizens' names from lists of registered voters, or combined lists of voters and people with drivers licenses, in the judicial district. The potential jurors complete questionnaires to help determine whether they are qualified to serve on a jury. After reviewing the questionnaires, the court randomly selects individuals to be summoned to appear for jury duty. These selection methods help ensure that jurors represent a cross section of the community, without regard to race, gender, national origin, age or political affiliation. Jurors receive modest compensation and expenses from the court for their service.

Being summoned for jury service does not guarantee that an individual actually will serve on a jury. When a jury is needed for a trial, the group of qualified jurors is taken to the courtroom where the trial will take place. The judge and the attorneys then ask the potential jurors questions to determine their suitability to serve on the jury, a process called voir dire. The purpose of voir dire is to exclude from the jury people who may not be able to decide the case fairly. Members of the panel who know any person involved in the case, who have information about the case, or who may have strong prejudices about the people or issues involved in the case, typically will be excused by the judge. The attorneys also may exclude a certain number of jurors without giving a reason.

JUROR QUALIFICATIONS AND EXEMPTIONS

Qualifications to be a Juror:

· United States citizen
· at least 18 years of age
· reside in the judicial district for one year
· adequate proficiency in English
· no disqualifying mental or physical condition
· not currently subject to felony charges
· never convicted of a felony (unless civil rights have been legally restored)

Exemptions from Service:

· active duty members of the armed forces
· members of police and fire departments
· certain public officials
· others based on individual court rules (such as members of voluntary emergency service organizations, and people who recently have served on a jury)

Excuse from Service:

· may be granted at the court's discretion on the grounds of "undue hardship or extreme inconvenience"

TERMS OF JURY SERVICE

Length of Service:

· trial jury service varies by court
· some courts require service for one day or for the duration of one trial; others require service for a fixed term
· grand jury service may be up to 18 months

Payment:

· $40 per day; in some instances jurors may also receive meal and travel allowances

Employment Protections:

· By law, employers must allow employees time off (paid or unpaid) for jury service. The law also forbids any employer from firing, intimidating, or coercing any permanent employee because of his or her federal jury service

BANKRUPTCY CASES

Federal courts have exclusive jurisdiction over bankruptcy cases. This means that a bankruptcy case cannot be filed in a state court. The bankruptcy courts have been established by Congress to operate within the district courts and presided over by bankruptcy judges.

The primary purposes of the law of bankruptcy are:

(1) to give an honest debtor a "fresh start" in life by relieving the debtor of most debts;
(2) to repay creditors in a fair and orderly manner to the extent that the debtor has property available for payment;
(3) to reorganize a failing business by restructuring debt or the business entity itself, or, alternatively, to provide a framework for the orderly liquidation of the failed enterprise; and
(4) to deter and remedy dishonest actions by debtors or creditors that would have the effect of undermining the purposes of bankruptcy law.

Bankruptcy law creates predictability and harmony in the marketplace by providing the risk parameters for creditors in extending credit to debtors. Further, the bankruptcy courts provide commercial dispute resolution options between debtors and creditors once problems arise in their relationship, providing stability to the marketplace. Lastly, bankruptcy promotes entrepreneurialism since it allows a fresh start for those who start new businesses, but fail for some reason beyond their control.

In the United States, unlike many other countries, bankruptcy usually is voluntary. In other words, it is initiated by a debtor for protection against creditors, rather than by creditors to facilitate the collection of their claims

The Bankruptcy Code provides three basic types of bankruptcy proceedings:

· Liquidation of the debtor's property (except for certain exempt property) and distribution of the proceeds, if any, to creditors. (Chapter 7)

· Debt adjustment by an individual debtor or husband and wife that allows them to repay their creditors, in whole or in part, over a period of up to five years in accordance with a detailed plan approved by the court. (Chapter 13)

· Reorganization of the financial affairs of a debtor, usually a business, through a plan that is submitted for approval by both creditors and the court. (Chapter 11)

from a common debtor. A voluntary bankruptcy case normally begins when the debtor files a petition with the bankruptcy court. A petition may be filed by an individual, by a husband and wife together, or by a corporation, partnership, or other business entity.

All individuals filing under any chapter of the Bankruptcy Code must have received credit counseling from an approved credit counseling agency either in an individual or group briefing within 180 days before filing for bankruptcy. There are exceptions in emergency situations or where the U.S. trustee or bankruptcy administrator has determined that there are insufficient approved agencies to provide the required counseling. In most states, the U.S. trustee or bankruptcy administrator is responsible for approving the providers that offer this special pre-bankruptcy briefing.

Creditors also may file involuntary bankruptcy petitions against debtors who are not paying their debts. Involuntary petitions are comparatively rare in the United States system, where more than 99% of all bankruptcy cases are commenced voluntarily. A debtor who contests such a petition may not be placed into bankruptcy involuntarily unless creditors can show that certain statutory requirements are met, including standing by the creditors to file the petition, and that the debtor is not generally paying debts as they become due.

A debtor, whether voluntary or involuntary, is required to file statements listing assets, income, liabilities, and the names and addresses of all creditors and how much they are owed. The filing of a bankruptcy petition automatically prevents, or "stays," virtually all collection actions against the debtor and the debtor's property (with some notable exceptions specified by the Bankruptcy Code such as criminal actions against the debtor). As long as the stay remains in effect, creditors cannot bring or continue lawsuits, garnish wages or seize property subject to mortgages or other security interests, or even make demands for payment, without first obtaining permission from the bankruptcy court. Creditors receive notice from the clerk of court that the debtor has filed a bankruptcy petition, and they are required to file proofs of claim in order to receive any share of a distribution from the debtor's property.

More than 70% of bankruptcy cases are filed under Chapter 7 of the Bankruptcy Code, which involves liquidation of the debtor's property. In these cases, the United States trustee, a Justice Department officer appointed to supervise the administration of the bankruptcy process in most federal court districts, appoints a trustee in bankruptcy who takes control of substantially all property of the debtor except for some categories that are exempt from seizure. The trustee then liquidates the property and distributes it to creditors according to a schedule of priorities established by the Code. The trustee is also responsible for challenging unjustified claims by creditors, investigating possible misconduct by the debtor before and during the bankruptcy, and for recovering claims that the bankruptcy estate may have against third parties, including parties who may have received fraudulent transfers or preferential payments from the debtor during the period immediately before bankruptcy. At the end of the liquidation process individual debtors normally receive a "discharge" of all pre-bankruptcy claims against them, except for certain categories of claims, such as for support of dependents or for taxes, that may not be discharged.

Any party in interest, including creditors and the trustee in bankruptcy, may object to the discharge of a particular claim or to the debtor's general discharge, on grounds such as fraud by the debtor. If a timely objection is made, the

bankruptcy court will hold a hearing and rule on whether discharge of a challenged claim, or a general discharge of debts, is allowable under the law. Litigation may also occur in a bankruptcy case over such matters as who owns certain property, how it should be used, what the property is worth, how much is owed on a debt, or how much money should be paid to lawyers, accountants, auctioneers, or other professionals. Litigation in the bankruptcy court is conducted in much the same way that civil cases are handled in the district court. There may be discovery, pretrial proceedings, settlement efforts, and a trial.

In most liquidation cases involving debtors who are consumers, there is little or no property in the bankruptcy estate to pay creditors. In these cases, the debtor will normally receive a discharge routinely, with little or no litigation. Bankruptcy cases may also be filed to allow a debtor to reorganize and establish a plan to repay creditors. Under Chapter 11 of the Bankruptcy Code, financially troubled businesses may obtain court approval of a plan to repay their creditors without immediately liquidating their assets. Unlike "compositions" or other types of non-liquidation creditor arrangements in other countries, Chapter 11 is part of United States bankruptcy law and occurs under the supervision of a bankruptcy court. A trustee is not normally appointed in Chapter 11 proceedings. Instead, the debtor continues to operate its business, subject to court supervision.

The ultimate purpose of Chapter 11 is to confirm a plan of reorganization for the debtor. The U.S. trustee appoints at least one committee of creditors to monitor the debtor and to negotiate a plan of reorganization. All plans must be submitted to the bankruptcy court, along with proposed disclosure statements explaining to parties in interest what their rights will be under each plan. If the court confirms the plan, the reorganized entity emerges from Chapter 11, with the obligations established by the plan replacing its pre-bankruptcy obligations. If no plan is confirmed, or if a party in interest persuades the court that a reorganization would not be practicable, the court may dismiss the reorganization case or convert it to a liquidation under Chapter 7.

Chapter 13 of the Bankruptcy Code creates a simpler kind of reorganization for individuals with continuing incomes, subject to certain maximum limits on amount of debt. Under Chapter 13, the debtor proposes a plan for repaying debt from future earnings rather than through liquidation of the debtor's property. Plans of this kind typically provide that all the debtor's disposable income for a period of three to five years will be devoted to repaying creditors. If the court finds that the plan is proposed in good faith, it may confirm the plan even over the objections of creditors. A trustee is appointed to supervise the execution of the plan. The debtor will pay everything required under the plan to the trustee, who in turn will pay creditors in the amounts required by the plan. If the debtor satisfactorily completes the plan's requirements, he or she will then receive a discharge from all obligations other than those specifically excepted from discharge by the Code.

A frequently used provision is Bankruptcy Code § 304, which authorizes the commencement of a case ancillary to a foreign insolvency proceeding. In cases where a debtor who is the subject of an insolvency proceeding in another country has property in the United States, a representative of the foreign tribunal may commence a proceeding in a United States bankruptcy court under § 304. The bankruptcy court has authority to fashion whatever relief is appropriate under the circumstances,

including the granting of injunctions barring the commencement or continuation of proceedings in other United States courts against the foreign debtor or its property. The court also has authority, where appropriate, to order the turnover of United States property of the foreign debtor to the foreign representative.

THE APPEALS PROCESS

The losing party in a decision by a trial court in the federal system is entitled as a matter of right to appeal the decision to a federal court of appeals. Similarly, a litigant who is not satisfied with a decision made by a federal administrative agency in the executive branch usually may file a petition for review of the agency decision by a court of appeals. Judicial review in cases involving certain federal agencies or programs—for example, disputes over Social Security benefits—may be obtained first in a district court rather than directly to a court of appeals.

In a civil case either side may appeal the verdict. In a criminal case, the defendant may appeal a guilty verdict, but the government may not appeal if a defendant is found not guilty. Either side in a criminal case may appeal with respect to the sentence that a judge imposes after a guilty verdict.

In most bankruptcy courts, an appeal of a ruling by a bankruptcy judge may be taken to the district court. In several circuits, a Bankruptcy Appellate Panel consisting of three bankruptcy judges has been established to hear appeals directly from the bankruptcy courts. In either situation, the party that loses in the initial bankruptcy appeal may then appeal further to the court of appeals. Most appeals from decisions of magistrate judges are taken to a district judge. But when a magistrate judge tries a case on consent of the parties, an appeal may be taken directly to the court of appeals.

A litigant who files an appeal, known as an "appellant," must show that the trial court or administrative agency made a legal error that affected the decision in the case. The court of appeals makes its decision based on the record of the case established by the trial court or agency. It does not receive additional evidence or hear witnesses. The court of appeals also may review the factual findings of the trial court or agency, but typically may only overturn a decision on factual grounds if the findings were "clearly erroneous." The appellate court may not hear new evidence, but may "remand" the case to the trial court for that purpose.

Appeals are decided by panels of three judges working together. The appellant presents legal arguments to the panel, in writing, in a document called a "brief." In the brief, the appellant tries to persuade the judges that the trial court made an error, and that its decision should be reversed. On the other hand, the party defending against the appeal, known as the "appellee," tries in its brief to show why the trial court decision was correct, or why any error made by the trial court was not significant enough to affect the outcome of the case.

Although some cases are decided on the basis of the litigants' briefs through short written decisions by the court, many cases are selected for an "oral argument" before the court. Oral argument in the court of appeals is a structured discussion between the appellate lawyers and the panel of judges focusing on the legal principles in dispute. Each side is given a short time—usually about 15 minutes—to present arguments to the court.

The court will usually state the reasons for its decision in a written opinion. A judge on the panel who disagrees with the majority opinion may write a separate dissenting opinion. The dissenting opinion may help the analysis of the

issues if the case is reviewed at a higher level.

The court of appeals decision usually will be the final word in the case, unless it sends the case back to the trial court for additional proceedings, or the parties ask the United States Supreme Court to review the case. In some cases the decision of the three-judge panel of the court may be reviewed en banc, that is, by a larger group of judges (usually all) of the court of appeals for the circuit.

A litigant who loses in a federal court of appeals, or in the highest court of a state court system, may petition the United States Supreme Court to review the case. The Supreme Court, however, does not have to grant review, except in a very small number of cases governed by special statutes. In a given year, the Court will typically receive about 8,000 petitions for certiorari, and it will agree to hear only about 100 cases.

The Supreme Court typically will agree to hear a case only when it involves an unusually important legal principle, or when two or more federal appellate courts have interpreted a law differently. There are also a small number of special circumstances in which the Supreme Court is required by law to hear a case or accept an appeal directly from a federal trial court. When the Supreme Court hears a case, the parties are required to file written briefs and the Court may hear oral argument. Additionally, other parties with significant interests in the legal issues raised by a case may ask permission to file briefs as friends of the court ("amicus curiae"). The executive branch, acting through the Solicitor General, will often file such briefs, which may help to define the issues and otherwise affect the outcome of a case.

The Supreme Court, like the lower courts, usually explains the reasons for its decision on a case in a written opinion. Supreme Court opinions are precedent for all other courts in the United States. As with the courts of appeals, justices who disagree with the majority opinion may write dissenting opinions. In some cases, justices who agree with the result in a case but not in the majority's reasoning will file concurring opinions.

FEDERAL JUDICIAL ADMINISTRATION

Three of the essential characteristics of federal judicial administration are that:

· The federal judiciary is a separate, independent branch of the government that has been given statutory authority to manage its own affairs, hire and pay its own staff, and maintain its own separate budget.

· The management of the federal judiciary is largely decentralized. The Judicial Conference of the United States establishes national policies and approves the budget for the judiciary, but each court has substantial local autonomy.

· Judges are in charge of the judiciary at all levels and establish the policies for management of the courts. Court administrators are hired by the judges and report to the judges.

INDIVIDUAL COURTS

The day-to-day responsibility for judicial administration rests largely with each individual court. Each court is given the responsibility by statute and administrative practice to appoint its own support staff and manage its own affairs. Under the judiciary's budget decentralization program, moreover, substantial budget and administrative responsibility has been delegated to each court.

Each court in the federal system has a chief judge who, in addition to hearing cases, has administrative responsibilities relating to the operation of the court. The chief judge is normally the judge who has served on the court the longest. District court, court of appeals, and Court of International Trade judges must be under age 65 to become chief judge. They may serve as chief judge for a maximum of seven years, and they may not serve as chief judge beyond the age of 70.

The chief judge of each court plays a key leadership role in overseeing the operations of the court, promoting its efficiency, and ensuring accountability to the public. The court operates as a collegial body, and important policy decisions are made by all judges of the court working together under the leadership of the chief judge.

COURT STAFF

Judicial branch staff are not part of the executive branch, and therefore are not part of the federal civil service system. Instead, the Judicial Conference and the Director of the Administrative Office of the United States Courts have established a separate personnel system for court officers and employees that includes a flexible pay structure, standard qualifications for certain positions, and an employee dispute resolution

procedure. Individual courts have wide discretion, within the national standards, to hire and pay their own employees. Court staff are supervised by, and responsible to, the judges of their court, not the Administrative Office of the United States Courts.

CLERK OF THE COURT

In addition to their own personal chambers staff of law clerks and secretaries, judges rely on central court support staff to assist in the work of the court.

The primary administrative officer of each court is the clerk of the court. The clerk manages the court's non-judicial functions in accordance with policies set by the court and reports directly to the court through its chief judge. Among the clerk's many functions are:

- Maintaining the records and dockets of the court
- Operating the court's computerized systems
- Keeping track of the court's budget and expenditures
- Maintaining property and personnel records
- Paying all fees, fines, costs and other monies collected into the U.S. Treasury
- Administering the court's jury system
- Providing interpreters and court reporters
- Sending official court notices and summons
- Providing courtroom support services
- Responding to inquiries from the bar and the public

Court Support Staff

In addition to their personal chambers staff of law clerks and secretaries, judges rely on central court support staff to assist in the work of the court. These staff include:

Clerk

Circuit Executive

Court Reporter

Court Librarian

Staff Attorneys and Pro Se Law Clerks

Pretrial Services Officers and Probation Officers.

OTHER CENTRAL COURT STAFF

Pretrial services officers and probation officers interview defendants before trial; investigate defendants' backgrounds; file detailed reports to assist judges in deciding on conditions of release or detention of defendants before trial and on sentencing of convicted defendants; and supervise released defendants.

Staff attorneys and pro se law clerks assist the court with research and drafting of opinions.

Court reporters make a word-for-word record of court proceedings and prepare a transcript.

Court librarians maintain court libraries and assist in meeting the information needs of the judges and lawyers.

THE CIRCUIT JUDICIAL COUNCILS

A judicial council in each geographic circuit oversees the administration of the courts located in the circuit. Each judicial council consists of the chief circuit judge, who serves as the chair, and an equal number of other circuit (court of appeals) judges and district (trial court) judges. Each judicial council appoints a circuit executive, who works closely with the chief circuit judge to coordinate a wide range of administrative matters in the circuit.

The judicial council assures accountability to the citizens through its broad authority to oversee numerous aspects of court of appeals and district court operations. The council is authorized by statute to issue orders to individual judges and court personnel. As part of its responsibility to ensure that individual courts are operating effectively, the judicial council reviews local court policies and actions on such matters as employment disputes, jury selection, legal defense for indigent defendants, court backlogs and local procedural rules for litigation. In addition, the council has authority to approve courts' requests for exceptions to national guidelines on staffing, resources, and expenses. And the judicial council may be called upon to take action to solve problems that the chief judge or local court cannot resolve on its own.

THE JUDICIAL CONFERENCE OF THE UNITED STATES

The Judicial Conference of the United States, established by statute in 1922, is the federal courts' national policy-making body, and it speaks for the judicial branch as a whole. The Chief Justice of the United States presides over the Conference, which consists of 26 other judges, including the chief judge of each court of appeals, one district court judge from each regional circuit, and the chief judge of the Court of International Trade.

The Judicial Conference works through committees established along subject matter lines to recommend national policies and legislation on all aspects of federal judicial administration. The committees, all of which are appointed by the Chief Justice, consist mostly of judges. Committees address such matters as budget, rules of practice and procedure, court administration and case management, criminal law, bankruptcy, judicial resources (judgeships and personnel matters), automation and technology, and codes of conduct. The main responsibilities of the Judicial Conference are:

- approving the judiciary's annual budget request (which is prepared by the Administrative Office and the Judicial Conference's Budget Committee)

- proposing, reviewing, and commenting on legislation that may affect the workload and procedures of the courts

· implementing legislation by promulgating national regulations, guidelines, and policies

· supervising and directing the Administrative Office in such matters as human resources, accounting and finance, automation and technology, statistics, and administrative support services

· drafting and amending the general rules of practice and procedure for litigation in the federal courts, subject to the formal approval of the Supreme Court and Congress

· promoting uniformity of court procedures and the expeditious conduct of court business

· exercising authority over codes of conduct, ethics, and judicial discipline

· making recommendations to the Congress for additional judgeships

· reviewing space and facilities needs

THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

The Administrative Office provides a broad range of legislative, legal, financial, automation, management, administrative, and program support services to the federal courts. The Administrative Office, an agency within the judicial branch established by statute in 1939, is supervised and directed by the Judicial Conference and is responsible for carrying out Conference policies. The Director of the Administrative Office, who is appointed by the Chief Justice in consultation with the Judicial Conference, serves as the chief administrative

Current Judicial Conference Committees

· Executive (senior arm of the Judicial Conference)
· Administrative Office (oversight of)
· Bankruptcy
· Budget
· Codes of Conduct
· Criminal Law
· Court Administration and Case Management
· Defender Services
· Federal-State Jurisdiction
· Financial Disclosure
· Information and Technology
· Intercircuit Assignments (of judges)
· International Judicial Relations
· Judicial Branch (judges' pay and benefits)
· Judicial Conduct and Disability Orders
· Judicial Resources (Article III judgeship and court staffing requests, personnel matters)
· Judicial Security
· Magistrate Judges
· Rules of Practice and Procedure
· Space and Facilities

officer of the federal courts. Congress has vested many of the judiciary's administrative responsibilities in the Director by statute. Among its functions, the Administrative Office:

- provides staff support and advice to the Judicial Conference and its committees
- provides management advice and assistance to the courts
- develops and administers the judiciary's budget
- allocates funds to each court
- audits court financial records
- manages the judiciary's payroll and human resources programs
- provides legal services to the judiciary
- collects and analyzes statistics to report on the business of the courts
- manages the judiciary's automation and information technology programs
- conducts studies and reviews of programs and operations
- develops new business methods for the courts
- issues manuals, guides, and other publications
- coordinates communications with the legislative and executive branches
- provides public information on the work of the judicial branch

Recognizing that the courts can often make better business decisions based on local needs, the Director delegates responsibility for many administrative matters from the Administrative Office to the individual courts. This concept, known as "decentralization," allows each court to operate with considerable autonomy and sound management principles in accordance with policies and guidelines set at the regional and national level. Decentralization of administrative authority has been shown to benefit both the courts and the taxpayers because it encourages innovation and economy. In conjunction with the delegation of administrative responsibilities to the courts, the Administrative Office provides them with considerable guidance, training, technical assistance and advice, and it performs audits and reviews.

THE FEDERAL JUDICIAL CENTER

The Federal Judicial Center, established in 1967, is the primary research and education agency of the federal judicial system. The Chief Justice of the United States chairs the Center's Board, which also includes the Director of the Administrative Office and seven judges elected by the Judicial Conference. The Board appoints the Center's Director and Deputy Director.

Among its functions, the Center:

- conducts and promotes education and training for federal judges
- develops education and training programs for court personnel, such as those in clerks' offices and probation and pretrial services offices
- conducts and promotes research on federal judicial processes, court management, and other issues affecting the judiciary
- produces publications, manuals, videotapes, and audiotapes for the federal judiciary on a broad range of topics
- maintains a library of materials on judicial administration

- develops programs relating to the history of the judicial branch and assists courts with their own judicial history programs

- facilitates exchanges with court systems of other countries.

THE UNITED STATES SENTENCING COMMISSION

The United States Sentencing Commission establishes sentencing guidelines for the federal criminal justice system. The Commission also monitors the performance of probation officers with regard to sentencing recommendations, and it has established a research program that includes a clearinghouse and information center on federal sentencing practices. The Sentencing Commission consists of a chairman and six other voting commissioners who are appointed for six-year terms by the President, subject to approval by the Senate.

THE JUDICIARY BUDGET

In recognition of the constitutional separation of powers among the three branches of the federal government, Congress has given the judiciary authority to prepare and execute its own budget. The Administrative Office, in consultation with the courts and with various Judicial Conference committees, prepares a proposed budget for the judiciary for each fiscal year. The proposed budget is based in large part on workload staffing and resources formulas developed by the Administrative Office in consultation with the courts. Using these formulas, a budget proposal is developed that incorporates specific allocations for support staff and administrative services for each court. The proposed budget also includes the requests

In recognition of the constitutional separation of powers among the three branches of the federal government, Congress has given the judiciary authority to prepare and execute its own budget.

The proposal is first reviewed by the Judicial Conference's Budget Committee, then approved by the Judicial Conference and submitted directly to the Congress with detailed justifications. By law, the President must include in his budget to Congress the judiciary's budget proposal without change.

of various Judicial Conference committees for funding new or expanded programs.

The proposal is first reviewed by the Judicial Conference's Budget Committee, then approved by the Judicial Conference and submitted directly to the Congress with detailed justifications. By law, the President must include in his budget to Congress the judiciary's budget proposal without change.

The appropriation committees of the Congress conduct hearings on the judiciary's proposed budget at which judges and the Director of the Administrative Office present and justify the judiciary's projected expenditures. After Congress enacts a budget for the judiciary, the Judicial Conference Executive Committee approves plans to spend the money, and the Administrative Office distributes funds directly to each court, operating unit, and program in the judiciary.

The Administrative Office's Director has delegated to the individual courts many statutory administrative authorities. For this reason, individual courts have considerable authority and flexibility to conduct their work, establish budget priorities, make sound business decisions, hire staff, and make purchases, consistent with policies and spending limits. The judiciary's budget includes salaries for judges and court personnel, which typically account for over 60% of the total budget. Another 20% of the budget is used to pay the executive branch for rent on court buildingsand facilities. The remaining 20% of the budget includes such expenses as computers, travel, supplies, security for judges, compensation for defense attorneys, and fees for jurors.

COURTHOUSE SPACE, FACILITIES, AND SECURITY

The federal courts are located in over 750 separate facilities across the United States that are either government-owned or leased. As with most other federal entities, the judiciary has no direct authority to acquire facilities for its own use. By law, that responsibility lies exclusively with the General Services Administration (GSA), an executive branch agency. As the landlord for the federal court system (and almost all other government-owned buildings), GSA is charged with providing space in either public buildings or leased facilities, and with providing certain levels of services in these accommodations. The Administrative Office also works with the GSA to provide accommodations, including chambers and courtrooms, to the courts.

In 1984, the Judicial Conference approved the first United States Courts Design Guide and other documents to provide guidelines and standards to GSA and to design architects for the construction and furnishing of federal courthouses. GSA has adopted these standards and guidelines for the design, construction and furnishing of federal courthouses and works closely with the Administrative Office.

The United States Marshals Service, a bureau of the Department of Justice, is responsible for providing security for judges wherever they are located. In the event of a threat to the judge or the judge's family, the marshal will make arrangements to provide protection until the threat can be neutralized. The Marshals Service is also responsible for ensuring the safety of courthouses and courtrooms. It accomplishes this task in two ways: First, the U.S. marshal and deputy marshals in each judicial district work closely with the members of the court and court staff, as well as with the Federal Bureau of Investigation and local law enforcement, to ensure the security of judges and court facilities. Second, the United States Marshals Service, using funds provided to it by the judiciary, hires private

security firms to provide court security officers to assist with routine security functions.

INFORMATION TECHNOLOGY IN THE JUDICIAL BRANCH

Since 1975, when the first computer was used in the federal courts, the use of information technology has increased rapidly. The judicial business of opinion and order writing is currently performed almost exclusively through word processing technologies. The courts supplement their legal research with on-line computer services. The dockets of all courts have been automated. Presentence investigation reports in criminal cases are prepared using specially designed computer programs. Nationwide software applications facilitate the collection of judicial statistics. Automated systems help the courts manage their resources—such as personnel, funds, or lawbooks—effectively and efficiently. The courts are inter-connected by the nationwide installation of the judiciary's own computer network, the Data Communications Network. The Administrative Office and the Federal Judicial Center provide information to the public electronically via the Internet. The Administrative Office has also established an internal (or "intranet") website for disseminating publications, guides, memoranda, bulletins, and other documents to judges and judicial branch staff.

The information technology (IT) program for the federal courts is guided by the Long Range Plan for Information Technology in the Federal Judiciary. The Plan is updated annually with input from the courts and is approved by the Judicial Conference on the recommendation of its Committee on Information Technology. Funding for IT is approved and expended in accordance with the Plan. Additionally, IT requirements in general and for specific IT projects are developed by court users to ensure that the judiciary's IT program continues to meet the essential needs of the federal courts over time.

STRATEGIC PLANNING AND MANAGEMENT EFFICIENCY IN THE FEDERAL COURTS

In recent years, strategic planning and management efficiency have become increasingly important in preserving judicial branch autonomy and judicial independence. Although the federal courts have little control over either their workload and the resources available to process the workload, the judiciary has through careful planning and management met the challenges of rising workloads and tight budgets.

The Judicial Conference in 1995 approved the first comprehensive Long Range Plan for the Federal Courts. The Plan's broad scope covered the activities of the entire judiciary, including detailed recommendations on aspects of jurisdiction, structure, procedures, and management of the federal courts. Ongoing responsibility for strategic planning rests with the Judicial Conference committees responsible for the respective subject areas, with coordination by the Executive Committee. The judiciary continuously works to identify ways to accommodate more work, contain costs, and improve services. Federal judges enjoy secure tenure and complete decisional independence. Nevertheless, they and court personnel are accountable to the public for performing their duties in an ethical manner and for making legal and effective use of funds and property provided by the taxpayers. Most issues involving the conduct or performance of a judge or a member of the court's staff are resolved informally by the chief judge of the court or collegially by all the judges of the court. But several other mechanisms are also in place to assure accountability of judges and court staff.

ACCOUNTABILITY

DISCIPLINARY MECHANISMS

Any person who believes that a judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, or that a judge cannot discharge all the duties of the office because of physical or mental disability, may file a complaint with the clerk of the court of appeals for the circuit where the judge sits.

The chief judge of the court of appeals is authorized to dismiss the complaint if it does not allege conduct that meets the statutory definition of misconduct or disability, or if the complaint relates to the merits of a judicial decision, or if the complaint is frivolous. The chief judge may also dismiss the complaint if corrective action has been taken or if intervening events have made further action unnecessary. The great majority of complaints are in fact dismissed.

If the chief judge does not dismiss the complaint, he or she is required to appoint a special investigatory committee of judges to examine the allegations and prepare a written report and recommendations to the judicial council of the circuit. After consideration of the special committee's report, the council is empowered to investigate the allegations further or to take appropriate actions, including:

- requesting that a judge retire voluntarily,
- certifying the disability of the judge (thereby creating a vacancy on the court),
- ordering that no further cases be assigned to the judge for a temporary period,
- issuing a public or private reprimand of the judge, or
- taking any other action as appropriate.

If the judicial council determines that an Article III judge may have engaged in criminal conduct or that the complaint is not amenable to resolution by the council, it must forward the matter to the Judicial Conference of the United States. The Judicial Conference may vote to refer the matter to the Congress for possible impeachment and removal proceedings. In practice, impeachment and removal from office is a rare event, and is generally reserved for situations in which a judge has already been convicted of a serious criminal offense. Court staff are not part of the government-wide civil service system and may be disciplined or removed without following the government-wide civil service rules. Each court, however, has in place an employee dispute resolution plan to protect employees against arbitrary action and to provide them with due process and reasonable redress for their grievances. The chief judge of each court normally has the final word on personnel matters, but employees generally may file an appeal from a final decision of their court on an employee dispute to the judicial council of the circuit.

In any case where it appears that a potential criminal violation may have been committed either by a judge or a member of the court's staff, the matter is referred promptly to the Department of Justice for possible criminal prosecution.

OTHER FORMAL MECHANISMS

The Judicial Conference of the United States approves the budget for the judiciary and establishes guidelines as to what courts may spend for various property and programs. Each court has been given local budget authority, but the court must stay within the guidelines approved by the Judicial Conference and follow pertinent statues and rules governing the handling of money and the purchase and maintenance of public property.

In management matters, the chief judge of each court—acting on behalf of all the judges—is responsible for overseeing court operations, supervising central court staff, and making sure that court funds are spent legally, wisely, and efficiently. The chief judge is expected to address and resolve administrative problems and may involve the other judges where necessary.

The Director of the Administrative Office, acting under the supervision of the Judicial Conference, may withdraw a delegation of budget or administrative authority to a court if he finds that the national spending guidelines or policies established by the Conference have been exceeded or if statutory or regulatory procedures have been violated.

The Director may also refer matters of concern to the judicial council of the circuit for appropriate action. The judicial council has statutory power to exercise general oversight over administrative matters within the circuit. It may order a court, or any judge or employee, to take appropriate administrative or management actions.

The Administrative Office conducts regular financial audits of all courts and court programs. It also provides management advice and conducts on-site management reviews of court operations on request. In addition, the General Accounting Office, an audit arm of the Congress, may conduct general reviews of court operations. The Congress itself, in appropriate cases, may conduct hearings or request background information on judicial operations as part of its responsibility of determining the judiciary's need for appropriations and in determining the need for changes in substantive law.

INFORMAL MECHANISMS

Federal judges and court staff take enormous personal and collective pride in the federal judiciary as a whole and in their own court. The federal courts enjoy a national reputation for excellence and efficiency, and judges and their staff are vigilant in upholding that reputation. Peer pressure is very important. It is, for example, a powerful incentive for judges to stay current in their caseloads. By statute, the judges of each court are authorized collectively to divide up the caseload of the court, to determine where judges sit, and to determine local operating procedures. Judges' caseload statistics are usually shared with their colleagues on a regular basis, and the Administrative Office is required by law to publish some important information on individual judges' backlogs.

In addition, virtually all judicial decisions are subject to appeal, and federal judges' decisions are widely distributed to the bar and the public through the media, lawbook publishers, and the Internet. Their decisions are analyzed by the legal and academic communities, and judges are often "rated" unofficially by bar polls and legal publications.

Finally, the role of the media in a democracy cannot be understated. Particularly in the current era of "investigative" journalism, every action of a court or an individual judge or court employee, is subject to potential media scrutiny and criticism.

COMMONLY ASKED QUESTIONS ABOUT THE FEDERAL JUDICIAL PROCESS

How is a civil case filed? Is there a charge?

A civil action is begun by the filing of a complaint. Parties beginning a civil action in a district court are required to pay a filing fee set by statute. A plaintiff who is unable to pay the fee may file a request to proceed in forma pauperis. If the request is granted by the court, the fees are waived. Filing fees and other service fees constitute only a small percentage of the federal judiciary's budget. Most fees charged by the courts are deposited into the general treasury of the United States. Congress, however, has authorized the courts to retain certain fees, such as those charged for providing electronic access to court records.

How is a criminal case filed?

Individuals may not file criminal charges in federal courts. A criminal proceeding may only be initiated by the government, usually through the U.S. attorney's office in coordination with a law enforcement agency. A magistrate judge or other judge may order the arrest of an accused person upon the filing of a complaint and accompanying affidavits sworn by the United States attorney or law enforcement agents that set forth sufficient facts to establish "probable cause" that a federal offense has been committed and that the accused has committed it. A felony case, however, may not proceed beyond the initial stages unless a federal grand jury indicts the defendant.

How does one file for bankruptcy protection? Is there a charge?

A bankruptcy case is begun by the filing of a petition with a bankruptcy court. There is a range of filing fees for bankruptcy cases, depending on the chapter of the Bankruptcy

Code under which the case is filed. Chapter 7, the most common type filed by individuals, involves an almost complete liquidation of the assets of the debtor, as well as a discharge of most debts. All individuals filing under any chapter of the Bankruptcy Code must have received credit counseling from an approved credit counseling agency either in an individual or group briefing within 180 days before filing for bankruptcy.

How does one find a lawyer?

Local bar associations usually offer lawyer referral services, often without charge. The clerk's office in each district court is usually able to help find a referral service. But personnel in the clerk's office and other federal court employees are prohibited from providing legal advice to individual litigants.

Defendants in criminal proceedings have a constitutional right to a lawyer, and they are entitled to have counsel appointed at government expense if they are financially unable to obtain adequate representation by private counsel. The Criminal Justice Act requires a court determination that a person is financially eligible for court appointed counsel.

Although parties normally have the right to be represented by a lawyer of their choice in civil cases, there is no general right to free legal assistance in civil proceedings. Some litigants obtain free or low-cost representation through local bar association referrals, lawyers acting in recognition of their professional responsibility to provide some representation pro bono publico, or through legal services organizations. Litigants in civil cases may also proceed pro se; that is, they may represent themselves without the assistance of a lawyer.

Are litigants who do not speak English entitled to a court-appointed interpreter?

A certified interpreter is appointed and paid for by the government for any criminal defendant who needs one, and for any defendant in a civil case in which the government is the plaintiff.

How are judges assigned to specific cases?

Judge assignment methods vary, but almost all courts use a blind random drawing under which each judge in a court receives roughly an equal caseload.

What is a U.S. Magistrate Judge?

Magistrate judges are judicial officers appointed by the district court to serve for eight-year terms. Their duties fall into four general categories:

(1) conducting most of the initial proceedings in criminal cases (including search and arrest warrants, detention hearings, probable cause hearings, and appointment of attorneys);

(2) trial of most criminal misdemeanor cases;

(3) conducting a wide variety of other proceedings referred to them by district judges (including deciding motions, reviewing petitions filed by prisoners, and conducting pretrial and settlement conferences); and

(4) trial of civil cases, if the parties consent.

How does one check on the status of a case?

The clerk's office responds without charge to most inquiries on the status of a case. A fee may be charged, however, to conduct certain searches and retrieve some types of information, and to make copies of court documents. Most federal

courts have automated systems that allow for the search and retrieval of case-related information at the public counters in the courthouse, and electronically from other locations. In many bankruptcy and appellate courts, telephone information systems enable callers to obtain case information by touch-tone phone. Court dockets and opinions may also be available on the Internet. The federal judiciary's Internet homepage, www.uscourts.gov, includes links to individual court websites, as well as a directory of court electronic public access services.

How quickly does a court reach a decision in a particular case?

All cases are handled as expeditiously as possible. The Speedy Trial Act of 1974 establishes special time requirements for the prosecution and disposition of criminal cases in district courts. As a result, courts must give the scheduling of criminal cases a higher priority than civil cases. The Act normally allows 70 days from a defendant's arrest to the beginning of the trial.

There is no similar law governing civil trial scheduling, but on average the courts are able to resolve most civil cases in less than a year. Statistically, the national median time from filing to disposition of civil cases in the federal courts is about eight to nine months. Depending on its complexity, a particular case may require more or less time to address. There are numerous reasons why the progress of a particular case may be delayed, many of which are outside the court's control. Cases may be delayed because settlement negotiations are in progress, or because there are shortages of judges or available courtrooms.

How are staff hired in the federal courts?

The Judicial Conference, with the assistance of the Administrative Office, establishes general qualifications and pay scales for court employees. The federal court system's personnel decisions are decentralized. Each court conducts its own advertising and hiring for job positions. Judges select and hire their own chambers staff. The clerk of court and certain other central court staff are hired by the court as a whole. Other court staff are hired by the clerk of court, who acts under the supervision of the court. Some employment opportunities are listed on the judiciary's Internet homepage, www. uscourts. gov, but often the clerk's office or Internet website of a particular court is the best source for a complete listing. The federal judiciary is committed to the national policy of ensuring equal employment opportunity to all persons.

COMMON LEGAL TERMS

acquittal: Judgment that a criminal defendant has not been proved guilty beyond a reasonable doubt. In other words, a verdict of "not guilty." Under the Double Jeopardy clause of the Constitution, the defendant may never be tried again criminally for the same offense.

administrative law judge: An officer in a regulatory or social service agency, such as the Securities and Exchange Commission or the Social Security Administration, who decides disputes under the law and regulations administered by his agency, subject to appeals to the Article III courts.

affidavit: A written statement of facts confirmed by the oath of the party making it, before a notary or officer having authority to administer oaths.

alternative dispute resolution: Methods of resolving a legal dispute without conducting a trial, including mediation and arbitration.

answer: The formal written statement by a defendant responding to a civil complaint and setting forth the grounds for his or her defense.

appeal: A request made after a trial by a party that has lost on one or more issues that a higher court (appellate court) review the trial court's decision to determine if it was correct. To make such a request is "to appeal" or "to take an appeal." One who appeals is called the "appellant. " The other party is the "appellee."

arraignment: A proceeding in which an individual who is accused of committing a crime is brought into court, told of the charges, and asked to plead guilty, not guilty, or nolo contendere (no contest).

bankruptcy: A legal process —over which the federal courts have exclusive jurisdiction—by which persons or businesses unable to pay their debts can seek the assistance of the court in liquidating and reorganizing their assets and liabilities. Under the protection of the bankruptcy court, debtors may discharge their debts. Bankruptcy judges preside over these proceedings.

bench trial: Trial by a judge without a jury in which a judge decides which party prevails.

brief: A written statement submitted by a party in a case that asserts the legal and factual reasons why the party believes the court should decide the case, or particular issues in a case, in that party's favor.

chambers: A judge's office, typically including work space for the judge's law clerks and secretary.

case law: The law as reflected in the written decisions of the courts.

case ancillary to a foreign proceeding: A case commenced under Bankruptcy Code § 304 by the representative of a foreign tribunal to protect the U.S. property of a debtor subject to an insolvency proceeding in another country.

chief judge: The judge who has primary responsibility for the administration of a court. Chief judges are determined by seniority.

clerk of court: An administrative officer appointed by the judges of the court to assist in managing the flow of cases through the court, maintain court records, handle financial matters, and provide other administrative support to the court.

common law: The legal system that originated in England and is still in use in the United States that relies on the articulation of legal principles in a historical succession of judicial decisions. Common law principles can be changed by legislation, but legislation is subject to interpretation by common law methodology. Many areas of the law, such as bankruptcy, are now codified in detailed statutes, but these statutes are applied according to their interpretations by successive precedents established by the courts.

complaint: A written statement filed by the plaintiff that initiates a civil case, stating the jurisdiction of the court to resolve the legal dispute, the wrongs allegedly committed by the defendant, and the requested relief.

contract: An agreement between two or more persons that creates an obligation to do or not to do a particular thing.

conviction: A judgment of guilt against a criminal defendant.

court: Government entity presided over by judges and authorized by statute to resolve legal disputes. Judges sometimes use "court" to refer to themselves in the third person, as in "the court has read the briefs."

court reporter: A person who makes a word-for-word record of what is said in court, generally by using a stenographic machine, shorthand or audio recording, and then produces a transcript of the proceedings upon request.

Court of International Trade: An Article III court established by Congress to hear cases involving U.S. international trade law,

including questions concerning tariffs, dumping, countervailing duties, and international property issues.

d

debtor: A person who is the subject of a bankruptcy case.

defendant: In a civil case, the person or organization against whom the plaintiff brings suit; in a criminal case, the person accused of the crime.

deposition: An oral statement made before an officer authorized by law to administer oaths. Such statements are often taken to examine potential witnesses, to obtain discovery, or to be used later in trial.

discovery: The process by which lawyers learn about their opponent's case in preparation for trial. Typical tools of discovery include depositions, interrogatories, requests for admissions, and requests for documents. All these devices help the lawyer learn the relevant facts and collect and examine any relevant documents or other materials.

docket: A log containing the complete history of each case in the form of brief chronological entries summarizing all court proceedings. All federal court dockets are maintained in electronic form and are generally available to the public by computer.

e

en banc: "In the bench" or "as a full bench." Refers to court sessions with the entire membership of a court participating rather than the usual number. United States circuit courts of appeals usually sit in panels of three judges, but all the judges in the court may decide certain matters together. They are then said to be sitting "en banc" (occasionally spelled "in banc").

equitable: Pertaining to civil suits in "equity" rather than in "law." In English legal history, the courts of "law" could order the payment of damages and could afford no other remedy. See "damages." A separate court of "equity" could order someone to do something or to cease to do something. See, e.g., "injunction." In American jurisprudence, the federal courts have both legal and equitable power, but the distinction is still an important one in certain respects. For example, a trial by jury is normally available in "law" cases but not in "equity" cases.

evidence: Information presented in testimony or in documents that is used to persuade the fact finder (judge or jury) to decide the case in favor of one side or the other. The federal courts must follow the Federal Rules of Evidence.

f

federal public defender: An attorney employed by the federal courts on a full-time basis to provide legal defense to defendants who are unable to afford counsel. The judiciary administers the federal defender program pursuant to the Criminal Justice Act.

federal question jurisdiction: Jurisdiction given to federal courts in cases involving the interpretation and application of the United States Constitution, acts of Congress, and treaties.

felony: A serious crime carrying a penalty of more than one year in prison. See also "misdemeanor."

file: (1) The act of placing a paper in the official custody of the clerk of court and entering it into

the file, or record, of a case; (2) the official record of a case.

grand jury: A body of 16-23 citizens who listen to evidence of criminal allegations presented by the prosecutors, and determine whether there is enough evidence to issue an indictment and conduct a trial. See also "Indictment" and "U.S. Attorney."

habeas corpus: A writ (court order) that is usually used to bring a prisoner before the court to determine the legality of his or her imprisonment. Someone imprisoned in state court proceedings may file a petition in federal court for a "writ of habeas corpus," seeking to have the federal court review whether the state has violated his or her rights under the United States Constitution. Federal prisoners may file habeas petitions as well. A writ of habeas corpus may also be used to bring a person in custody before the court to give testimony or to be prosecuted.

hearsay: Statements by a witness who did not see or hear the incident in question but heard about it second-hand from someone else. Hearsay is usually not admissible as evidence in court because it is not as reliable as first-hand testimony, but there are many exceptions to the hearsay rule.

impeachment: (1) The process of calling a witness's testimony into doubt. For example, if the attorney can show that the witness may have fabricated portions of his testimony, the witness is said to be "impeached." (2) The constitutional process whereby the House of Representatives may "impeach" (accuse of misconduct) high officers of the federal government, who are then tried by the Senate.

indictment: The formal charge issued by a grand jury stating that there is enough evidence that the defendant committed the crime to justify having a trial; it is used primarily for felonies. See also "information."

in forma pauperis: "In the manner of a pauper." Permission given by the court to a person to file a case without payment of the required court fees because the person cannot pay them.

injunction: A court order prohibiting a defendant from performing a specific act, or compelling a defendant to perform a specific act.

interrogatories: Written questions sent by one party in a lawsuit to an opposing party as part of pretrial discovery in civil cases. The party receiving the interrogatories is required to answer them in writing under oath.

issue: (1) A disputed point between parties in a lawsuit. (2) To send out officially, as in a court issuing an order.

judge: An official with statutory authority to decide legal disputes according to the law. Used generically, the term "judge" may refer to all judicial officers, including Supreme Court justices, state and federal judges, military judges, and executive branch appointees who preside over tribunals and other bodies that decide legal disputes.

judgment: The official decision of a court finally resolving the dispute between the parties to the lawsuit.

jurisdiction: (1) The legal authority or competence of a court to hear and decide a case.

(2) The geographic area over which the court has authority to decide cases.

jury: The group of local citizens selected by the court to hear the evidence in a trial and render a verdict on matters of fact. See also "Grand Jury."

jury instructions: A judge's directions to the jury before it begins deliberations regarding the factual questions it must answer and the legal rules that it must apply.

lawsuit: A legal action started by a plaintiff against a defendant based on a complaint that the defendant failed to perform a legal duty which resulted in harm to the plaintiff.

litigation: A case, controversy, or lawsuit. Participants (plaintiffs and defendants) in lawsuits are called litigants.

magistrate judge: A judicial officer of the U.S. District Court who conducts initial proceedings in criminal cases, decides criminal misdemeanor cases, conducts many pretrial civil and criminal matters on behalf of district judges, and decides civil cases with the consent of the parties.

misdemeanor: An offense punishable by one year of imprisonment or less. See also "felony."

motion: A request by a litigant to a judge for a decision on an issue relating to the case.

opinion: A judge's written explanation of the decision of the court. Because a case may be heard by three or more judges in the court of appeals, the opinion in appellate decisions can take several forms. If all the judges completely agree on the result, one judge will write the opinion for all. If all the judges do not agree, the

Sources of Additional Information:

The Federal Courts and What They Do (Federal Judicial Center, 2006)

Getting Started as a Federal Judge (Administrative Office, 2005)

Long Range Plan for the Federal Courts (Judicial Conference of the U.S., 1995)

Judiciary website addresses:

United States Supreme Court: www.supremecourtus.gov

Administrative Office of the United States Courts: www.uscourts.gov

Federal Judicial Center: www.fjc.gov

formal decision will be based upon the view of the majority, and one member of the majority will write the opinion. The judges who did not agree with the majority may write separately in dissenting or concurring opinions to present their views. A dissenting opinion disagrees with the majority opinion because of the reasoning and/or the principles of law the majority used to decide the case. A concurring opinion agrees with the decision of the majority opinion, but offers further comment or clarification or even an entirely different reason for reaching the same result. Only the majority opinion can serve as binding precedent in future cases. See also "precedent."

oral argument: An opportunity for lawyers to summarize their positions before the court and also to answer the judges' questions.

panel: (1) In appellate cases, a group of judges (usually three) assigned to decide the case. (2) In the jury selection process, the group of potential jurors. (3) The list of attorneys who are both available and qualified to serve as court-appointed counsel for criminal defendants who cannot afford their own counsel.

party: One of the litigants in a case. At the trial level, the parties are typically referred to as the plaintiff and defendant. On appeal, they are known as the appellant and appellee, or, in some cases involving administrative agencies, as the petitioner and respondent.

petit jury (or trial jury): A group of citizens who hear the evidence presented by both sides at trial and determine the facts in dispute. Federal criminal juries consist of 12 persons. Federal civil juries consist of at least six persons. See also "jury" and "grand jury."

petty offense: A federal misdemeanor punishable by six months or less in prison.

plaintiff: The person who files the complaint in a civil lawsuit.

plea: In a criminal case, the defendant's statement pleading "guilty" or "not guilty" in answer to the charges.

pleadings: Written statements filed with the court that describe a party's legal or factual assertions about the case.

precedent: A court decision in an earlier case with facts and legal issues similar to a dispute currently before a court. Judges —following the common-law tradition—will generally "follow precedent." They use the principles established in earlier cases to decide new cases that have similar facts and raise similar legal issues. A judge will disregard precedent if a party can show that the earlier case was wrongly decided, or that it differed in some significant way from the current case. Lower courts must follow the decisions of higher courts.

procedure: The rules for conducting a lawsuit. There are rules of civil procedure, criminal procedure, evidence, bankruptcy, and appellate procedure.

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