

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

March 12, 1996

The Judicial Conference of the United States convened in Washington, D.C., on March 12, 1996, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Juan R. Torruella
Chief Judge Joseph L. Tauro,
District of Massachusetts

Second Circuit:

Chief Judge Jon O. Newman
Chief Judge Peter C. Dorsey,
District of Connecticut

Third Circuit:

Chief Judge Dolores K. Sloviter
Chief Judge Edward N. Cahn,
Eastern District of Pennsylvania

Fourth Circuit:

Chief Judge J. Harvie Wilkinson, III
Judge W. Earl Britt,
Eastern District of North Carolina

Fifth Circuit:

Chief Judge Henry A. Politz
Chief Judge William H. Barbour,
Southern District of Mississippi

Sixth Circuit:

Chief Judge Gilbert S. Merritt
Judge S. Arthur Spiegel,
Southern District of Ohio

Seventh Circuit:

Chief Judge Richard A. Posner
Chief Judge Michael M. Mihm,
Central District of Illinois

Eighth Circuit:

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

Ninth Circuit:

Chief Judge Procter Hug, Jr.
Chief Judge Wm. Matthew Byrne, Jr.,
Central District of California

Tenth Circuit:

Chief Judge Stephanie K. Seymour
Judge Clarence A. Brimmer,
District of Wyoming

Eleventh Circuit:

Chief Judge Gerald B. Tjoffat
Judge Wm. Terrell Hodges,
Middle District of Florida

District of Columbia Circuit:

Chief Judge Harry T. Edwards
Chief Judge John Garrett Penn,
District of Columbia

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Federal Circuit:

Chief Judge Glenn L. Archer, Jr.

Court of International Trade:

Chief Judge Dominick L. DiCarlo

Circuit Judge Robert E. Cowen, and District Judges Maryanne Trump Barry, Richard P. Conaboy, Julia S. Gibbons, Philip M. Pro, Barefoot Sanders, Alicemarie H. Stotler, and Ann C. Williams attended the Conference session. Circuit Executives Vincent Flanagan, Steven Flanders, Toby Slawsky, Samuel W. Phillips, Gregory A. Nussel, James A. Higgins, Collins T. Fitzpatrick, June L. Boadwine, Gregory B. Walters, Robert L. Hoecker, Norman E. Zoller, and Linda Ferren were also present.

Senators Judd Gregg and Orrin Hatch, and Representative Henry Hyde spoke on matters pending in Congress of interest to the Conference. Attorney General Janet Reno addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice.

Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Clarence A. Lee, Jr., Associate Director for Management and Operations; William R. Burchill, Jr., Associate Director and General Counsel; Karen K. Siegel, Assistant Director, Judicial Conference Executive Secretariat; Michael W. Blommer, Assistant Director, Congressional, External and Public Affairs; Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat; and David A. Sellers, Public Information Officer. Judge Rya W. Zobel and Russell R. Wheeler, Director and Deputy Director of the Federal Judicial Center, also attended the session of the Conference, as did Harvey Rishikof, Administrative Assistant to the Chief Justice, and Judicial Fellows Paul W. Cobb, R. Barry Ruback, and Alex Wohl.

REPORTS

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

ELECTION

The Judicial Conference elected to membership on the Board of the Federal Judicial Center Judge Pasco M. Bowman II of the Eighth Circuit Court of Appeals, vice Judge J. Harvie Wilkinson III, and Judge Thomas F. Hogan of the District Court for the District of Columbia, vice Judge Michael Telesca, for four-year terms commencing March 28, 1996.

EXECUTIVE COMMITTEE

FISCAL YEAR 1996 SPENDING PLAN

In September 1995, the Executive Committee approved preliminary spending plans for the Salaries and Expenses, Defender Services, Fees of Jurors, and Court Security appropriations accounts in anticipation of enactment of the judiciary's fiscal year 1996 appropriations bill. However, an appropriations bill was not enacted until January 6, 1996 (Public Law No. 104-91). In the interim, the Executive Committee authorized the operations of the judicial branch to be funded during lapses in fiscal year 1996 appropriations from fees collected in fiscal year 1996 and prior year fee collections, twice agreeing to extend this authorization when the deadlines loomed.

Upon enactment of the appropriations bill, the Executive Committee slightly modified and finalized the interim financial plans. Some highlights of the approved financial plans include: an increase of \$5 per hour in panel attorney rates, effective January 1, 1996, in those districts that have been approved for higher Criminal Justice Act rates but for which funding has not yet been identified; increased funding for seven traditional defender organizations and one community defender organization to represent death-sentenced inmates who had been represented by post-conviction defender organizations; funding for cellular telephones for the improvement of judges' security; funding for additional bankruptcy clerks to respond to the extraordinary increase in bankruptcy filings; and the earmarking of additional funds for videoconferencing of prisoner civil rights proceedings and other automation enhancements (see *infra*, "Videoconferencing," p. 14).

GENDER BIAS STUDIES

The judiciary's fiscal year 1996 appropriations act did not specifically include funds for gender or racial bias studies which had been included in Crime Trust Fund monies in an earlier House version of the appropriations bill. It was determined that

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no appeal of the deletion of the gender/racial bias funding would be filed with the House-Senate conference committee. Colloquies and counter-colloquies inserted in the *Congressional Record* by a number of Senators took opposing sides on whether other judiciary funds could be used to pay for such studies. On recommendation of the Executive Committee, the Judicial Conference agreed to send letters to the Chairmen of the judiciary's congressional Appropriations Subcommittees to advise them that, absent their objection, the judiciary would fund ongoing gender or race bias studies to their completion, and that no new studies would be initiated. It was also agreed that copies of the letters would be sent to Senators who participated in the colloquies on bias funding.

REIMBURSEMENT OF RELOCATION EXPENSES

The policy for reimbursement of relocation expenses as published in the *Guide to Judiciary Policies and Procedures* has become obsolete in light of new policies established in recent years. The Executive Committee tasked the Committee on Judicial Resources with reviewing and redrafting for Judicial Conference consideration the full relocation allowance policy. The Judicial Resources Committee might also take a fresh look at the policy to determine whether any additional changes would be in order, taking into account the limited funds available for this purpose.

Pending review of the relocation policy by the Judicial Resources Committee, the Judicial Conference, reversing a previous determination of the Executive Committee (see JCUS-SEP 95, p. 68), approved reimbursement to overseas law clerks for the expenses of shipping automobiles, so long as the total reimbursement for relocation expenses for each law clerk does not exceed \$5000 each way.

In addition, the Executive Committee considered and denied a request for reimbursement of relocation expenses from a new judicial appointee.

COURTHOUSE CONSTRUCTION

As a prerequisite to receiving space project authorizations, the judiciary was asked on November 2, 1995, by members of the Senate to prioritize within two weeks its pending fiscal year 1995-1996 courthouse construction projects. After soliciting the views of Judicial Conference members, the Executive Committee established a procedure to respond to this request, asking the Security, Space and Facilities Committee to consult with the circuit judicial councils and affected chief judges prior to making recommendations. The Security, Space and Facilities Committee then presented a proposed list of 1995-1996 courthouse construction projects in priority

order, which the Executive Committee approved. See also, *infra*, "Courthouse Construction Projects," p. 36.

JUDICIAL QUESTIONNAIRE FROM SENATOR GRASSLEY

On January 26, 1996, Senator Charles Grassley, Chairman of the Judiciary Committee's Subcommittee on Administrative Oversight and the Courts, sent a detailed questionnaire to all district and circuit judges, with a modified version going to chief judges. The questionnaire sought opinions on a number of judicial administration issues and requested workload and other data. The Executive Committee was urged by a number of judges to provide guidance in responding to the questionnaire. The Committee determined to take a three-pronged approach to the questionnaire: (a) to encourage all judges to respond individually; (b) to submit a comprehensive response on behalf of the Judicial Conference; and (c) to send a letter to Senator Grassley informing him of this decision.

MISCELLANEOUS ACTIONS

The Executive Committee:

- Asked its Chairman to call to the attention of judges and defenders the Judicial Conference-prescribed hourly fee guidelines for appointed counsel in death penalty cases (\$75 to \$125 per hour) and express the Committee's hope that, in these constrained budgetary times, the guidelines will be adhered to;
- Agreed to seek recommendations from the Bankruptcy Committee for improvements in the United States trustee program, with the assumption that the program will remain for now within the Department of Justice;
- Assigned a series of options presented by the Ninth Circuit Judicial Council related to the handling of federal cases in American Samoa to the Committee on Federal-State Jurisdiction and assigned to the National Judicial Council for State and Federal Courts the issue of relations with tribal courts;
- Tasked the Committee on Judicial Resources with studying the issue of whether caseload should be a factor in filling judicial vacancies and expressed the hope that, in the interim, the Senate would continue its past practice of filling vacancies as they occur. The Committee also determined to encourage judges who are concerned with whether their courts' workloads justify the

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need to fill vacancies to communicate with the Judicial Resources Committee rather than directly with the Congress;

- Approved technical amendments to items 8.1 and 8.2 of the bankruptcy court miscellaneous fee schedule promulgated pursuant to 28 U.S.C. § 1930(b);
- Approved a request from the Committee on International Judicial Relations to sponsor an intellectual property seminar, funded by the Department of Commerce, for legal officials, judges and lawyers from Ukraine and the Russian Federation;
- On recommendation of the Administrative Office Committee, strongly opposed, on behalf of the Judicial Conference, the creation of an Inspector General in the judicial branch;
- Cleared for publication the *Long Range Plan for the Federal Courts* approved by the Judicial Conference at the September 1995 session. Consistent with earlier actions on the plan, the Committee approved as part of the published document a series of minor technical corrections in Recommendations 7, 13, 51, 54, 55, 57, and 58, and in Implementation Strategies 51a, 56a, and 56b. The Committee also resolved a difference of opinion between the Long Range Planning and Judicial Branch Committees, voting to delete commentary from chapter 10 of the plan concerning recess appointments of Article III judges.
- In response to a request for comment on proposed legislation, agreed to request respectfully that Congress leave to the judiciary whether to hold circuit judicial conferences, or at the least, legislate in this area only after hearings are held. The Committee also objected to a congressionally imposed dollar limit per circuit conference.¹
- Agreed to support the pursuit of legislation to transfer the function of tracking and receiving fine payments, including the National Fine Center, from the judiciary to the Department of Justice;
- Authorized the chair of the Committee on Rules of Practice and Procedure to respond to a congressional inquiry about nonunanimous jury verdicts, if asked, by communicating the longstanding policy of the Conference against direct

¹The judiciary's 1996 appropriations act (Public Law No. 104-91), enacted in early January, amended 28 U.S.C. § 333 to make optional the holding of and attendance at circuit conferences.

legislative amendment of the Federal Rules outside the Rules Enabling Act's rulemaking process;

- Amended the jurisdictional statement of the Committee on the Administration of the Bankruptcy System to add the phrase, "Monitor the condition of the fund held in escrow to pay the chapter 7 trustees.";
- Approved a recommendation of the Budget Committee that a prior Conference position concerning the centralization of unclaimed court registry funds be rescinded (JCUS-SEP 93, p. 42);
- Agreed, on recommendation of the Court Administration and Case Management Committee, to seek an amendment to 28 U.S.C. § 471 extending by six months, to June 30, 1997, the date by which the Judicial Conference's Civil Justice Reform Act report is to be transmitted to Congress;
- Asked the Judicial Resources Committee to study the feasibility of annual or odd-year biennial judgeship surveys;
- Requested the Security, Space and Facilities Committee to develop a plan for improving perimeter security of courthouses; and
- Regarding the provision of computer-assisted legal research service, agreed to recommit to the Committee on Automation and Technology the question of whether multiple vendors in the computer-assisted support area of legal research should be considered.

COMMITTEE ON THE ADMINISTRATIVE OFFICE

COMMITTEE ACTIVITIES

The Committee on the Administrative Office reported on its continuing review of the agency's activities and programs. Recognizing the efforts of the Administrative Office in dealing with the difficult budgetary situation this fiscal year and, in particular, the outstanding efforts of Director Mecham in resolving the funding crisis, the Committee unanimously approved the following:

[T]he Committee on the Administrative Office commends and expresses its sincere appreciation to Administrative Office Director Leonidas Ralph Mecham, for his extraordinary, vigorous, and successful efforts in conjunction with actions by Chief Justice Rehnquist and Sixth Circuit Chief Judge Gilbert S. Merritt, Chairman of the Executive Committee of the United States Judicial Conference, and efforts of other judges resulting in successfully obtaining adequate fiscal year 1996 funding for the Judiciary despite continuing difficulties regarding the funding of federal government operations.

COMMITTEE ON AUTOMATION AND TECHNOLOGY

LONG RANGE PLAN FOR AUTOMATION

Pursuant to 28 U.S.C. § 612, the Committee on Automation and Technology recommended approval of the fiscal year 1996 update to the *Long Range Plan for Automation in the Federal Judiciary*. The Judicial Conference approved the update.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

BANKRUPTCY ESTATE ADMINISTRATION

At its September 1991 meeting, the Judicial Conference approved a memorandum of understanding (MOU) between the Executive Office for United States Trustees and the Administrative Office describing the respective duties of the United States trustee, the court, and the clerk in the case closing process and post-confirmation monitoring of chapter 11 cases (JCUS-SEP 91, p. 53). Amendments to the Federal Rules of Bankruptcy Procedure and other developments made revision of the MOU necessary. On recommendation of the Committee on the Administration of the Bankruptcy System, the Judicial Conference approved an *Amended Memorandum of Understanding Between the Executive Office for United States Trustees and the Administrative Office of the United States Courts Regarding Case Closing and Post Confirmation Chapter 11 Monitoring* which—

- Eliminates the requirement that the proposed dividend distribution in a chapter 7 case be submitted to the court for approval;

- Provides more direction to chapter 7 trustees regarding the documentation that should be submitted with the final report and sets out more specific time elements within which the United States trustee is expected to review the final report;
- Addresses concerns raised about the reliability of the case trustee certification procedures and the accuracy of the trustee reports necessary for case closing; and
- Permits modification of the MOU as necessary by written agreement between the parties.

CHAPTER 11 QUARTERLY FEES

The United States trustee program under the Department of Justice was established by Congress for oversight of the administration of bankruptcy estates and supervision of trustees and other fiduciaries in all but the six judicial districts in Alabama and North Carolina. Currently, debtors in the United States trustee and bankruptcy administrator districts pay the same fees when filing for bankruptcy, but chapter 11 debtors in bankruptcy administrator districts are not subject to an additional quarterly fee that is levied on chapter 11 debtors in the United States trustee districts. On recommendation of the Bankruptcy Committee, the Conference agreed to take appropriate action to institute quarterly chapter 11 fees in bankruptcy administrator districts comparable to those in effect in United States trustee districts so that the revenues go to the judiciary.

PERIODIC REVISION OF DOLLAR AMOUNTS IN THE BANKRUPTCY CODE

Section 104(b)(1) of title 11 of the United States Code provides for an automatic procedure for adjusting certain dollar amounts in the Bankruptcy Code every three years according to a mathematical formula which is tied to changes in the economy. Under § 104(b)(2), the Judicial Conference is directed to publish in the Federal Register by March 1, 1998, and at three-year intervals thereafter, the dollar amounts that will become effective on April 1. Since the periodic publication of adjusted dollar amounts under § 104 is a ministerial task which involves no exercise of discretion, the Judicial Conference approved a Bankruptcy Committee recommendation to authorize the automatic publication by the Administrative Office of adjusted dollar amounts in the Bankruptcy Code at the three-year intervals prescribed under § 104(b).

REGULATIONS FOR THE SELECTION OF UNITED STATES BANKRUPTCY JUDGES

The Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101-12213, requires that qualified individuals with disabilities be given the same consideration for employment that qualified individuals without disabilities are given. Although the judiciary is excluded from coverage under the ADA, the statute's antidiscrimination principles are used as guidance in implementing the Judicial Conference Equal Employment Opportunity Program. On recommendation of the Bankruptcy Committee, the Judicial Conference approved amendments to the regulations governing the selection of bankruptcy judges to clarify that qualified individuals with disabilities have the same employment opportunities with respect to bankruptcy judgeship positions that are available to persons without disabilities. The Conference also approved conforming amendments to the sample public notice, the sample application form, the sample applicant qualification factors checklist, and the preliminary disclosure statement for United States bankruptcy judges.

BACKGROUND INVESTIGATIONS OF BANKRUPTCY JUDGE NOMINEES

In 1992 and again in 1995, the executive branch reduced the span of its uniform standard for background investigations of individuals in executive branch agencies, first from 15 years to ten years, and then to seven years. Concluding, as it had previously, that the role of bankruptcy judge is too important to forego the full-field background investigation of judicial nominees, the Bankruptcy Committee recommended, and the Judicial Conference agreed, that FBI background investigations for bankruptcy judge nominees should continue to cover a 15-year span. See also *infra*, "Background Investigations of Magistrate Judge Nominees," p. 30.

AD HOC RECALL REGULATIONS

To give certain recalled bankruptcy judges the same life and health insurance benefits as federal employees who have a break in service, the Judicial Conference approved the Bankruptcy Committee's recommendation to amend the ad hoc recall regulations for bankruptcy judges to—

- a. Permit the judicial council of the circuit to recall a bankruptcy judge for a fixed period not to exceed one year and a day;

- b. Permit the judicial council of the circuit to recall a bankruptcy judge on either a full-time basis or on a when-actually-employed basis; and
- c. Amend the title to delete the reference therein to the period of service (not to exceed one year). See also *infra*, "Ad Hoc Recall Regulations," p. 30.

In addition, the Conference approved a technical amendment to the regulations which clarifies that a bankruptcy judge recalled under the regulations shall also take the constitutional oath under 5 U.S.C. § 3331.

COMMITTEE ON THE BUDGET

COMMITTEE ACTIVITIES

The Budget Committee reported on the difficulties of obtaining fiscal year 1996 funding, the status of the judiciary's fiscal year 1997 budget request, and the policy guidance to be issued to the Judicial Conference program committees in formulating the fiscal year 1998 request. The Committee also reported on Economy Subcommittee initiatives.

COMMITTEE ON CODES OF CONDUCT

ETHICS REFORM ACT OUTSIDE EMPLOYMENT REGULATIONS

The Committee on Codes of Conduct recommended a technical revision to the Judicial Conference Ethics Reform Act Regulations Concerning Outside Earned Income, Honoraria, and Outside Employment to clarify that certain employees who fall within the definition of "special government employee" are not subject to the Regulations. The Judicial Conference approved the recommendation amending the Regulations by adding the following new section 2(c) (new language is italicized):

§ 2. Definitions.

* * * * *

- (c) *The terms "judicial officer or employee" and "covered senior employee" set forth in section 2(a) and (b), above, do not include any special government employee as defined in 18 U.S.C. § 202.*

CODE OF CONDUCT FOR UNITED STATES JUDGES

The Judicial Conference approved a recommendation of the Committee that section C of the Compliance Section of the Code of Conduct for United States Judges be amended (a) to clarify its applicability to retired Article III, magistrate, and bankruptcy judges; and (b) to correct an erroneous citation. The corrections are as follows (language to be omitted is lined-through; new language is italicized):

C: Retired Judge. A retired judge who ~~receives at least the same compensation that the judge received when on full time service and who is eligible for recall to judicial service~~ *is retired under 28 U.S.C. §§ 371(b) or 372(a), or who is recalled to judicial service,* should comply with all the provisions of this Code except Canon 5G, but the judge should refrain from judicial service during the period of an extra-judicial appointment not sanctioned by Canon 5G. All other retired judges *who are* eligible for recall to judicial service (except those in Territories and Possessions) should comply with the provisions of this Code governing part-time judges. A senior judge in the Territories and Possessions must comply with the Code as prescribed by 28 U.S.C. § 373(c)(5) and ~~28 U.S.C. § 372(d)~~.

COMMITTEE ACTIVITIES

Since its last report to the Conference in September 1995, the Committee on Codes of Conduct received 36 new written inquiries and issued 33 written advisory responses. The Chairman received and responded to 34 telephonic inquiries. In addition, individual Committee members responded to 36 inquiries from their colleagues.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

SERVICES TO PERSONS WITH COMMUNICATIONS DISABILITIES

At its September 1995 session, the Judicial Conference adopted a policy that all federal courts provide reasonable accommodations to persons with communications disabilities. The Conference also agreed to require courts to provide, at judiciary expense, sign language interpreters or other appropriate auxiliary aids to deaf and hearing-impaired participants in federal court proceedings in accordance with

guidelines prepared by the Administrative Office. This policy does not apply to spectators, nor does it apply to jurors whose qualifications for service are determined under other provisions of law. The Administrative Office, under the supervision and subject to the approval of the Court Administration and Case Management Committee and the Judicial Conference, was directed to develop other appropriate written guidelines to implement the Conference's policy (JCUS-SEP 95, p. 75). At this session, on recommendation of the Court Administration and Case Management Committee, the Conference approved guidelines for providing services to hearing-impaired and other persons with communications disabilities. These guidelines will be published in Volume I, Chapter III of the *Guide to Judiciary Policies and Procedures*.

VIDEOCONFERENCING

Between 1991 and 1994, the Judicial Conference implemented pilot programs for the experimental use of videoconferencing for certain civil hearings in four United States district courts and in one United States bankruptcy court. After considering an assessment of the pilot programs by the Administrative Office and the advantages and disadvantages of videoconferencing demonstrated by the pilot programs, the Court Administration and Case Management Committee recommended, and the Conference agreed, that videoconferencing should be endorsed as a viable optional case management tool in prisoner civil rights pretrial proceedings.

In addition, the Conference approved a recommendation of the Committee that continued funding, pending availability, be authorized for the ongoing videoconferencing programs in the district court for the Eastern District of Texas and the bankruptcy court for the Western District of Texas. The Conference also authorized the expenditure of funds to expand the program of videoconferencing prisoner civil rights pretrial proceedings to additional district courts that meet criteria developed by the Court Administration and Case Management Committee, pending available funding.

RESIDENCY REQUIREMENT FOR DISTRICT JUDGES

There is currently a statutory requirement that judges reside in the district to which they were appointed (28 U.S.C. § 134(b)). The sole exception to this residency provision for district judges pertains to judges appointed to the District Court for the District of Columbia, who have no residency requirement. On recommendation of the Committee, which considered a request from judges in the Second Circuit, the Judicial Conference agreed to propose legislation amending 28 U.S.C. § 134(b) to allow

district judges appointed in the Eastern or Southern Districts of New York to reside within 20 miles of the district to which they were appointed.

COURT INTERPRETERS

In 1980, upon enactment of the court interpreters statute (28 U.S.C. § 1827), the Administrative Office began a program to certify court interpreters in Spanish. After a number of years of internal administration of the program, the Administrative Office contracted with the University of Arizona to develop and administer interpreter examinations under a sole source, cost-reimbursable contract. The Judicial Conference expanded the program in September 1992 to other languages (JCUS-SEP 92, p. 64), and costs associated with the University contract increased substantially. As a result, an independent review of the interpreter certification program was conducted. Based on that review, the Committee recommended that the Judicial Conference (a) direct that the resources available for the certification of interpreters be used first to support Spanish language certification; (b) direct the Administrative Office to evaluate cost savings proposals for Spanish certification and to implement savings proposals that would not impair the overall quality of the program; and (c) suspend the certification of interpreters in all languages other than Spanish (including Navajo and Haitian Creole) pending further evaluation by the Administrative Office of alternatives to certification. The Conference approved the Committee's recommendations.

MISCELLANEOUS FEE SCHEDULES - REGISTRY FUNDS

In order to eliminate ambiguity regarding fees for handling registry funds, the Judicial Conference approved a Committee recommendation to amend Items 12, 13, and 19 of the miscellaneous fee schedules issued in accordance with 28 U.S.C. §§ 1913, 1914, and 1930, respectively, as follows (language to be omitted is lined-through; new language is italicized):

The clerk shall assess a charge of ~~up to three percent~~ for the handling of registry funds *deposited with the court*, to be assessed from interest earnings and in accordance with the detailed fee schedule issued by the Director of the Administrative Office of the United States Courts.

The Conference further agreed to direct the Administrative Office to amend the registry fund detailed fee schedule to reflect a three percent of capital limitation.

MISCELLANEOUS FEE SCHEDULES - SEARCH FEE

Although the miscellaneous fee schedules for the district and bankruptcy courts include a fee for every search of the records of the court conducted by the clerk's office, the fee schedule for the United States Court of Federal Claims (28 U.S.C. § 1926) contains no search fee. On recommendation of the Committee, the Judicial Conference approved an amendment to the miscellaneous fee schedule for the Court of Federal Claims to add a \$15 search fee and to include a reference to the guidelines for the application of the search fee found in the district court miscellaneous fee schedule.

MISCELLANEOUS FEE SCHEDULES - ELECTRONIC PUBLIC ACCESS FEE

In March 1991, the Judicial Conference approved a fee for electronic access to court data for the district and bankruptcy courts (JCUS-MAR 91, p. 16), and a similar fee was approved in March and September 1994 for the appellate courts (JCUS-MAR 94, p. 16) and the United States Court of Federal Claims (JCUS-SEP 94, p. 47), respectively. This fee has been incorporated into the appropriate miscellaneous fee schedules. The fee was initially established at \$1.00 per minute; it was reduced in March 1995 to 75 cents per minute to avoid an ongoing surplus (JCUS-MAR 95, pp. 13-14). At this session, the Conference approved a Committee recommendation to reduce the fee for electronic public access further, from 75 cents per minute to 60 cents per minute.

CLOSED CIRCUIT TELEVISIONING OF COURT PROCEEDINGS

Proposed legislation would require federal courts to order the closed circuit televising of proceedings in certain criminal cases, particularly cases that have been moved to a remote location. The legislation would authorize or require the costs of the closed circuit system to be paid from private donations. The Judicial Conference determined to take no policy position on the legislative amendments pertaining to closed circuit television. It also approved a recommendation of the Court Administration and Case Management Committee that the House and Senate Judiciary Committee leadership be informed that such legislation, if enacted, should be modified to (a) remove any prohibition relating to the expenditure of appropriated funds; and (b) make discretionary any requirement that courts order closed circuit televising of certain criminal proceedings.

CAMERAS IN THE COURTROOM

The Judicial Conference agreed to authorize each court of appeals to decide for itself whether to permit the taking of photographs and radio and television coverage of appellate arguments, subject to any restrictions in statutes, national and local rules, and such guidelines as the Judicial Conference may adopt. The Conference further agreed to—

- a. Strongly urge each circuit judicial council to adopt an order reflecting the Judicial Conference's decision to authorize the taking of photographs and radio and television coverage of court proceedings in the United States courts of appeals; and
- b. Strongly urge each circuit judicial council to adopt an order pursuant to 28 U.S.C. § 332 (d)(1), reflecting the September 1994 decision of the Judicial Conference (JCUS-SEP 94, pp. 46-47) not to permit the taking of photographs and radio and television coverage of court proceedings in the United States district courts. In addition, the Judicial Conference agreed to strongly urge the judicial councils to abrogate any local rules of court that conflict with this decision, pursuant to 28 U.S.C. § 2071(c)(1).

COMMITTEE ON CRIMINAL LAW

UNIVERSAL PRETRIAL DRUG TESTING

In December 1995, President Clinton directed the Attorney General to develop a "...universal policy providing for drug testing of all federal arrestees before decisions are made on whether to release them into the community pending trial." In February 1996, the Attorney General submitted a pretrial drug testing proposal to the Executive Committee, which referred the matter to the Committee on Criminal Law for recommendation to the March Judicial Conference. Reporting on the proposal to the Conference, the Criminal Law Committee recommended that the issue be referred back to that Committee. The Judicial Conference voted to refer the Attorney General's proposal regarding universal pretrial drug testing to the Criminal Law Committee for expeditious consideration and report to the Executive Committee, which is authorized to act on the matter on behalf of the Conference.

SUPERVISION

The Judicial Conference approved two manuals for distribution to probation and pretrial services personnel. The first, "Staff Safety Manual for the Probation and Pretrial Services System," addresses office safety strategies, emergency preparedness, mental and physical preparedness, and strategies for safety in the community. The second, "National Oleoresin Capsicum Training Manual for the Probation and Pretrial Services System," provides policy for the use of Oleoresin Capsicum (commonly known as Cap-Stun), a non-lethal spray which is used in self-defense.

FIREARMS INSTRUCTION

In districts in which the court has authorized probation and pretrial services officers to carry firearms, district firearms instructors are trained and initially certified in a two-week firearms instructor school managed by the Federal Corrections and Supervision Division of the Administrative Office. The Judicial Conference approved a recommendation of the Committee on Criminal Law, based on five years of experience with the program, that the cycle for recertification of firearms instructors be changed from a two- to three-year cycle to a four- to five-year cycle.

JUDGMENT FORMS

On recommendation of the Committee, the Judicial Conference approved the following forms:

- a. AO 254E, "Judgment in a Criminal Case for Organizational Defendants." This form was developed to simplify the production of judgments in cases where the defendant is an organization; and
- b. AO 245H, "Judgment in a Criminal Case for Petty Offenses (Short Form)" and AO 245I, "Judgment in a Criminal Case for Petty Offenses." These forms were created in response to the suggestion of several magistrate judges that a shorter, easier judgment be developed to handle petty offenses.

COMMITTEE ON DEFENDER SERVICES

DEFENDER ORGANIZATION FUNDING REQUESTS

The Committee on Defender Services is authorized to approve funding requests for defender organizations on behalf of the Judicial Conference within the general limits of the approved financial plan. For the fiscal year 1996, the Committee approved budgets totalling \$130,928,600 for federal public defender organizations, grants totalling \$33,386,700 for community defender organizations, \$5 million in grants to post-conviction defender organizations, and increases in budgets and grants to support capital habeas corpus representation totalling \$14,525,894 in view of congressional elimination of funding for post-conviction defender organizations.

COMMUNITY DEFENDER ORGANIZATIONS

The Judicial Conference approved a recommendation of the Committee on Defender Services that the Grant and Conditions Agreement for Community Defender Organizations be amended to ensure that grant funds are fully protected against loss even when amounts on deposit exceed the current \$100,000 limit on federally insured accounts. The amendment, which will take effect in fiscal year 1997, reads as follows (new language is italicized):

2. BANK ACCOUNTS FOR GRANT FUNDS: Except as authorized by the A.O., the grantee will maintain grant funds in federally insured interest bearing accounts *in accordance with provisions of 31 CFR 202 and will ensure that amounts in excess of federal insurance limits are collateralized before depositing the funds*; grant funds will be maintained separately and will not be commingled with any non-grant funds maintained by grantee; and interest earned on the deposit of grant funds will be deposited with grant funds and may not be obligated or expended by the grantee, and will be returned to the A.O. at the end of the fiscal year for which the grant was awarded.

In addition, although the Committee declined to support such a change, the Conference determined to revise the Grant and Conditions Agreement to require Community Defender Organizations to maintain insurance covering liability arising from malpractice, negligence, unfair employment practices, or errors and omissions.

PANEL ATTORNEY FEES

On recommendation of the Committee, the Judicial Conference approved, for use at the discretion of the courts, attorney supplemental information statement forms, attorney memorandum forms, and payment recommendation sheets. These forms should assist in determining the reasonableness of Criminal Justice Act panel attorney voucher (CJA 20) claims in excess of the case compensation maximums.

COMMITTEE ON FEDERAL-STATE JURISDICTION

SPECIAL COURT

The Regional Rail Reorganization Act of 1973 (Public Law No. 93-236) established the Special Court, which presently consists of five Article III judges designated from other courts, to oversee a series of rail service reorganizations in the northeast and midwest during the 1970's and early 1980's. In the last decade, the Court's workload has declined significantly. On recommendation of the Committee on Federal-State Jurisdiction, the Judicial Conference agreed to support the dissolution of the Special Court and, more specifically, seek legislation to—

- a. Dissolve the Special Court following a reasonable, but brief, transition period;
- b. Transfer the former Special Court's exclusive, nationwide original jurisdiction to the United States District Court for the District of Columbia; and
- c. Allow parties in any subsequent proceedings within the Special Court's jurisdiction to obtain appellate review in the United States Court of Appeals for the District of Columbia Circuit pursuant to 28 U.S.C. §§ 1291-1294.

CHILD CUSTODY ORDERS

The "Child Custody Reform Act of 1995" (S. 632, 104th Congress) would amend the Parental Kidnapping Prevention Act (PKPA) (28 U.S.C. § 1738A) to establish uniform standards for resolving child custody jurisdiction between states. It would also seek to clarify when a state's custody order is entitled to "full faith and credit." Although neither the PKPA nor the legislation currently implicates the federal courts, efforts are being made to amend the bill or other legislative proposals to create federal jurisdiction in this area. The Judicial Conference has previously opposed similar legislation, noting that it "would constitute an unnecessary expansion of federal jurisdiction into areas in which federal courts have no expertise and could result in

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unnecessary federal-state conflicts" (JCUS-SEP 89, p. 64). At this session, the Conference, on recommendation of the Committee, reaffirmed its position opposing legislation to create a federal cause of action to resolve conflicts between states on the issue of jurisdiction over child custody disputes. The Conference also emphasized confidence in the state courts' ability to resolve such disputes and supported the efforts of the Conference of Chief Justices to address the problem of conflicting interstate child custody orders.

NATIONAL CENTER FOR STATE COURTS

On recommendation of the Committee on Federal-State Jurisdiction, the Judicial Conference approved the following resolution in recognition of the 25th anniversary of the National Center for State Courts and the substantial contributions of this organization:

Whereas 1996 marks the 25th Anniversary of the establishment of the National Center for State Courts in Williamsburg, Virginia; and

Whereas the National Center is dedicated to improving the administration of justice in the nation's state courts; and

Whereas the National Center provides critical administrative support for state and local courts throughout the nation by conducting research, providing education and training, offering direct assistance, and gathering and distributing information about the state courts; and

Whereas the National Center continually identifies emerging issues affecting state and federal jurisdiction and has provided invaluable assistance to the Conference of Chief Justices in preserving the traditional jurisdiction of the state courts; and

Whereas the National Center has demonstrated an unfailing commitment to improve judicial federalism by strengthening communication, cooperation, and coordination between the state and federal courts; and

Whereas the staff of the National Center has exemplified the highest standards of professionalism, dedication, and commitment to ensuring that the state courts provide a fair, efficient, and responsive system of justice for all Americans;

NOW, THEREFORE, BE IT RESOLVED THAT THE JUDICIAL CONFERENCE OF THE UNITED STATES congratulates the National Center on its 25th Anniversary, and extends the deep appreciation of the Federal Judiciary for the Center's many contributions to the preservation of equal access to justice.

COMMITTEE ON FINANCIAL DISCLOSURE

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported that as of December 31, 1995, it had received 2,961 financial disclosure reports and certifications for the calendar year 1994, including 1,260 reports and certifications from justices and Article III judges, 342 from bankruptcy judges, 461 from magistrate judges, and 898 from judicial employees.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that during the period from July 1, 1995 to December 31, 1995, a total of 119 intercircuit assignments, undertaken by 74 justices and Article III judges, were processed and recommended by the Committee on Intercircuit Assignments and approved by the Chief Justice.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported that the Conference of Supreme Courts of the Americas, held in October 1995, was a success. A comprehensive substantive program was presented, and a charter for the establishment of a permanent Organization of Supreme Courts of the Americas was developed. The Organization will provide a structure to advance its goals of promoting and strengthening judicial independence and the rule of law throughout the Hemisphere.

COMMITTEE ON THE JUDICIAL BRANCH

SENIOR JUDGES

A 1964 resolution of the Judicial Conference provides that "senior judges should be designated to sit in their own districts for periods not longer than a year at a time by each designation, except under exceptional circumstances." JCUS-SEP 64, p. 59. On recommendation of the Committee on the Judicial Branch, the Judicial Conference repealed the 1964 resolution and, in lieu of the policy expressed by the resolution, determined that the discipline of senior judges and proceedings concerning disability or inability to perform judicial duties should be inquired into and resolved pursuant to authority of 28 U.S.C. § 372.

JUDICIAL RETIREMENT

The Conference was asked by staff of a Senate Judiciary subcommittee to comment on a legislative proposal to extend the "Rule of 80"² to allow judges to take senior status as early as age 60 with 20 years of service as Article III judges. In addition, however, the proposal provides that the workload certification requirement of 28 U.S.C. § 371(f) would be increased for all senior judges from 25 percent to 50 percent of an average active judge's workload. On recommendation of the Committee, which considered a number of alternatives, the Judicial Conference agreed to inform the staff of the Senate Judiciary Subcommittee on Administrative Oversight and the Courts that the Conference—

- a. Supports legislation to expand the "Rule of 80" to allow a judge to take senior status as early as age 60 with 20 years of service as an Article III judge;
- b. Opposes legislation which would increase the workload certification requirement for all senior judges from 25 percent to 50 percent, because the Conference is unable to ascertain the impact of an increased workload certification requirement upon senior judges or judges who are considering taking senior status; and
- c. Expresses no objection to legislation which would (1) establish a 50 percent workload certification requirement for judges who take senior status before age

²The "Rule of 80" provides that a judge may retire from office or take senior status commencing at age 65, provided the sum of age and years of judicial service totals 80 or more. 28 U.S.C. § 371(c).

65; and (2) provide that when these judges reach age 65, the workload certification requirement would decrease from 50 percent to 25 percent.

COMMITTEE ON JUDICIAL RESOURCES

BIENNIAL SURVEY OF JUDGESHIP NEEDS

Additional judgeships are recommended by the Judicial Conference only after a thorough examination of the needs of the courts through the biennial survey of judgeship needs. Convinced that any recommendation to hold unfilled a vacancy or eliminate a judgeship deserves a similar comprehensive review, the Committee on Judicial Resources recommended, and the Conference concurred, that the Conference—

- a. Include, in the biennial survey of judgeship needs, reviews of the need to eliminate judgeship positions or leave judgeships unfilled, and communicate to Congress any recommendations regarding eliminations along with requests for additional judgeships; and
- b. Urge the Senate to continue processing nominations to fill vacancies as they occur and the Congress to act on judgeship requirements -- the need both to increase and decrease -- as a total package.

In addition, to allay concerns expressed by some courts with temporary judgeships that immediate action was necessary to avoid the possibility of losing one or more of the judgeships, the Judicial Resources Committee, at the request of the Executive Committee, expedited the 1996 biennial survey of judgeship needs for districts that currently have temporary judgeships. The Conference approved the Committee's recommendation that it authorize transmittal to Congress of a request to (a) convert the temporary judgeships to permanent in the Northern District of New York, Eastern District of Virginia, Southern District of Illinois, Eastern District of California, and Northern District of Alabama; and (b) extend the temporary judgeships for five years in the Northern District of Ohio, Central District of Illinois, Eastern District of Missouri, District of Nebraska, District of Hawaii, and District of Kansas.

COURT REPORTING RESOURCES FOR SENIOR JUDGES

Finding the current system of allocating court reporting resources to senior judges increasingly difficult to administer, the Judicial Resources Committee proposed a new method which provides objective criteria, allows for maximum flexibility in the use of allocated resources, and provides a mechanism for the first time for

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redistributing resources to meet changing needs. On recommendation of the Committee, the Judicial Conference approved the following method of allocating court reporter resources for senior judges:

- a. Court reporter staffing credit (and associated funding) will be provided to the courts based upon the total number of in-court hours reported by the senior judges during the prior statistical reporting year or period. The criteria will require 650 senior judge hours for one position; partial position credit will be authorized for fractional remainders when the in-court time for senior judges was reported at less than 650 hours in court; and 650 hours will be subtracted for each official court reporter on board above the fiscal year court reporter position ceiling for active judges;
- b. The salary adjustment period will be consistent with the salary adjustment period of the Cost Control Monitoring System; and
- c. If requested by a court, and certified by the circuit judicial council, staffing credit (and associated funding) for a full court reporter position will be provided to the court for any senior district judge who draws cases substantially on the same basis as all active judges in the district, with this certification to be redetermined each year by the circuit councils; the in-court hours for senior judges so qualifying will be removed from the calculation.

The Conference also approved the Committee's recommendation to authorize staffing credit for additional court reporters to support senior judges in accordance with the new methodology for the following district courts. Authorization of this credit will be made as soon as funds can be identified for its implementation; courts over their authorized court reporter ceilings at the time the allocations are made will not be provided with the funding until the ceilings are adjusted based upon confirmation of new active judges.

<u>District Court</u>	<u>Staffing Credit</u>
Arizona	1.00
Arkansas (Eastern)	.59
Illinois (Northern)	1.15
Kentucky (Western)	.61
Michigan (Eastern)	1.00
New York (Southern)	1.00
Ohio (Southern)	1.00
Pennsylvania (Middle)	1.00
Tennessee (Middle)	.37

REALTIME COURT REPORTING

In September 1994, the Committee on Judicial Resources was asked by the Judicial Conference to consider development of special qualifications standards, salary incentives, and transcript rates for court reporters providing realtime reporting services (i.e., displaying the court transcript immediately after words are spoken in the courtroom) (JCUS-SEP 94, p. 49). After reviewing a number of options, the Committee recommended the following policy, which the Conference approved at this session. Effective June 1, 1996, the Conference will—

- a. Recognize as certified realtime reporters those official court reporters who have successfully completed the certified realtime reporter examination offered by the National Court Reporters Association, or who have passed an equivalent qualifying examination, and permit certified realtime reporters to sell unedited, uncertified transcripts;
- b. Define the category of "realtime unedited transcript" as "a draft transcript produced by a certified realtime reporter as a byproduct of realtime to be delivered electronically during the proceedings or immediately following adjournment"; set the maximum rate each certified realtime reporter may charge and collect for an original "realtime unedited transcript" to be equal to one-half that of daily transcript; and set the maximum rate each certified realtime reporter may charge and collect for copies of realtime unedited transcript to be equal to that of the copy rates for daily transcript. Litigants who have ordered a realtime unedited transcript and subsequently order a certified transcript of the same proceeding will receive a credit toward the purchase of the certified transcript equal to the purchase price of the realtime unedited transcript; and
- c. Authorize the Administrative Office to issue guidelines to implement this policy. These guidelines will include standards for the production, distribution and use of unedited transcripts.

TRANSCRIPTS

On recommendation of the Committee on Judicial Resources, the Conference modified the Transcript Format Guidelines to provide an exception to the requirement that each page of transcript contain 25 lines of text. The exception allows a page break before and after sidebar conferences, bench conferences, and hearings on motions in jury trials when the transcript is produced under the daily or hourly

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delivery schedule and the exception is approved by the presiding judicial officer. Court reporters are required to reduce the page count for billing purposes by one-half page for every page of transcript which includes a sidebar conference, bench conference, or hearing on motions that is marked by such a page break. This modification will make it easier for a judge to provide portions of a transcript to a jury for review.

In addition, the Judicial Conference approved a Committee recommendation to amend a 1966 policy in order expressly to allow court reporters to charge parties (including the Department of Justice and parties proceeding under the Criminal Justice Act) for transcripts produced of arraignments, changes of plea, or proceedings in connection with the imposition of sentencing when an electronic recording of the proceeding has been filed with the court in lieu of a written transcript.

PAY-FOR-PERFORMANCE STRUCTURE

In September 1993, the Judicial Conference approved the Court Personnel System (CPS) -- a qualifications, classification, and compensation system covering most court employees (JCUS-SEP 93, pp. 49-50). One component of CPS is a pay-for-performance option permitting court units to design alternative salary increase policies based on performance. As approved by the Conference in 1993, the CPS assumed that individual court units would independently design their own pay-for-performance systems. It subsequently became apparent to the Committee that pay-for-performance would be better served if the Administrative Office would design a performance management structure. On recommendation of the Committee, the Judicial Conference approved a proposed performance management structure and a revised process for use by courts seeking to implement pay-for-performance under the Court Personnel System. Any court unit that develops performance appraisal and pay-for-performance plans designed within the structure will need no further approval prior to implementing its pay-for-performance system. No such system will be implemented until FY 1997.

VOLUNTARY EARLY RETIREMENT AUTHORITY

The Office of Personnel Management has granted voluntary early retirement authority for fiscal year 1996 for all eligible judiciary employees except for employees of the Supreme Court, the Federal Judicial Center, and the U.S. Sentencing Commission. The Judicial Conference approved a Judicial Resources Committee recommendation to authorize all court units to offer voluntary early retirement to

eligible employees when the court unit must reduce staff as a result of organizational restructuring or budget limitations in fiscal year 1996.

COMPENSATORY TIME

Currently, there is no judiciary-wide policy governing the use of compensatory time, although informal compensatory time programs are available to many court employees as local policy. This unregulated system leads to inconsistent practices and may be subject to abuse, including the potential for significant financial liability on the part of the judiciary. The Judicial Conference approved a Judicial Resources Committee recommendation that a compensatory time policy be established which mandates that at least certain elements be included in policies of those court units which choose to use compensatory time. The compensatory policy will be published in Chapter X of the *Guide to Judiciary Policies and Procedures*.

CHILD SUPPORT ENFORCEMENT PROGRAM

In September 1988, the Judicial Conference approved the cooperation and participation of the judiciary in the Federal Employee Salary Offset Program (JCUS-SEP 88, pp. 89-90). At this session, the Conference approved a Judicial Resources Committee recommendation that the judiciary's participation in the program be expanded to authorize the use of payroll data for the Child Support Enforcement Program.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

PRINCIPLES OF MAGISTRATE JUDGE UTILIZATION

The Committee on the Administration of the Magistrate Judges System recommended that the Judicial Conference adopt "Principles of Magistrate Judge Utilization"; approve their distribution to all district courts; authorize their use by the Conference, the Magistrate Judges Committee and the Administration Office as a tool for advising courts and assessing their magistrate judge utilization; and encourage their use by the Federal Judicial Center in judicial education programs. The Judicial Conference declined to adopt this recommendation.

CONTEMPT AUTHORITY

Consistent with Recommendation 66 of the *Long Range Plan for the Federal Courts*, the Judicial Conference slightly modified and then approved a recommendation of the Magistrate Judges Committee that an amendment of 28 U.S.C. § 636(e) be endorsed to provide that—

- a. Magistrate judges be given summary contempt authority for criminal contempts that occur in their presence, limiting the penalties that the magistrate judge may impose to 30 days' imprisonment or a \$5,000 fine;
- b. Magistrate judges be given contempt authority in civil consent cases under 28 U.S.C. § 636(c) and misdemeanor cases under 18 U.S.C. § 3401, thereby authorizing magistrate judges in such cases:
 - (1) To exercise the full civil contempt authority of the district court; and
 - (2) To recommend for prosecution, and to punish after notice and hearing under Federal Rules of Criminal Procedure 42(b), criminal contempts that constitute disobedience or resistance to the court's lawful writ, process, order, rule, decree, or command in such cases, limiting the penalties that the magistrate judge may impose to 30 days' imprisonment or a \$5,000 fine;
- c. Appeals from magistrate judges' contempt orders be heard by the court that will hear the appeal of the final order on the merits of the case, either the court of appeals under 28 U.S.C. § 636(c)(3), or the district court under 28 U.S.C. § 636(c)(4) or 18 U.S.C. § 3402. In any other proceeding in which a magistrate judge presides under 28 U.S.C. § 636(a) or § 636(b), or any other statute, the appeal of a magistrate judge's summary contempt order shall be to the district court;
- d. Magistrate judges be authorized to certify more serious criminal contempts, and other criminal contempts occurring outside the magistrate judge's presence in any other cases or proceedings arising under § 636(a) or § 636(b), or any other statute, to the district court for further contempt proceedings; and
- e. Magistrate judges be authorized to certify all civil contempts in any other cases or proceedings arising under § 636(a) or § 636(b), or any other statute, to the district court for further contempt proceedings.

AD HOC RECALL REGULATIONS

The Judicial Conference approved a recommendation of the Magistrate Judges Committee to amend Sections 2 and 5 of the *Regulations of the Judicial Conference Establishing Standards and Procedures for the Recall of United States Magistrate Judges* to extend the period of recall service from up to one year to up to one year and one day. The amendment will also provide that a recalled magistrate judge may be compensated on a full-time basis or a "when-actually-employed" basis. These changes will permit magistrate judges who are performing substantial service for the federal judiciary to reacquire the same life insurance coverage that they had at the time of retirement and, if retired without health insurance benefits, to obtain federal health insurance coverage during the term of recall. See also *supra*, "Ad Hoc Recall Regulations," pp. 11-12).

SELECTION OF MAGISTRATE JUDGES

On recommendation of the Committee, the Judicial Conference approved an amendment to Section 3.02(d) of the *Regulations of the Judicial Conference Establishing Standards and Procedures for the Appointment and Reappointment of United States Magistrate Judges*. The amendment will permit the Magistrate Judges Committee to grant, on an individual case basis, waivers of this provision, which prohibits a member of a merit selection panel from being considered as a nominee for a magistrate judge position for a period of one year after serving on the panel.

BACKGROUND INVESTIGATIONS OF MAGISTRATE JUDGE NOMINEES

As noted above (see *supra*, "Background Investigations of Bankruptcy Judge Nominees," p. 11), the executive branch has twice reduced the span of its background investigations for appointees from the standard 15-year span, first in 1992 to a 10-year period, and later in 1995, to a seven-year period. On recommendation of the Magistrate Judges Committee, the Judicial Conference determined that the span of the FBI background investigations of individuals selected as new full-time magistrate judges should continue to be 15 years.

CHANGES IN MAGISTRATE JUDGE POSITIONS

After consideration of the report of the Committee on the Administration of the Magistrate Judges System and the recommendations of the Director of the

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Administrative Office, the district courts, and the judicial councils of the circuits, the Judicial Conference approved the following changes in salaries and arrangements for full-time and part-time magistrate judge positions. Changes with a budgetary impact are to be effective when appropriated funds are available.

FOURTH CIRCUIT

Western District of Virginia

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

Northern District of West Virginia

Increased the salary of the part-time magistrate judge position at Wheeling from Level 3 (\$41,280 per annum) to Level 2 (\$51,600 per annum).

Southern District of West Virginia

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

FIFTH CIRCUIT

Western District of Texas

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

SIXTH CIRCUIT

Eastern District of Michigan

- a. Discontinued the vacant magistrate judge position at Detroit; and
- b. Made no change in the number, locations, or arrangements of the other magistrate judge positions in the district.

Western District of Michigan

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

Eastern District of Tennessee

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

Western District of Tennessee

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

EIGHTH CIRCUIT

Western District of Missouri

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

District of North Dakota

- a. Converted the part-time magistrate judge position at Bismarck to full-time status;
- b. Authorized the full-time magistrate judge position at Fargo in the District of North Dakota to serve in the adjoining District of Minnesota in accordance with 28 U.S.C. § 631(a); and
- c. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

NINTH CIRCUIT

District of Alaska

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

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TENTH CIRCUIT

District of Wyoming

Designated the full-time magistrate judge position at Yellowstone National Park, in the District of Wyoming, to serve in the adjoining District of Montana in accordance with 28 U.S.C. § 631(a).

ELEVENTH CIRCUIT

Middle District of Georgia

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

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

ILLUSTRATIVE RULES

Responding to suggestions made during the course of revising the Illustrative Rules Governing Complaints of Judicial Misconduct and Disability to accommodate recent positions of the Judicial Conference (see JCUS-MAR 94, pp. 27-31), the Committee to Review Circuit Council Conduct and Disability Orders recommended two additional modifications to the Rules. Both were approved in principle by the Judicial Conference as follows (proposed new language is italicized):

- New Rule 1(f) to read along the following lines:

(f) Abuse of the Complaint Procedure. A complainant who has filed vexatious, repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints. After affording the offending complainant an opportunity to show cause in writing why his or her ability to file further complaints should not be limited, the judicial council may restrict or impose conditions upon the complainant's use of the complaint procedure. Upon written request of the complainant, the judicial council may revise or withdraw any restrictions or conditions imposed.

- Amended Rule 16(g) to read along the following lines:

(g) Consent of judge complained about. Any materials from the files may be disclosed to any person upon the written consent of both the judge complained about and the chief judge of the circuit. *In any disclosure* the chief judge may require that the identity of the complainant, or of witnesses in an investigation conducted by a special committee or the judicial council, be shielded.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

OFFICIAL BANKRUPTCY FORMS

Section 104(b) of the Bankruptcy Code, as amended in 1994, requires the Judicial Conference to adjust -- in accordance with changes in the Consumer Price Index -- specified dollar amounts in certain provisions of the Code every three years beginning April 1, 1998. These adjustments are ministerial, and as noted previously, the Judicial Conference at this session delegated the publication of the adjusted amounts to the Administrative Office (see *supra*, "Periodic Revision of Dollar Amounts in the Bankruptcy Code," p. 10). Some of the dollar amounts to be adjusted are referenced in the Official Bankruptcy Forms, which are promulgated directly by the Judicial Conference. To avoid undue confusion and delay in revising the pertinent Official Forms to reflect dollar adjustments, the Judicial Conference approved a Rules Committee recommendation that on April 1, 1998, and at each three-year interval ending on April 1 thereafter, the Official Bankruptcy Forms be amended, automatically and without further action by the Conference, to conform to any adjustment of dollar amounts made under § 104(b) of the Bankruptcy Code.

LOCAL RULES

Amendments to the Federal Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure took effect on December 1, 1995, requiring that all local rules of court "must conform to any uniform numbering system prescribed by the Judicial Conference." (See Appellate Rule 47, Bankruptcy Rules 8018 and 9029, Civil Rule 83, and Criminal Rule 57.) At the Conference's urging in September 1988 (JCUS-SEP 88, p. 103), many district courts have voluntarily adopted a uniform numbering system for local rules addressing civil practice, and on request of the Committee, almost all appellate courts have renumbered their rules patterned on the Appellate Rules. The Rules Committee has recently completed a study of the local rules on

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bankruptcy and criminal procedure and prepared model uniform numbering systems tracking the Rules in these areas. On recommendation of the Committee, the Judicial Conference adopted a numbering system for local rules of court that corresponds with the relevant Federal Rules of Practice and Procedure, and set April 15, 1997, as the effective date of compliance with the uniform numbering system so that courts will have sufficient time to make necessary changes to their local rules.

COMMITTEE ON SECURITY, SPACE AND FACILITIES

SPACE RENTAL COST REDUCTION PLAN

At its September 1995 session, the Judicial Conference directed the Security, Space and Facilities and Budget Committees to submit a plan to the March 1996 Judicial Conference for reducing the overall growth of space rental costs (JCUS-SEP 95, p. 73). The Security, Space and Facilities Committee, after providing opportunity for comment by court units, proposed a plan to contain space growth, entitled "Space Management Initiatives in the Federal Courts." The Budget Committee concurred in the plan, and it was approved by the Judicial Conference at this session.

THE PUBLIC BUILDINGS REFORM ACT OF 1995

On recommendation of the Committee, the Judicial Conference determined that it would take no position at this time on the Public Buildings Reform Act of 1995, S. 1005 (104th Congress), a bill which has the potential to change the way space matters are addressed by the executive and legislative branches. In the event of further action by the Senate or House of Representatives, the Conference delegated to the Committee on Security, Space and Facilities, in consultation with the Director of the Administrative Office of the United States Courts and the Executive Committee, the authority to express views on certain provisions of the bill that will have an impact on space and facilities for the federal courts.

UNITED STATES COURTS DESIGN GUIDE

The Judicial Conference approved a Security, Space and Facilities Committee recommendation to amend the *United States Courts Design Guide* to enhance the level of security for probation and pretrial services offices and bankruptcy clerks' offices located outside federal courthouses in commercially leased space. The changes include

providing for the installation of bullet-resistant glazing on the window and surrounding areas of the public counter at locations where there is no weapons screening at the entrance and, for offices without a public counter, installation of a security access control system.

COURTHOUSE CONSTRUCTION PROJECTS

In March 1995, the Judicial Conference approved a recommendation of the Security, Space and Facilities Committee to develop a five-year listing of courthouse construction projects (JCUS-MAR 95, pp. 31-32) which would group new construction projects annually over a five-year period, according to the urgency of each court's housing situation. The first five-year list was approved by the Conference in September 1995 (JCUS-SEP 95, pp. 98-99). Subsequently, Congress requested further details of the process and methodology used to place pending projects in numerical order. Moreover, some of the assumptions underlying the five-year list approved by the Conference in September 1995 have changed, and the Committee has continued to refine the criteria used to adjust the plan, should funding limitations or actions by Congress necessitate project delay or acceleration. To address the concerns of Congress and the necessary revisions, the Conference approved a Committee recommendation that it—

- a. Approve criteria and a methodology for placing courthouse construction projects in numerical order (including the factors and scores for calculating and weighing the criteria) and a revised five-year plan of courthouse construction projects placed in order of priority, including the composite and detailed scores of each project. The Committee was authorized to provide narrative descriptions of how the criteria were applied, projections of caseload based on the long range facilities plans completed by each district, and other explanatory materials that might be requested; and
- b. Delegate to the Committee on Security, Space and Facilities (in consultation with affected circuit judicial councils and courts) authority to adjust the five-year plan to take into account changing circumstances (such as modified funding limits or contracting situations) that might delay or accelerate projects listed in the Conference-approved five-year plan. When adjusting the plan, the Committee will take into account the priority order and scores of the projects approved by the Conference.

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24-HOUR COURT SECURITY OFFICER COVERAGE

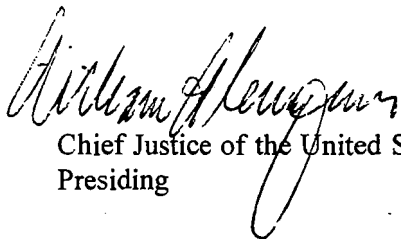
The Conference agreed to recommit to the Committee on Security, Space and Facilities a resolution to eliminate existing 24-hour security officer coverage for purposes of reevaluating this matter after consulting with the affected courts to determine the effects of eliminating existing 24-hour coverage. Any further action by the Committee to eliminate 24-hour security should be reviewed by the Judicial Conference.

FUNDING

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

RELEASE OF CONFERENCE ACTION

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


Chief Justice of the United States
Presiding

April 29, 1996