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

September 12, 2017

The Judicial Conference of the United States convened in Washington, D.C., on September 12, 2017, 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 Jeffrey R. Howard
Judge Paul Barbadoro,
District of New Hampshire

Second Circuit:

Chief Judge Robert A. Katzmann
Chief Judge Colleen McMahon,
Southern District of New York

Third Circuit:

Chief Judge D. Brooks Smith
Chief Judge Leonard P. Stark,
District of Delaware

Fourth Circuit:

Chief Judge Roger L. Gregory
Judge Robert James Conrad, Jr.,
Western District of North Carolina

Fifth Circuit:

Chief Judge Carl E. Stewart
Chief Judge Lee H. Rosenthal,
Southern District of Texas

Sixth Circuit:

Chief Judge Ransey Guy Cole, Jr.
Judge Joseph M. Hood,
Eastern District of Kentucky

Seventh Circuit:

Chief Judge Diane P. Wood
Chief Judge Michael J. Reagan,
Southern District of Illinois

Eighth Circuit:

Chief Judge Lavenski R. Smith
Judge Linda R. Reade,
Northern District of Iowa

Ninth Circuit:

Chief Judge Sidney R. Thomas
Judge Claudia Wilken,
Northern District of California

Tenth Circuit:

Chief Judge Timothy M. Tymkovich
Judge Martha Vazquez,
District of New Mexico

Eleventh Circuit:

Judge Federico A. Moreno,
Southern District of Florida

District of Columbia Circuit:

Chief Judge Merrick B. Garland
Chief Judge Beryl A. Howell,
District of Columbia

Federal Circuit:

Chief Judge Sharon Prost

Court of International Trade:

Chief Judge Timothy C. Stanceu

The following Judicial Conference committee chairs also attended the Conference session: Circuit Judges Michael A. Chagares, Richard R. Clifton, Julia Smith Gibbons, Thomas M. Hardiman, Raymond J. Lohier, Jr., and Anthony J. Scirica; District Judges John D. Bates, Susan R. Bolton, David G. Campbell, Gary A. Fenner, David R. Herndon, Royce C. Lamberth, Ricardo S. Martinez, Donald W. Molloy, Karen E. Schreier, Richard Seeborg, Rodney W. Sippel, and Lawrence F. Stengel; and Bankruptcy Judge Helen E. Burris. Attending as the bankruptcy judge and magistrate judge observers, respectively, were Chief Bankruptcy Judge Marcia Phillips Parsons and Magistrate Judge Kevin N. Fox. James P. Gerstenlauer of the Eleventh Circuit represented the circuit executives.

James C. Duff, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Lee Ann Bennett, Deputy Director; Sheryl L. Walter, General Counsel; Katherine H. Simon, Secretariat Officer, Helen G. Bornstein, Senior Attorney, and Ellen Cole Gerdes, Program Manager, Judicial Conference Secretariat; Cordia A. Strom, Legislative Affairs Officer; and David A. Sellers, Public Affairs Officer. District Judge Jeremy D. Fogel, Director, and John S. Cooke, Deputy Director, Federal Judicial Center, and Kenneth P. Cohen, Staff Director, and Brent E. Newton, Deputy Staff Director, United States Sentencing Commission, were in attendance at the session of the Conference, as were Jeffrey P. Minear, Counselor to the Chief Justice, and Ethan V. Torrey, Supreme Court Legal Counsel.

Attorney General Jeff Sessions addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice. Senator Patrick J. Leahy and Representatives Bob Goodlatte and Darrell Issa spoke on matters pending in Congress of interest to the Conference.

REPORTS

Mr. Duff reported to the Judicial Conference on the judicial business of the courts and on matters relating to the Administrative Office. Judge Jeremy D. Fogel

spoke to the Conference about Federal Judicial Center (FJC) programs and Mr. Cohen reported on United States Sentencing Commission activities. Judge Thomas M. Hardiman, Chair of the Committee on Information Technology, presented a special report on information technology security.

EXECUTIVE COMMITTEE

RESOLUTION

The Judicial Conference approved a recommendation of the Executive Committee to adopt the following resolution recognizing the substantial contributions made by Judicial Conference committee chairs whose terms of service end in 2017:

> The Judicial Conference of the United States recognizes with appreciation, respect, and admiration the following judicial officers:
>
> **HONORABLE GARY A. FENNER**
> Committee on Financial Disclosure
>
> **HONORABLE NEIL M. GORSUCH**
> Advisory Committee on Appellate Rules
>
> **HONORABLE WILLIAM K. SESSIONS III**
> Advisory Committee on Evidence Rules
>
> Appointed as committee chairs by the Chief Justice of the United States, these outstanding jurists have played a vital role in the administration of the federal court system. These judges served with distinction as leaders of their Judicial Conference committees while, at the same time, continuing to perform their duties as judges in their own courts. They have set a standard of skilled leadership and earned our deep respect and sincere gratitude for their innumerable contributions. We acknowledge with appreciation their commitment and dedicated service to the Judicial Conference and to the entire federal judiciary.

UNITED STATES SENTENCING COMMISSION

On recommendation of the Executive Committee, the Judicial Conference agreed, by mail ballot, to recommend to the President that the following judges be considered for appointment to fill vacancies on the United States Sentencing Commission:

District Judge Lance M. Africk, Eastern District of Louisiana
District Judge Bruce H. Hendricks, District of South Carolina
District Judge Rosemary Marquez, District of Arizona
Circuit Judge Michael J. Melloy, Eighth Circuit
Chief District Judge Kevin Michael Moore, Southern District of Florida
District Judge Nelva Gonzales Ramos, Southern District of Texas

MISCELLANEOUS ACTIONS

The Executive Committee—

- Approved costs related to the 2018 Ninth Circuit judicial conference, pursuant to § 930(a)(2) of the Judicial Conference regulations on meeting planning and administration, *Guide to Judiciary Policy*, Vol. 19, Ch. 9.

- Approved final fiscal year (FY) 2017 financial plans for the Salaries and Expenses, Defender Services, Court Security, and Fees of Jurors and Commissioners accounts and endorsed a strategy for distributing court allotments among court programs.

- Referred back to the Committee on Information Technology for reconsideration a decision not to implement secondary password protection for access to the Human Resources Management Information System (HRMIS) application.

- Approved amendments to the jurisdictional statements of the Committees on Information Technology and Judicial Security to reflect each committee's role in issues involving cybersecurity.

- Approved on behalf of the Conference a resolution recognizing Judge Paul Barbadoro, whose term of service as a member of the Judicial Conference and Chair of the Executive Committee ends on September 30, 2017.

- Approved interim FY 2018 financial plans for the Salaries and Expenses (S&E), Defender Services, Court Security, and Fees of Jurors and Commissioners appropriations accounts and endorsed a strategy for distributing court allotments among court programs.

- Discussed initiatives the judiciary has undertaken to address implicit bias and racial fairness in the judiciary and what next steps should be taken, including the creation of a webpage to raise awareness of the existing efforts, provide a clearinghouse of materials, experts, and points of contact, and encourage consideration and development of new programs.

COMMITTEE ON AUDITS AND ADMINISTRATIVE OFFICE ACCOUNTABILITY

COMMITTEE ACTIVITIES

The Committee on Audits and Administrative Office Accountability reported that it was briefed on planned updates to judiciary requirements for financial statements and reports. Initial updates will be designed to strengthen internal controls over financial reporting in court units and federal public defender organizations that have implemented the Judiciary Integrated Financial Management System (JIFMS). Longer-term changes will transform the judiciary's financial reporting model, resulting in a consolidated set of judiciary-wide financial statements, rather than separate financial statements for individual courts, funds, and programs.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

DUTY STATIONS AND ADDITIONAL PLACES OF HOLDING COURT

On recommendation of the Committee on the Administration of the Bankruptcy System, and in accordance with 28 U.S.C. § 152(b)(1), the Judicial Conference approved a request from the First Circuit Judicial Council to redesignate the official bankruptcy judge duty station in the District of New Hampshire from Manchester to Concord, and add Manchester to the list of approved places of holding bankruptcy court in that district.

BANKRUPTCY VENUE STATUTE

In September 2002, the Judicial Conference agreed to seek legislation to amend 28 U.S.C. § 1412 to allow a judge to raise an issue of venue and transfer a bankruptcy case sua sponte (JCUS-SEP 02, p. 40). At this session, the Committee recommended that the Judicial Conference rescind this position, noting that a court's authority in this area does not appear to be in dispute. The Conference adopted the Committee's recommendation.

GUIDELINES ON THE USE OF OUTSIDE FACILITIES AND SERVICES

Under 28 U.S.C. § 156(c), bankruptcy courts are authorized in limited circumstances to use outside services and facilities, such as claims agents, to receive and process claims, issue notices, and carry out certain other functions typically performed by bankruptcy court clerks' offices. In March 1989, the Judicial Conference adopted Guidelines on the Use of Outside Facilities and Services (JCUS-MAR 89, p. 9). Due to changes in practice and technology since then, the Guidelines are now outdated. On recommendation of the Committee, the Conference agreed to rescind them. New non-mandatory operational guidelines will be developed for inclusion in the Bankruptcy Clerks' Manual.

REGULATIONS ON THE EXTENDED SERVICE RECALL OF RETIRED BANKRUPTCY JUDGES

Section 1020.25(b) of the Judicial Conference Regulations on Extended Service Recall of Retired Bankruptcy Judges (*Guide to Judiciary Policy*, Vol. 3, Ch. 10) deems a bankruptcy judge recalled under those regulations to be an officer or employee of the federal judiciary for purposes of the Federal Employees' Group Life Insurance (FEGLI) program and the Federal Employees Health Benefits Program (FEHB). As all retired bankruptcy judges are employees of the federal judiciary for purposes of FEGLI, and recalled bankruptcy judges are considered reemployed annuitants for purposes of FEHB, the Committee determined that section 1020.25(b) was unnecessary with respect to the former and inaccurate with respect to the latter and recommended that it be deleted. The Conference adopted the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Bankruptcy System reported that it continues to monitor the judgeship vacancy pilot project, which was approved by the Judicial Conference in September 2014 (JCUS-SEP 14, p. 7), and identified four bankruptcy courts to invite to participate in the pilot should one of the current courts discontinue participation. The Committee is continuing to assess bankruptcy judgeship resources, including monitoring legislation for new judgeships and extensions of temporary judgeships and considering recalled bankruptcy judge requests. Additionally, the Committee discussed its horizontal consolidation pilot approved by the Judicial Conference in March 2016 (JCUS-MAR 16, p. 8) and several cost-containment initiatives discussed by the Committee on Court Administration and Case Management's Subcommittee on Cost Containment.

COMMITTEE ON THE BUDGET

FISCAL YEAR 2019 BUDGET REQUEST

After considering the budget requests of the program committees, the Budget Committee recommended to the Judicial Conference a FY 2019 budget request of $6,893.9 million in discretionary appropriations, which is 3.6 percent above assumed discretionary appropriations for FY 2018, but $173.6 million below the funding levels requested by the program committees. The Judicial Conference approved the Budget Committee's FY 2019 budget request, subject to amendments necessary as a result of (a) new legislation, (b) actions of the Judicial Conference, or (c) any other reason the Executive Committee considers necessary and appropriate.[1]

COMMITTEE ACTIVITIES

The Committee on the Budget reported that it discussed the status of the FY 2018 appropriations cycle, the renewed importance of congressional outreach with the 115th Congress, and the status of various cost-containment initiatives. The Committee also discussed the Court Administration and Case Management Committee's initial study on organizational streamlining and a number of funding challenges the judiciary must address, including cybersecurity; infrastructure costs for

[1] Subsequent to the Conference session, the Executive Committee approved an adjustment to the FY 2019 budget request to reflect changes in FY 2018 funding assumptions. The budget request was increased by $92.6 million to $6,986.5 million.

new courthouse construction; a physical access control systems funding strategy (PACS); and the Probation and Pretrial Services Automated Case Tracking System (PACTS) replacement. The Committee approved updates to non-salary funding formulas for use beginning with the FY 2018 financial plan. In addition, the Committee discussed a legislative proposal to convert the U.S. Court of Federal Claims to Article III status.

COMMITTEE ON CODES OF CONDUCT

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Judicial Conference in March 2017, the Committee received 22 new written inquiries and issued 24 written advisory responses. During this period, the average response time for requests was 15 days. In addition, the Committee chair responded to 58 informal inquiries, individual Committee members responded to 143 informal inquiries, and Committee counsel responded to 598 informal inquiries, for a total of 799 informal inquiry responses. In response to a referral from the Executive Committee, the Committee on Codes of Conduct advised the Judicial Conference that it did not recommend any amendments to the judiciary's codes of conduct regarding the prohibition on the practice of law by judges or judiciary employees as part of military reserve service, or any changes in the Committee's guidance on that issue.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

GUIDANCE ON PORTABLE COMMUNICATION DEVICES IN THE COURTHOUSE

On recommendation of the Committee on Court Administration and Case Management, in consultation with the Committees on Information Technology and Judicial Security, the Conference approved updated guidance on portable communication devices in the courthouse for inclusion in the *Guide to Judiciary Policy* and delegated to the Court Administration and Case Management Committee the authority to make non-substantive, technical, and conforming changes to the guidance. The guidance provides courts with information on issues to consider in developing local policies on the use of portable communication devices in courthouses.

COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported that it endorsed an initial report from its cost-containment subcommittee on efforts to develop and evaluate organizational cost-containment proposals and decided on next steps for moving the initiative forward. The Committee approved a recommendation from its case management subcommittee to amend its method of identifying courts in need of case management assistance, i.e., those with protracted civil case dispositions. The Committee also received an update regarding the Committee's investigation into privacy concerns related to sensitive information found in Social Security and immigration opinions and agreed to communicate those concerns to the courts, along with a suggested approach for addressing the concerns, and to ask the Committee on Rules of Practice and Procedure whether any rules changes might be warranted. In addition, the Committee was briefed on the work of the Administrative Office's Task Force on Protecting Cooperators.

COMMITTEE ON CRIMINAL LAW

PRESUMPTION OF DETENTION

Section 3142(e) of title 18, U.S. Code, provides a rebuttable presumption of pretrial detention if a defendant is charged with committing any one of several enumerated offenses, regardless of the defendant's criminal history or whether he or she is at a high risk of failing to appear or poses a threat to the community. To assess the impact of this presumption on the detention of low-risk defendants, the Administrative Office commissioned a study that analyzed how the presumption is applied to defendants charged with certain drug and firearms offenses. Based on the study, the Committee concluded that the § 3142(e) presumption was unnecessarily increasing detention rates of low-risk defendants, particularly in drug trafficking cases. On recommendation of the Committee, the Judicial Conference agreed to seek legislation amending the presumption of detention found in 18 U.S.C. § 3142(e)(3)(A) to limit its application to defendants described therein whose criminal history suggests that they are at a higher risk of failing to appear or posing a danger to the community or another person as follows (new language underlined)—

> (3) Subject to rebuttal by the person, it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community if the judicial officer finds that there is probable cause to believe that the person committed—

> (A) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46 and such person has previously been convicted of two or more offenses described in subsection (f)(1) of this section, or two or more state or local offenses that would have been offenses described in subsection (f)(1) of this section if a circumstance giving rise to federal jurisdiction had existed, or a combination of such offenses;

SPECIAL PROBATION TERMS

Section 3607 of title 18, U.S. Code, offers a process of special probation and expungement for first-time drug offenders who are found guilty of simple possession under 21 U.S.C. § 844. Specifically, a court may, with the offender's consent, place the offender on a one-year maximum term of probation without entering a judgment of conviction, and upon successful completion of the term of probation, the proceedings are dismissed. For offenders under the age of 21 that successfully complete their terms of probation, upon application by the offender, an order of expungement is entered. A bill was introduced in Congress, H.R. 2617 (115th Congress), the RENEW Act, that would expand the age of eligibility for expungement under section 3607 of title 18 from "under the age of 21" to "under the age of 25." The Committee on Criminal Law noted that the RENEW Act's aim of expanding the scope of section 3607 is consistent with practices already occurring in many courts looking to increase alternatives to incarceration and enhance judicial discretion and is consistent with Judicial Conference policy on sealing and expunging records in that it would not limit judicial discretion in the management of cases and adoption of rules and procedures. On recommendation of the Committee, the Conference agreed to support amendments to 18 U.S.C. § 3607 that provide judges with alternatives to incarceration and expand sentencing discretion, and that are consistent with the Conference's prior views on sealing and expunging records (see JCUS-SEP 15, pp. 12-13).

COMMITTEE ACTIVITIES

The Committee on Criminal Law reported that, relying on its delegated authority to approve technical, non-controversial revisions to the forms for judgments in criminal cases (JCUS-MAR 04, p. 13), the Committee approved, consistent with the Justice for All Reauthorization Act of 2016, Public Law No. 114-324, a new mandatory condition of supervised release requiring defendants to make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A, or any other statute authorizing a

sentence of restitution. The Committee also received a briefing on a proposed study of presentence reports and provided information to AO staff and its contractor on questions to be included in a survey of district and magistrate judges about presentence reports.

COMMITTEE ON DEFENDER SERVICES

COMMITTEE ACTIVITIES

The Committee on Defender Services reported that it received an update on a comprehensive, impartial review of the Criminal Justice Act (CJA) program that is being conducted by the Ad Hoc Committee to Review the CJA Program. The Committee was also briefed on planned cybersecurity initiatives that will ensure that the Defender Services program is aligned with the judiciary's information technology security efforts. In addition, the Committee received an update on the implementation of eVoucher as a national electronic CJA panel management and voucher processing system and noted ongoing efforts to improve the system's national reporting capabilities.

COMMITTEE ON FEDERAL-STATE JURISDICTION

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported that it continued work on its jurisdictional improvements project to identify proposals to amend title 28 of the U.S. Code to improve the clarity and workability of federal jurisdiction and venue statutes. The Committee also discussed legislation that would substantially alter federal court procedures for class actions and multidistrict litigation and change how courts handle 'misjoinder' of plaintiffs in personal injury and wrongful death cases. In addition, the Committee discussed legislation that would increase the number of cases that could be filed in or removed to federal courts based on diversity jurisdiction by changing the manner in which courts review claims that non-diverse defendants have been joined for the sole purpose of defeating diversity jurisdiction and a proposal to convert the U.S. Court of Federal Claims to Article III status. The Committee reviewed and approved for publication a Federal Judicial Center pocket guide, *Enhancing Cooperation Through State-Federal Judicial Councils*, as part of its continuing efforts to facilitate communication between the federal judiciary and the state courts on matters of mutual concern.

COMMITTEE ON FINANCIAL DISCLOSURE

REDACTION REGULATIONS

Section 111 of the Ethics in Government Act of 1978, as amended, 5 U.S.C. app. § 101-111, provides that the Judicial Conference may delegate any of its authority under the Act to an ethics committee established by the Conference. In September 1990, the Conference delegated its authority under the Act to the Committee on Judicial Ethics, which later became the Committee on Financial Disclosure (JCUS-SEP 90, p. 85). At the time, the Act did not contain any provisions relating to the redaction of information in financial disclosure reports that could pose a security risk to filers. Twenty years later, Congress enacted the Identity Theft and Assumption Deterrence Act of 1998, Public Law No. 105-318, which amended the Ethics in Government Act to authorized the Conference, in consultation with the U.S. Marshals Service (USMS), to redact sensitive information that could endanger a filer and provided that the Conference, in consultation with the Department of Justice should issue regulations setting forth the circumstances under which redaction was appropriate. 5 U.S.C. app. § 105(b)(3). Pursuant to that authority, the Judicial Conference has adopted and periodically amended such regulations. As redaction is now an established part of the judiciary's financial disclosure process, and the Committee has been delegated authority to adopt regulations for all other aspects of financial disclosure reporting, the Committee recommended that the Conference update its 1990 delegation to authorize the Committee on Financial Disclosure to adopt and amend redaction regulations under 5 U.S.C. app. § 105(b)(3)(D). The Conference approved the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported that it was updated on efforts to procure and implement a new electronic financial disclosure reporting system, and it provided input pertaining to the development of software for the system. It also reported on the adoption of new financial disclosure regulations. In addition, the Committee stated that as of May 22, 2017, it had received 4,283 financial disclosure reports and certifications for calendar year 2015 (out of a total of 4,285 required), including 1,310 annual reports and certifications from Supreme Court justices and Article III judges; 344 annual reports from bankruptcy judges; 571 annual reports from magistrate judges; 1,592 annual reports from judicial employees; and 466 reports from nominee, initial, and final filers.

COMMITTEE ON INFORMATION TECHNOLOGY

LONG RANGE PLAN FOR INFORMATION TECHNOLOGY IN THE FEDERAL JUDICIARY

Pursuant to 28 U.S.C. § 612 and on recommendation of the Committee on Information Technology, the Judicial Conference approved the fiscal year 2018 update to the *Long Range Plan for Information Technology in the Federal Judiciary*. Funds for the judiciary's information technology program will be spent in accordance with this plan.

COMMITTEE ACTIVITIES

The Committee on Information Technology reported that it submitted an FY 2019 budget request to the Committee on the Budget, which included increased funds for replacement of the probation and pretrial services case management system; new and ongoing cybersecurity initiatives; telecommunications equipment and wiring for the nine new federal courthouses for which Congress appropriated funding to the General Services Administration (GSA) in 2016; and possible transition costs for the GSA Enterprise Infrastructure Solutions contract. In addition, it endorsed the concepts contained in the Cloud Computing Strategy and Roadmap as a guide to the judiciary's enterprise hosting program, recognizing that implementation will require the active participation of multiple AO and court entities, consistent with the organizational structure and culture of the judiciary. It also received information on the implementation of security self-assessments and independent security assessments.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

GUIDELINES GOVERNING THE INTERCIRCUIT ASSIGNMENT OF BANKRUPTCY AND MAGISTRATE JUDGES

On recommendation of the Committee on Intercircuit Assignments, the Judicial Conference approved non-substantive amendments, pertaining primarily to formatting and headings, to the regulations governing the intercircuit assignment of bankruptcy judges (*Guide to Judiciary Policy*, Vol. 3, Ch. 6) and the intercircuit assignment of magistrate judges (*Guide*, Vol. 3. Ch. 7). Also on recommendation of the Committee, the Conference delegated authority to the Committee to make non-substantive, technical, and conforming changes to those regulations in the future.

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that 109 intercircuit assignments were undertaken by 92 Article III judges from January 1, 2017, to June 30, 2017. During this time, the Committee continued to disseminate information about intercircuit assignments and aided courts requesting assistance by identifying and obtaining judges willing to take assignments. The Committee also reviewed and concurred with four proposed intercircuit assignments of bankruptcy judges. In addition, the Committee forwarded to the Chief Justice for approval proposed non-substantive amendments to the regulations governing the intercircuit assignment of Article III judges and discussed a proposal to convert the U.S. Court of Federal Claims to Article III status and its implications for the intercircuit assignments system**.**

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported about its involvement in rule of law and judicial reform throughout the world, including activities in Africa, Europe and Eurasia, the Near East, East Asia and the Pacific, South and Central Asia, and the Western Hemisphere. The Committee received oral and written reports about international rule of law activities from the Department of State, the Department of Justice, the United States Agency for International Development, the Department of Commerce, the United States Patent and Trademark Office, the Open World Leadership Center at the Library of Congress, the United Nations Counterterrorism Executive Directorate, the Federal Judicial Center, the Administrative Office, the Judicial Conference Committee on Defender Services, and the Federal Court Clerks Association. The Committee also reported on hosting foreign delegations of jurists and judicial personnel for briefings at the Administrative Office.

COMMITTEE ON THE JUDICIAL BRANCH

COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that it participated in the sixth Judicial-Congressional Dialogue, an initiative that began in 2014, with the goal of increasing understanding between the legislative and judicial branches. The event was held on May 17, 2017, and included a program entitled, "Breakthrough: The

Appointment of the First Women Federal Judges." The Committee also considered a proposal to convert the U.S. Court of Federal Claims to Article III status.

COMMITTEE ON JUDICIAL CONDUCT AND DISABILITY

COMMITTEE ACTIVITIES

The Committee on Judicial Conduct and Disability reported that it considered complaint-related matters under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351–364 (Act), and the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules), including one petition for review of a circuit judicial council order. It also reported that the Committee and its staff continue to address inquiries regarding the Act and the Rules, and to give other assistance as needed to chief judges and circuit judicial councils.

COMMITTEE ON JUDICIAL RESOURCES

JUDICIAL EMERGENCIES

In March 1999, the Judicial Conference defined a "judicial emergency" as any Article III judgeship vacancy in a district court where weighted filings are in excess of 600 per authorized judgeship, or any vacancy in existence more than 18 months where weighted filings are between 430 and 600 per judgeship (JCUS-MAR 99, p. 23). In practice, the Administrative Office also considers as a judicial emergency a vacancy that results in a court with more than one authorized judgeship having only one active judge. In June 2017, on recommendation of it Judicial Statistics Subcommittee, the Committee on Judicial Resources considered a request from the chief judge of the district court for the Northern District of Florida to revise the definition of judicial emergency to include any vacancy in a district court where weighted filings exceed 800 per active judge, to account for the circumstances of small but inordinately busy courts where judicial vacancies leave the remaining active judges with unusually high caseloads. Noting that the weighted filings per active judge in districts that would qualify as a judicial emergency under the proposed definition are higher than those in a majority of the districts currently classified as judicial emergencies, the Committee recommended, and the Conference approved, modifying the definition of judicial emergency to include any vacancy in a district court where weighted filings exceed 800 per active judge.

STAFFING FORMULAS

The Committee on Judicial Resources supervises, coordinates, and makes recommendations to the Judicial Conference regarding all judiciary staffing formulas. The staffing formulas provide an empirical basis to estimate the number of employees required to perform most non-chambers work. The staffing formulas are developed using work measurement studies that rely on extensive data collection and input from the courts. At this session, the Committee recommended updates to the staffing formulas for pro se law clerks, death penalty law clerks, and bankruptcy clerks' offices in accordance with its schedule for updating staffing formulas every five years, and developed the first formula for court reporters, as set forth below.

Pro Se Law Clerks. The Committee recommended, and the Judicial Conference approved, an updated staffing formula for pro se law clerks for implementation in fiscal year 2018 that—

a. Based on prisoner cases only, provides a credit of 14.3 hours per civil rights case, a credit of 9.4 hours per habeas corpus case, and a constant of a 0.5 full-time equivalent (FTE) position to courts that receive death penalty cases but have no death penalty law clerks.

b. For any district court whose allocation is less than a 0.5 FTE position, rounds the allocation up to a 0.5 FTE position and for any court whose allocation falls between 0.51 and 0.99 of a FTE position, rounds the allocation up to 1 FTE position. This rule does not apply to the three territorial courts.

c. Retains the two-year stabilization policy, which requires prisoner case filings to drop below a staffing threshold for two consecutive years before decreasing staff allocations.

Death Penalty Law Clerks. On recommendation of the Committee, the Conference approved an updated staffing formula for death penalty law clerks to be implemented in fiscal year 2018 that—

a. Provides a credit of 99.9 hours per pending death penalty case that is not stayed as of the end of a statistical year, regardless of age, and a constant value of 720.7 hours to each district court meeting a three-case minimum.

b. Retains the two-year stabilization policy, which requires unstayed death penalty case filings to drop below a staffing threshold for two consecutive years before decreasing staff allocations.

Bankruptcy Clerks' Offices. On recommendation of the Committee, the Conference approved updated staffing formulas for bankruptcy clerks' offices to be implemented in fiscal year 2018 that —

a. Provides five separate staffing formulas for bankruptcy courts with 1, 2, 3, 4-to-6, and 7-to-24 authorized judgeships, respectively.

b. Retains the two-year weighted average of filings as the driver for petitions.

c. Provides a staffing credit to bankruptcy courts that perform national level work.

Court Reporters. On recommendation of the Committee, the Conference approved the first staffing formula for court reporters for implementation in fiscal year 2018 that provides—

a. A credit of 1,569.6 hours per active, onboard Article III judge in a district court who elects to have proceedings recorded by a stenotype or stenomask method.

b. A credit of 1,569.6 hours per senior Article III judge in a district court who is certified for staff by his or her respective circuit judicial council and elects to have proceedings recorded by a stenotype or stenomask method.

c. A credit of 1,569.6 hours per 650 aggregate in-court hours for senior Article III judges not certified for staff by their respective circuit judicial council.

d. A one-year, phase-in period for courts where onboard staff exceeds formula results.

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that it considered an initial cost-containment report at the request of the Committee on Court Administration and Case Management. It also considered a proposal to convert the U.S. Court of Federal Claims to Article III status. The Committee submitted to the Committee on the Budget a FY 2019 budget request for programs under the Judicial Resources Committee's jurisdiction, declined to recommend an exception to the Judicial Conference policy that limits judges to one law clerk position at the Judiciary Salary Plan-14 level or above, and received a report on the Online System for Clerkship Application and Review (OSCAR).

COMMITTEE ON JUDICIAL SECURITY

CRIMINAL HISTORY CHECKS ON GENERAL SERVICES ADMINISTRATION CONTRACT WORKERS

The General Services Administration (GSA) provides contract custodial and maintenance workers for government-owned facilities, including courthouses. Although GSA conducts background checks on the contractors, GSA's policy for determining suitability does not disqualify individuals who have previously been convicted of felonies from working in restricted court space. To address this concern, the Administrative Office worked with the U.S. Marshals Service (USMS) to develop criteria based on an individual's past criminal convictions and patterns of criminal conduct for determining suitability of contractors to access restricted areas. After considering the proposed standard, and making some modifications, the Committee recommended that the Judicial Conference adopt the standard for use by the USMS when conducting criminal history checks to determine whether the GSA's prospective contract workers are eligible to access restricted court space. The Conference approved the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Judicial Security reported that it reviewed and approved a long-term budget strategy to replace and/or upgrade physical access control systems used at judiciary facilities. This strategy was developed jointly by the Administrative Office and the USMS and is reflected in the Committee's FY 2019 budget request made to the Committee on the Budget. The Committee also reviewed and considered revisions to the Court Administration and Case Management Committee's 2010 guidance on the use of portable communication devices in courtrooms and courthouses, and endorsed the proposed guidance.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

PART-TIME MAGISTRATE JUDGE SALARY STRUCTURE

In March 1992, the Judicial Conference adopted an eight-level salary structure for part-time magistrate judges and an accompanying document entitled "General Expectations of Part-time Magistrate Judges" to clarify what is expected of part-time magistrate judges (JCUS-MAR 92, pp. 28-30). The criteria used by the Committee on

the Administration of the Magistrate Judges System to recommend a salary level for a particular position included (1) the number and types of duties performed and expected to be performed by the incumbent; (2) the number of hours reported by the incumbent; and (3) the extent the incumbent fulfills the General Expectations for Part-time Magistrate Judges.

In response to concerns raised about the difficulty in achieving consistency in salary levels among judges with similar workloads under this scheme, in June 2016, the Committee initiated a comprehensive review of the part-time magistrate judges' salary structure and related criteria. Based on that review, the Committee recommended that the Conference reduce the number of salary levels from eight to five, and base the five levels on specific percentages of the salary of a full-time magistrate judge, ranging from ten percent to fifty percent. If the new salary levels were approved by the Conference, the Committee noted its intent to then amend its criteria for each salary level to include flexible hours guidelines roughly corresponding to the percentage of pay the judge would receive under the new salary structure. The number of hours reported would be considered along with other relevant criteria. The Committee also recommended a conforming change to the General Expectations of Part-time Magistrate Judges to eliminate a specific reference to salary level 8. The Conference approved the Committee's recommendations.

SECURITY CLEARANCES

For decades, the Department of Justice (DOJ) granted magistrate judges security clearances to access classified case information based only on a review of a judge's pre-appointment Federal Bureau of Investigation (FBI) background investigation report, regardless of the age of the report, and exempted magistrate judges from any reinvestigation. At the direction of the Office of the Director of National Intelligence, the DOJ has now informed the AO that it can no longer grant clearances to magistrate judges based on FBI background investigation reports that are more than five-years old. The DOJ has implemented a policy requiring a new full-field FBI investigation for magistrate judges whose investigations are more than five-years old, and reinvestigations every five years for magistrate judges who need to maintain their security clearance. Noting concern that the new procedures will cause delays in litigation and interfere with courts' ability to fully utilize their magistrate judges, the Committee recommended that the Conference seek a change in executive branch security clearance requirements and procedures to permit full-time magistrate judges to obtain security clearances based on FBI background investigation reports, including pre-appointment background investigation reports, that are not more than ten years old, and require reinvestigations for the magistrate judges who need to maintain a clearance every ten years. Under DOJ regulations (28 C.F.R. §17.46(c)), procedures for magistrate judge access to classified information are approved by the Assistant

Attorney General in consultation with the Judicial Conference. The Conference approved the Committee's recommendation.

CHANGES IN MAGISTRATE JUDGE POSITIONS

After considering the recommendations of the Committee and the views of the Administrative Office, the district courts, and the judicial councils of the circuits, the Judicial Conference agreed to (a) authorize an additional magistrate judge position at San Juan in the District of Puerto Rico; (b) make no change at this time in the number, location, or arrangements of the magistrate judge positions in the District of Delaware; (c) authorize an additional magistrate judge position at McAllen in the Southern District of Texas; (d) authorize the conversion of the part-time magistrate judge position at Rapid City in the District of South Dakota to a full-time magistrate judge position; and (e) authorize an additional magistrate judge position at Atlanta in the Northern District of Georgia.

ACCELERATED FUNDING

On recommendation of the Committee, the Conference agreed to designate for accelerated funding, effective April 1, 2018, the new full-time magistrate judge positions at San Juan in the District of Puerto Rico, McAllen in the Southern District of Texas, Rapid City in the District of South Dakota, and Atlanta in the Northern District of Georgia.

COMMITTEE ACTIVITIES

The Committee considered four cyclical district-wide magistrate judge utilization reviews prepared by the Administrative Office and determined not to recommend any changes in the magistrate judge positions in those district courts. Pursuant to Judicial Conference policy regarding the review of magistrate judge position vacancies (JCUS-SEP 04, p. 26), for the period between its December 2016 and June 2017 meetings, the Committee, through its chair, approved filling 18 full-time magistrate judge position vacancies in 12 district courts. At its June 2017 meeting, the full Committee considered and approved a request from one court to fill two magistrate judge position vacancies. The Committee also considered requests from 11 courts for the extension of recall of 12 retired magistrate judges. At its meeting, the Committee voted to approve all but one request consistent with the respective circuit judicial council's approval, and it approved the twelfth request upon reconsideration after its meeting.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

FEDERAL RULES OF APPELLATE PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Appellate Rules 8 (Stay or Injunction Pending Appeal), 11 (Forwarding the Record), 25 (Filing and Service), 26 (Computing and Extending Time), 28.1(Cross-Appeals), 29 (Brief of an Amicus Curiae), 31 (Serving and Filing Briefs), 39 (Costs), and 41 (Mandate: Contents; Issuance and Effective Date; Stay), and Forms 4 (Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis) and 7 (Declaration of Inmate Filing), together with committee notes explaining their purpose and intent. The Judicial Conference approved the proposed rules and forms amendments and authorized their transmittal to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Bankruptcy Rules 3002.1 (Notices Relating to Claims Secured by Security Interest in the Debtor's Principal Residence), 5005 (Filing and Transmittal of Papers), 7004 (Process; Service of Summons, Complaint), 7062 (Stay of Proceedings to Enforce a Judgment), 8002 (Time for Filing Notice of Appeal), 8006 (Certifying a Direct Appeal to the Court of Appeals), 8007 (Stay Pending Appeal; Bonds; Suspension of Proceedings), 8010 (Completing and Transmitting the Record), 8011 (Filing and Service; Signature), 8013 (Motions; Intervention), 8015 (Form and Length of Briefs; Form of Appendices and Other Papers), 8016 (Cross-Appeals), 8017 (Brief of an Amicus Curiae), 8021 (Costs), 8022 (Motion for Rehearing), and 9025 (Security; Proceedings Against Sureties), new Rule 8018.1 (District-Court Review of a Judgment that the Bankruptcy Court Lacked Constitutional Authority to Enter), and new Part VIII Appendix, together with committee notes explaining their purpose and intent. The Judicial Conference approved the proposed amendments and authorized their transmittal to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

The Conference also approved, on recommendation of the Committee, proposed revisions to Bankruptcy Official Forms 25A (Plan of Reorganization in Small Business Case Under Chapter 11), 25B (Disclosure Statement in Small Business Case Under Chapter 11), 25C (Small Business Monthly Operating Report), 26 (Periodic Report Regarding Value, Operations, and Profitability of Entities in Which

the Debtor's Estate Holds a Substantial or Controlling Interest) (renumbered respectively as 425A, 425B, 425C, and 426), 101 (Voluntary Petition for Individuals Filing for Bankruptcy), 309F (Notice of Chapter 11 Bankruptcy Case—For Corporations or Partnerships), 309G (Notice of Chapter 12 Bankruptcy Case—For Individuals or Joint Debtors), 309H (Notice of Chapter 12 Bankruptcy Case—For Corporations or Partnerships), and 309I (Notice of Chapter 13 Bankruptcy Case), effective December 1, 2017, and to Official Forms 417A (Notice of Appeal and Statement of Election) and 417C (Certificate of Compliance with Type-Volume Limit, Typeface Requirements, and Type-Style Requirements), effective December 1, 2018, to govern all proceedings in bankruptcy cases commenced after the effective dates and, insofar as just and practicable, all proceedings pending on the effective dates.

FEDERAL RULES OF CIVIL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Civil Rules 5 (Serving and Filing Pleadings and other Papers), 23 (Class Actions), 62 (Stay of Proceedings to Enforce a Judgment), and 65.1 (Proceedings Against a Surety), together with committee notes explaining their purpose and intent. The Judicial Conference approved the amendments and authorized their transmittal to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

FEDERAL RULES OF CRIMINAL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Criminal Rules 12.4 (Disclosure Statement), 45 (Computing and Extending Time), and 49 (Serving and Filing Papers), together with committee notes explaining their purpose and intent. The Judicial Conference approved the amendments and authorized their transmittal to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure reported that it approved for publication for public comment proposed amendments to Appellate Rules 3, 13, 26.1, 28, and 32; Bankruptcy Rules 2002, 4001, 6007, 9036, 9037, and Official Form 410; new Criminal Rule 16.1; Rule 5 of the Rules Governing Section 2254 Cases;

Rule 5 of the Rules Governing Section 2255 Proceedings; and Evidence Rule 807. The rules were published in August 2017, and the comment period closes on February 15, 2018.

COMMITTEE ON SPACE AND FACILITIES

COURTHOUSE PROJECT PRIORITIES

The *Federal Judiciary Courthouse Project Priorities* (*CPP*) identifies the judiciary's priorities for new courthouse construction. Part I lists the projects for which the judiciary will request funding in its annual budget submission. Part II consists of the judiciary's out-year courthouse construction priorities. The priority order of all projects on Part I is maintained until a project is fully funded, at which time the project is removed from the list. The priority order of projects on Part II is updated each year based on each location's urgency evaluation score, which is developed as part of the judiciary's Asset Management Planning process (see JCUS-MAR 08, p. 26). On recommendation of the Committee on Space and Facilities, the Judicial Conference adopted a FY 2019 *CPP*, which carried forward all the projects on Part I and Part II of the FY 2018 *CPP*, as they had not yet received full funding, and added a project in McAllen, Texas to Part II. The projects on the FY 2019 *CPP* were approved in the following priority order:

a. Part I: (1) Harrisburg, Pennsylvania; (2) Huntsville, Alabama; and (3) Fort Lauderdale, Florida; and

b. Part II: (1) Chattanooga, Tennessee; (2) Hato Rey, Puerto Rico; (3) McAllen, Texas; and (4) Norfolk, Virginia.

FEASIBILITY STUDIES

Courthouse constructions projects must have a completed GSA feasibility study prior to being placed on the *CPP* (JCUS-MAR 08, p. 26). After considering the building, space, and security needs and urgency evaluation score for Anchorage, Alaska, the Committee recommended that the Judicial Conference request that GSA perform a feasibility study for Anchorage, Alaska. The Conference adopted the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Space and Facilities reported that it approved 14 Component B requests for the construction of new courtrooms and/or chambers in federal court facilities, all as submitted by the circuits, with one exception that was approved in part. The Committee also approved an increase to the furniture and carpet cost ceilings, which will be adjusted annually for inflation and reevaluated after five years. Finally, the Committee was updated on the progress of the space reduction program, including the annual rent cost avoidance achieved to date. The Committee will continue to track national and circuit progress and assist circuits in reaching their space reduction goals by the end of FY 2018.

FUNDING

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

Chief Justice of the United States
Presiding