

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

March 10, 1998

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The Judicial Conference of the United States convened in Washington, D.C., on March 10, 1998, 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
Judge Joseph A. DiClerico,
District of New Hampshire

Second Circuit:

Chief Judge Ralph K. Winter, Jr.
Judge Peter C. Dorsey,
District of Connecticut

Third Circuit:

Chief Judge Edward R. Becker
Chief Judge Donald E. Ziegler,
Western District of Pennsylvania

Fourth Circuit:

Chief Judge J. Harvie Wilkinson III
Chief Judge Charles H. Haden II,
Southern District of West Virginia

Fifth Circuit:

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

Sixth Circuit:

Chief Judge Boyce F. Martin, Jr.
Chief Judge Julia Smith Gibbons, [\(1\)](#)
Western District of Tennessee

Seventh Circuit:

Judge Robert L. Miller, Jr.,
Northern District of Indiana

Eighth Circuit:

Chief Judge Richard S. Arnold
Judge James M. Rosenbaum,
District of Minnesota

Ninth Circuit:

Chief Judge Procter Hug, Jr.
Judge Lloyd D. George,
District of Nevada

Tenth Circuit:

Chief Judge Stephanie K. Seymour
Judge Ralph G. Thompson,
Western District of Oklahoma

Eleventh Circuit:

Chief Judge Joseph W. Hatchett
Judge Wm. Terrell Hodges,
Middle District of Florida

District of Columbia Circuit:

Chief Judge Harry T. Edwards
Chief Judge Norma H. Johnson,
District of Columbia

Federal Circuit:

Chief Judge H. Robert Mayer
Court of International Trade:
Chief Judge Gregory W. Carman

Circuit Judges Stephen H. Anderson, Emmett R. Cox, W. Eugene Davis, David R. Hansen, Alan D. Lourie, Paul V. Niemeyer, Norman H. Stahl, and David R. Thompson and District Judges Edward B. Davis, John G. Heyburn II, D. Brock Hornby, George P. Kazen, Edward W. Nottingham, Philip M. Pro, and Alicemarie H. Stotler attended the Conference session. Jill Sayenga, Circuit Executive for the District of Columbia Circuit, was also present.

Senators Orrin Hatch and Patrick Leahy and Representatives Henry J. Hyde and Howard Coble spoke on matters pending in Congress of interest to the Conference. Attorney General Janet Reno and Solicitor General Seth P. Waxman 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, Legislative Affairs; Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat; and David Sellers, Deputy Assistant Director, Public Affairs. 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 James Duff, Administrative Assistant to the Chief Justice; Mary Ann Willis, Supreme Court Staff Counsel; and judicial fellows Robert Clayman, David Pimentel and Harry L. Pohlman.

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 Richard Conaboy, Chairman of the United States Sentencing Commission, reported on Sentencing Commission activities.

ELECTIONS

The Judicial Conference elected to membership on the Board of the Federal Judicial Center Judge Stanley Marcus, Eleventh Circuit, for a four-year term vice Judge Marvin E. Aspen, Illinois (Northern) and Judge Jean C. Hamilton, Missouri (Eastern), to fill the unexpired term of Judge Pasco Bowman (Eighth Circuit).

EXECUTIVE COMMITTEE

RESOLUTION

On behalf of the Judicial Conference, the Executive Committee approved the following resolution honoring Chief Judge Richard S. Arnold for his service to the Judicial Conference:

The Judicial Conference of the United States notes with deep regret the departure from its ranks of our esteemed friend and colleague, the Honorable

RICHARD S. ARNOLD

Chief Judge of the United States Court of Appeals for the Eighth Circuit and member of this body since 1992.

Recognized throughout the judiciary for his gifted intellect, integrity, and statesmanlike demeanor, Judge Arnold has contributed selflessly and immeasurably to the administration of the federal court system. From his leadership of the Conference's Budget Committee to his dedicated service on the Executive Committee, he has demonstrated unwavering good judgment and has earned our utmost respect and gratitude.

Judge Arnold is a gracious and warmhearted individual who does not hesitate to exercise his keen, dry wit in a manner that is always uplifting and constructive. He is an invaluable asset to the judiciary and a valued friend. We will sorely miss him at Conference sessions, but look forward to his significant future contributions to the judiciary.

It is our pleasure to pay tribute to Judge Richard Arnold and to express our sincere appreciation for his friendship and for his countless accomplishments in the administration of justice.

MISCELLANEOUS ACTIONS

The Executive Committee:

- Revised the fiscal year 1998 Salaries and Expenses financial plan to (a) authorize use of \$9 million in reserve funds for priority space alterations projects, for which the judiciary anticipates receiving a reduction in rent from the General Services Administration (GSA); and (b) approve the use of \$3.7 million to fund additional temporary staffing resources for court units to meet short-term increases in workload associated with several automation systems and for financial duties resulting from recent legislation.
- Agreed, on recommendation of the Committee on Financial Disclosure, to support a legislative proposal that would allow the release of public financial disclosure forms to be deferred where the revealing of sensitive and personal information would endanger an individual judicial officer or employee. This position was subsequently modified by the Judicial Conference. See *infra*, "Financial Disclosure Reports," p. 16.
- Agreed, on recommendation of the Committee on the Administration of the Magistrate Judges System, to increase the salary of the part-time magistrate judge position at Redding, California from Level 5 to Level 4, redesignate the part-time magistrate judge position at Redding as Redding or Susanville, and discontinue the part-time magistrate judge position at Susanville. See *infra*,

COMMITTEE ON THE ADMINISTRATIVE OFFICE

COMMITTEE ACTIVITIES

The Committee on the Administrative Office reviewed the progress of efforts to improve the Administrative Office's advisory structure. In addition, the Committee discussed the Federal Judicial Center's motions on training responsibilities and organizational relationships with the Administrative Office. The Committee was also briefed by AO executives on initiatives in the areas of public affairs, employee benefits, and information technology.

COMMITTEE ON AUTOMATION AND TECHNOLOGY

LONG RANGE PLAN FOR INFORMATION TECHNOLOGY

Pursuant to 28 U.S.C. § 612, the Committee on Automation and Technology recommended approval of the fiscal year 1998 update to the *Long Range Plan for Information Technology in the Federal Judiciary* (formerly entitled *Long Range Plan for Automation in the Federal Judiciary*). The Judicial Conference approved the recommendation.

LOCAL INFORMATION TECHNOLOGY COMMITTEES

On recommendation of the Automation and Technology Committee, the Judicial Conference agreed to urge each court to consider creating a local information technology committee. These groups, generally comprised of judges and other court staff who represent all categories of information technology users, would facilitate training and communications on information technology issues, projects, and innovations.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

CHAPTER 7 FILING FEE WAIVER PROGRAM

In the judiciary appropriations act for fiscal year 1994 (Pub. L. No. 103-121), Congress directed the Judicial Conference to study the effect of waiving the filing fee in Chapter 7 cases for individual debtors who are unable to pay the fee even in installments. At the request and under the guidance of the Committee on the Administration of the Bankruptcy System, a study was conducted by the Federal Judicial Center. The report of the study, entitled *Implementing and Evaluating the Chapter 7 Filing Fee Waiver Program*, describes the implementation of the pilot program, projects the number of fee waiver applications and associated costs if a national program were to be implemented, and discusses issues to be addressed by subsequent legislation or rules if the program were implemented nationwide. On recommendation of the Committee, the Judicial Conference approved the report for submission to Congress by March 31, 1998.

BANKRUPTCY CHIEF JUDGES

Under 28 U.S.C. § 154(b), a chief judge of the bankruptcy court shall be designated in each

district court having more than one bankruptcy judge. Section 154(b) is silent on any tenure, age, or seniority criteria for appointing chief bankruptcy judges, and there is considerable variation among the district courts on these matters. In March 1994, the Judicial Conference tabled a recommendation of the Bankruptcy Committee that it approve guidelines regarding the tenure of chief bankruptcy judges (JCUS-MAR 94, p. 11). At this session, the Conference approved a more limited proposal by the Committee that district courts be encouraged to appoint a chief bankruptcy judge for a set term of up to seven years, with the possibility of reappointment.

BANKRUPTCY JUDGES' RETIREMENT REGULATIONS

On recommendation of the Bankruptcy Committee, the Judicial Conference approved amendments to sections 6.03 (concerning the offset of an annuity under the Judicial Retirement System to recover prior government contributions to the Thrift Savings Plan) and 12.02 (regarding continuation of coverage under the Judicial Survivors' Annuities System for a judge who retires on a deferred annuity) of the Regulations of the Director Implementing the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988. The revisions will conform the guidelines to recent statutory amendments. See also *infra*, "Magistrate Judges' Retirement Regulations," p. 25.

COMMITTEE ON THE BUDGET

COMMITTEE ACTIVITIES

The Committee on the Budget reported that the presentation of the judiciary's fiscal year 1999 congressional budget request changed from previous years to align the request more closely with actual expenditures. This change is technical only and does not alter the budget formulation process nor the bottom line request. The new presentation is more accurate and easier to explain.

COMMITTEE ON CODES OF CONDUCT

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Conference in September 1997, the Committee received 30 new written inquiries and issued 31 written advisory responses. During this period, the average response time for requests has been 23 days, excluding responses that are held for discussion at Committee meetings. The chairman received and responded to 22 telephonic inquiries. In addition, individual Committee members responded to 64 inquiries from their colleagues.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

JUROR ATTENDANCE FEE

The Court Administration and Case Management Committee considered ways to ease the burden of individuals for whom jury service is a financial hardship. Rather than seek an across-the-board increase in the \$40 attendance fee for all jurors, the Committee determined to focus on the aggravated burden of jurors who serve on lengthy trials. Currently, 28 U.S.C. § 1871(b)(2) provides discretion for courts to pay an additional amount up to \$10 in excess of the fee after 30 days of

service. On recommendation of the Committee, the Judicial Conference agreed to propose legislation to reduce from 30 to five the number of required days of attendance by jurors hearing one case in order to be eligible for the additional fee, as provided by § 1871(b)(2).

SHARING COURT FACILITIES

At its March 1997 session, the Judicial Conference strongly encouraged courts to enter into shared court facilities arrangements with state and local governments, or other entities, to reduce space rental costs (JCUS-MAR 97, p. 40). In an effort to provide guidance to courts implementing shared arrangements, the Committee on Court Administration and Case Management considered the implications of the Judicial Conference's policy on cameras in the courtroom when facilities are shared. The Committee recommended to the Conference, *inter alia*, that a state court using a federal court facility for a state judicial proceeding be permitted, at the discretion of the local court, to allow media cameras if authorized by state law. This recommendation was modified by the Judicial Conference, which approved the following:

A federal judge who uses a state facility to conduct a federal proceeding is nevertheless bound by Judicial Conference policies, including the policy on cameras in the courtroom. The Judicial Conference policy on cameras in the courtroom also governs when a state court uses a federal facility to conduct state court judicial proceedings.

COMBINING FUNCTIONS OF THE BANKRUPTCY AND DISTRICT COURT CLERKS' OFFICES

In September 1996, the Judicial Conference, after reviewing a report by the National Academy of Public Administration on administrative structures of the federal trial courts, agreed to encourage courts to examine their administrative delivery systems and consider more efficient structures for the provision of administrative services (JCUS-SEP 96, pp. 53-54). As a result, some courts began to consider reorganizing or combining the administrative or operational functions of the district and bankruptcy clerks' offices. Since consolidation of the two offices implicates 28 U.S.C. § 156(d), which requires approval of the Judicial Conference and the Congress prior to a consolidation of the bankruptcy court clerk's office with the district court clerk's office, the Committee on Court Administration and Case Management determined that guidance should be provided to the courts on the issue of when administrative restructuring rises to the level of consolidation, thereby triggering the provisions of § 156(d). Working with the Bankruptcy Committee and after widespread distribution for comment, the Committee on Court Administration and Case Management recommended, and the Judicial Conference approved, procedures for combining functions of the clerks' offices in the district and bankruptcy courts. These procedures will be published in the *Guide to Judiciary Policies and Procedures*.

STATISTICAL REPORTING OF BANKRUPTCY APPEALS

Under the present statistical reporting system for district courts, adopted in 1991 to meet the requirements of the Civil Justice Reform Act (CJRA), all motions pending over six months, all bench trials under submission for over six months, and all cases pending for over three years must be included in the statistical reports, which also include the names of the district judges and the case names and numbers. Appeals taken from orders and decrees issued by bankruptcy judges pursuant to 28 U.S.C. § 158 are not included in the present reporting system. In order to assist in directing judges' attention to bankruptcy appeals and avoid undue delays in providing finality to matters where delay can be financially detrimental to the parties, the Judicial Conference approved a Court Administration and Case Management Committee recommendation to

- a. Require the semi-annual public statistical reports now required by the Judicial Conference from the judges in the district courts to be expanded to include appeals to the district courts taken from orders and decrees issued by bankruptcy judges pursuant to 28 U.S.C. § 158;
- b. Define the "pending date" for such appeals as 60 days from the date of the docketing of the appeal in the district court; and
- c. Require that all bankruptcy appeals pending over six months in the district courts be included in the reports.

GRADUATED FEE STUDY

The judiciary appropriations act for fiscal year 1994 (Pub. L. No. 103-121) directed the Judicial Conference to study, in at least six judicial districts, the impact of a graduated fee system for cases filed under chapters 11 and 13 of title 11, United States Code. A study was conducted by the Administrative Office, and the resulting report was reviewed by both the Bankruptcy Committee and the Committee on Court Administration and Case Management. The Committees agreed with the conclusion of the report that the current fixed-fee filing system should not be replaced by a graduated fee system. On recommendation of the Court Administration and Case Management Committee, the Judicial Conference agreed to transmit to Congress the report regarding graduated filing fees in the bankruptcy courts.

CIVIL JUSTICE REFORM ACT

Under the Civil Justice Reform Act of 1990, 28 U.S.C. §§ 471-478 (which include almost all of the substantive requirements of the Act) were scheduled to sunset on December 1, 1997. However, prior to the sunset date, Public Law No. 105-53 was enacted, which provides, in part, that § 476, dealing with statistical reporting, shall remain in effect permanently and that § 471 be deleted from the sunset provisions. Section 471 requires all 94 district courts to implement a civil justice expense and delay reduction plan, and all courts met this requirement by December 1993. Without the other six code sections that define the substantive and procedural standards of the CJRA program, which were allowed to expire, continued existence of § 471 is incongruous. On recommendation of the Committee on Court Administration and Case Management, the Judicial Conference agreed to propose legislation to amend section 103(b)(2)(A) of the Civil Justice Reform Act, as amended by Public Law No. 105-53, to reinstate the sunset provision's applicability to 28 U.S.C. § 471.

COMMITTEE ON CRIMINAL LAW

SENTENCING AUTHORITIES

The Department of Justice has proposed amendments to five provisions of title 18, United States Code, 18 U.S.C. §§ 401 (criminal contempt), 1705 (destruction of letter boxes), 1916 (unauthorized employment or disposition of lapsed appropriations), 2234 (willfully exceeding authority in executing a search warrant), and 2235 (maliciously procuring and executing a search warrant), each of which currently expressly provides for the imposition of imprisonment or a fine, but not both. The amendments, which would allow for a sentence of a fine, imprisonment or both, would permit a court the customary sentencing flexibility to impose both a fine and a prison term when appropriate. On recommendation of the Committee on Criminal Law, the Judicial Conference concurred in the Department of Justice proposal to add the words "or both" at the appropriate place

in each of the above provisions.

COMMITTEE ON DEFENDER SERVICES

QUALITY STEP INCREASES

Because the salary policies of federal public defender organizations (FPDOs) are based on those developed and used by the Department of Justice for United States Attorneys' offices (see 18 U.S.C. § 3006(g)(2)(A)) and are independent of the district courts, employee awards and other methods used by the courts for recognizing judiciary employees have been unavailable to the FPDOs. The only exception to this is the quality step increase (QSI), which is also used in the United States Attorneys' offices. In fiscal year 1993, due to budgetary constraints, QSIs were suspended for judiciary employees, including FPDO personnel. On recommendation of the Committee on Defender Services, the Judicial Conference agreed to grant federal defenders the authority to reinstate Quality Step Increases for graded employees of federal defender organizations, to the same extent and within the same constraints as the offices of United States Attorneys.

CRIMINAL JUSTICE ACT GUIDELINES

On revising the Guidelines for the Administration of the Criminal Justice Act and Related Statutes (CJA Guidelines), (Volume VII, *Guide to Judiciary Policies and Procedures*), to conform with congressional defunding of post-conviction defender organizations, the Committee on Defender Services determined to recommend further modifications to subparagraph 6.03C (Consulting Services in Capital Federal Habeas Corpus Cases and in Federal Capital Prosecutions) of the CJA guidelines, and the deletion of Appendix I (Qualification Standards for Designation of Expert Consultant Panels) of the CJA Guidelines to ensure the efficient use of expert attorney consultants. The Judicial Conference approved the recommended revisions which would, among other things, limit an expert attorney consultant to providing "light" consultation services, ensure that an expert attorney consultant shall not be paid an hourly rate exceeding that which an appointed counsel could be authorized to be paid, and replace the phrase "exhaustion of state remedies" with "determination of need to exhaust state remedies" in a list of examples of the type of work that may be performed by expert attorney consultants.

REPRESENTATION IN STATE COURT

The Committee on Defender Services considered whether representation in state court to exhaust state remedies in capital habeas corpus proceedings is within the scope of a federal defender's representation pursuant to the CJA's "ancillary matters" authority, 18 U.S.C. § 3006A(c), or under 21 U.S.C. § 848(q). Acting under authority delegated to it by the Judicial Conference for approval of federal defender organization budgets and grants (JCUS-MAR 89, p. 19), the Committee adopted the position that, prospectively, CJA funds may not be expended to support legal representation in capital post-conviction proceedings in state court, except for the purpose of seeking a stay of execution to preserve the right to pursue federal habeas corpus. To extend comparable restrictions to the compensation of CJA panel attorneys, the Committee recommended that the Judicial Conference, prospectively, adopt the position that CJA funds may not be expended to support legal representation in capital post-conviction proceedings in state court, except for the purpose of seeking a stay of execution to preserve the right to pursue federal habeas corpus. The Judicial Conference declined to approve the Committee's recommendation.

CJA FORM 23

To import the penalty of perjury assurance of an oath to the signature at the bottom of CJA Form 23 (Financial Affidavit in Support of Request for Attorney, Expert or Other Court Services Without Payment of Fee), the Committee on Defender Services recommended that the warning and certification statement of the form be revised to incorporate the language in 28 U.S.C. § 1746(2) (unsworn declarations under penalty of perjury). The Judicial Conference approved the recommendation.

COMMITTEE ON FEDERAL -STATE JURISDICTION

VIRGIN ISLANDS DISTRICT COURT

In September 1997, the Third Circuit Judicial Council unanimously adopted a resolution urging the Judicial Conference to support Article III status for the District Court of the Virgin Islands, currently a territorial court established under Article IV of the Constitution. In recent years, the Conference has viewed "commonwealth" status as a significant factor in considering the justification for Article III status. See, *e.g.*, JCUS-SEP 94, p. 51; JCUS-MAR 94, p. 19. The Committee on Federal-State Jurisdiction carefully considered the Judicial Council's resolution and agreed that, although the Virgin Islands has not sought or been granted commonwealth status, it has permanent ties to the United States and enjoys many of the attributes of a state. Moreover, the adjudicatory role of the District Court of the Virgin Islands is virtually identical to that of other district courts and the need for judicial independence equally as strong. Thus, for these reasons, as well as the assertion that no additional costs would be required, the Committee recommended, and the Judicial Conference agreed, that the Conference support the Third Circuit Judicial Council resolution recommending that the District Court of the Virgin Islands be made an Article III court.

COMMITTEE ON FINANCIAL DISCLOSURE

FINANCIAL DISCLOSURE REPORTS

Section 105 of the Ethics in Government Act of 1978 (5 U.S.C. app. 4, § 105), as amended, requires the release of financial disclosure reports to any member of the public who properly completes a request form and indicates that he or she understands the prohibitions on the use of the information contained in the report. Personal information not required by the statute is redacted prior to release, and judges are notified that their reports have been released. In response to security concerns when the safety of a particular judge is threatened, the United States Marshals Service drafted legislation to amend § 105 to defer the release of public financial disclosure forms where such a threat exists. Slightly modifying a recommendation of the Committee on Financial Disclosure, which had consulted with the Committee on Security and Facilities, the Judicial Conference agreed to support in principle enactment of legislation that would at least allow the release of financial disclosure forms to be deferred where the revealing of sensitive and personal information would endanger the individual judicial officer or employee. See also *supra*, "Miscellaneous Actions," p. 6.

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported that as of January 15, 1998, it had received 3,062 financial disclosure reports and certifications for the calendar year 1996, including 1,274

reports and certifications from Supreme Court justices, Article III judges and judicial officers of special courts; 338 from bankruptcy judges; 480 from magistrate judges; and 970 from judicial employees.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that during the period from July 1, 1997 to December 31, 1997, a total of 75 intercircuit assignments, undertaken by 60 Article III judges, were processed and recommended by the Committee and approved by the Chief Justice. In addition the Committee aided courts requesting assistance in identifying judges willing to take assignments. The Committee further reported that the Chief Justice had approved its recommended changes to the Guidelines for the Intercircuit Assignment of Article III Judges, which have been distributed to all judges.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported that it is considering proposals for potential rule of law programs to be funded by a grant from the United States Agency for International Development, as approved by the Judicial Conference in September 1997 (JCUS-SEP 97, pp. 72-73). Each program will be reviewed by the Executive Committee before implementation.

COMMITTEE ON THE JUDICIAL BRANCH

JUDICIAL COMPENSATION

In January 1997, the Judicial Conference unanimously endorsed the pursuit of legislation to accomplish the following objectives: (a) give judges a catch-up pay adjustment; (b) sever the linkage between judicial, congressional, and Executive Schedule compensation and substitute linking judges' salary adjustments to the mechanism for adjusting General Schedule pay rates; and (c) repeal section 140 of Public Law No. 97-92 (JCUS-MAR 97, pp. 26, 41). Subsequently Congress enacted legislation which enabled the judges to receive a 2.3 percent 1998 Employment Cost Index (ECI) adjustment. Believing that the judiciary should focus congressional and executive branch attention on the need to reestablish an institutional mechanism to deal with the impending problem of salary compression, the Committee on the Judicial Branch recommended, and the Judicial Conference adopted, a resolution to--

- a. Seek vigorously a cost-of-living adjustment for federal judges, Members of Congress, and top officials in the executive branch for 1999;
- b. Continue to seek the repeal of section 140 of Public Law No. 97-92; and
- c. Support the revitalization of a federal salary-fixing entity similar to the former Commission on Executive, Legislative and Judicial Salaries.

FEDERAL EMPLOYEES GROUP LIFE INSURANCE

The Judicial Branch Committee made two recommendations relating to the Federal Employees Group Life Insurance Program (FEGLI): The first would increase the amount of supplemental additional coverage under Option B of the FEGLI program from the current limit of five times the employee's annual rate of pay or that of Executive Schedule Level II (whichever is lower); and the second would allow a re-employed annuitant to retain full FEGLI program Option B coverage after the completion of recall status. The Judicial Conference endorsed the concepts of these proposals.

JUDGES' TRAVEL

In light of the inadequacy of the current judges' maximum daily subsistence allowance in a number of metropolitan areas that are experiencing a severe shortage of hotel rooms, the Judicial Conference approved a Judicial Branch Committee recommendation to increase by \$25 the maximum daily subsistence allowance for judges' travel.

The Committee was asked to consider a proposal by Senate Judiciary Subcommittee Chairman Charles Grassley that a provision be included in a bankruptcy judgeship bill which would require bankruptcy judges to seek pre- and post-travel approval of non-case related professional (non-personal) travel from their chief bankruptcy judges, and that such travel be reported annually to Congress by the Director of the Administrative Office. It was the Committee's view, shared by the Bankruptcy Committee, that although Congress has a legitimate interest in how the judiciary spends appropriated funds, the provision would impose unjustifiable administrative burdens and unnecessarily require advance clearance for travel plainly appropriate in purpose and scope. On recommendation of the Judicial Branch Committee, the Conference agreed to (a) affirm the importance of travel undertaken for governance and educational purposes in achieving judiciary and public policy objectives; and (b) reaffirm strongly the judiciary's obligation, responsibility, and authority to regulate judicial travel, and oppose specific legislative regulation of such travel. The Judicial Conference declined to adopt a third Committee proposal that judges be required to report non-case related official travel to the appropriate chief judge.

COMITTEE ON JUDICIAL RESOURCES

ARTICLE III JUDGESHIP NEEDS

Courts of Appeals. In March 1997, the Judicial Conference voted to recommend an additional judgeship for the Fifth Circuit Court of Appeals (JCUS-MAR 97, pp. 26-27). At the request of the Fifth Circuit Court of Appeals and on recommendation of the Committee on Judicial Resources, the Judicial Conference agreed at this session to rescind its recommendation for the additional Fifth Circuit judgeship.

Court of Appeals Judgeship Survey. In response to congressional interest in the judiciary's developing an internal mechanism for recommending that judgeship vacancies not be filled, the Judicial Conference, in March 1997, approved a process for reviewing workload situations in the district courts that may suggest the need to recommend not filling a vacant judgeship or eliminating a judgeship (JCUS-MAR 97, p. 27). After opportunity for comment by circuit judicial councils, the Committee on Judicial Resources proposed a similar mechanism for the courts of appeals. The Judicial Conference approved the process to be included in the biennial judgeship surveys for determining when to recommend that a vacancy not be filled or a position be eliminated in the courts of appeals beginning with the next survey. Since the United States Courts of Appeals for the

District of Columbia and the Federal Circuits are currently excluded from the process and standards used by the Conference for determining judgeship needs, those courts would be excluded also from this process.

District Courts. In March 1996, the Judicial Conference recommended conversion of an existing temporary judgeship in the Northern District of Alabama to a permanent position (JCUS-MAR 96, p. 24). The temporary judgeship in that district lapsed in May 1996, and the district was not included for a judgeship in the temporary judgeship bill which was approved by Congress in October 1997 (Pub. L. No. 105-53). Since the need for an additional judge remains, the Judicial Conference approved a Judicial Resources Committee recommendation to amend its judgeship request to Congress to include one additional permanent judgeship for the Northern District of Alabama.

The Judicial Conference, in September 1996, recommended one additional temporary judgeship for the Middle District of Louisiana (JCUS-SEP 96, pp. 59-60). However, the district's need for an additional judge was satisfied with the enactment of Public Law No. 105-53, which transferred one permanent judgeship from the Eastern District of Louisiana to the Middle District. With the concurrence of the chief judge of the Middle District of Louisiana, the Judicial Resources Committee recommended, and the Judicial Conference agreed, to amend its judgeship request to exclude the additional temporary judgeship for the Middle District of Louisiana.

ALTERNATIVE DISPUTE RESOLUTION

The Judicial Resources Committee had been directed by the Judicial Conference to "consider the development of a funding mechanism for addressing alternative dispute resolution (ADR) staffing resources in the courts and report back to the Judicial Conference" (JCUS-MAR 97, p. 16). Using the results of a survey of all district courts, the Committee developed a staffing factor for the ADR programs in most district courts and a separate staffing factor for six districts with extensive ADR programs. On recommendation of the Committee, the Judicial Conference approved a staffing factor of 2.17 hours for each case participating in a local ADR program. This factor will be applied to most district courts beginning in fiscal year 1999 meeting the following criteria:

- a. The district court must have an established ADR program that is certified by the chief judge (excluding Federal Rule of Civil Procedure 16 judicial settlement conferences);
- b. District clerk's office resources must be used to administer the program;
- c. The ADR program has to have been in place long enough for the district court or the Administrative Office to accumulate one year's worth of data; and
- d. The ADR program must be effective.

For the following six districts, which have extensive ADR programs, the Judicial Conference approved a staffing factor of 4.38 hours per case in an ADR program, plus a constant of 1397.23 hours, to be applied beginning in fiscal year 1999: Northern District of California, Middle District of Florida, Western District of Missouri, District of New Jersey, Eastern District of New York, and Eastern District of Pennsylvania.

In order to allow courts an additional six months for an orderly transition of functions and to prepare for any loss of resources associated with the sunset of the Civil Justice Reform Act or the redistribution of arbitration funds, the Judicial Conference approved a Judicial Resources Committee recommendation that funding for CJRA staffing resources in district courts be continued

through the end of fiscal year 1998.

COURTROOM SUPPORT FOR DISTRICT JUDGES

When an active district judge resigns, retires, or dies, staffing credit and the associated funding for courtroom support are eliminated in the following fiscal year's allocation, unless the judicial vacancy is filled. However, the caseload continues to exist and requires management. On recommendation of the Judicial Resources Committee, the Judicial Conference authorized the provision of courtroom deputy clerk staffing credit and associated funding based on judicial vacancies when an active district judge leaves the court without taking senior status.

SALARY MATCHING/ADVANCED IN-STEP APPOINTMENT

The Judicial Conference approved a recommendation of the Judicial Resources Committee to amend the salary matching/advanced in-step appointment policy to allow setting the starting salary of a newly hired Court Personnel System employee at any step of the classification level, in any situation where an applicant has unusually high or unique qualifications directly pertinent to the position being filled and/or because of a special need of the court unit for the applicant's services. The change allows courts the option of negotiating starting salaries for new employees and enables court units to compete favorably with the executive branch.

CIRCUIT EXECUTIVES OFFICES

In September 1991, the Judicial Conference established a staffing methodology and staffing ceilings for circuit executives' offices (JCUS-SEP 91, p. 63). To update the formula and adjust for an error in the original study methodology, the Judicial Conference, on recommendation of the Judicial Resources Committee, approved revised staffing ceilings for circuit executives' offices, increasing the authorized staffing levels from 221.5 to 240.2 for fiscal year 2000. In addition, the Conference authorized the Director of the Administrative Office to approve new work units within these revised ceilings, beginning in fiscal year 2000, based on a demonstration of need and the availability of funding.

SUPPLEMENTAL BENEFITS

The basic federal benefits package available to most judiciary employees provides retirement coverage, health and life insurance, and a tax-deferred savings opportunity under the Thrift Savings Plan. However, with specific legislative authority, non-salary benefits are offered by several federal agencies to their employees in addition to the base federal benefits package. In order to continue to attract and retain a competent workforce, the Judicial Conference agreed with a proposal of the Judicial Resources Committee that it seek legislation to provide the Director of the Administrative Office the discretion to establish a program of supplemental benefits for judicial officers and employees.

LIABILITY INSURANCE

Public Law No. 104-201 authorizes both executive and legislative branch agencies to reimburse qualified employees for some of the costs incurred for professional liability insurance. This provision does not apply to the judiciary. On recommendation of the Committee on Judicial

Resources, the Judicial Conference agreed to seek an amendment to include coverage of the judicial branch in section 636 of Public Law No. 104-201, which authorizes reimbursement of any qualified employee for not to exceed one-half the costs incurred by such employee for professional liability insurance.

PERSONAL ASSISTANTS FOR INDIVIDUALS WITH DISABILITIES

In keeping with its commitment to the principles of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, the judiciary has sought to provide reasonable accommodations for its judicial officers and employees with disabilities, including providing equipment and devices that will allow members of the court family to perform job tasks, as well as funds to provide personal assistants for those involved in training, when necessary. However, the judiciary lacks explicit authority to use appropriated funds to hire personal assistants for judicial officers and employees with disabilities (*e.g.*, readers for the blind and interpreters for the deaf) to assist in day-to-day work. The Judicial Conference approved a Judicial Resources Committee recommendation that it seek legislation to include the judiciary in 5 U.S.C. § 3102 so as to give the judiciary explicit authority, comparable to the executive branch, to hire personal assistants for employees with disabilities.

DEPENDENT CARE ASSISTANCE PROGRAM

A dependent care assistance program (DCAP) allows an employer to provide dependent care benefits to its employees tax-free, subject to certain limits. In response to a request from Congress for comment on pending legislation establishing a DCAP for all federal employees, the Judicial Conference, on recommendation of the Judicial Resources Committee, agreed to support the establishment of dependent care assistance programs for federal employees as provided in H.R. 2213 (105th Congress), but with the modification that the Director of the Administrative Office be given the authority to establish a dependent care assistance program for the Third Branch.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

AUTHORITY TO GRANT A CONTINUANCE OF A PRELIMINARY EXAMINATION

In 1997, at the request of the Committee on Rules of Practice and Procedure, the Committee on the Administration of the Magistrate Judges System considered a proposal to seek legislation to amend 18 U.S.C. § 3060(c) to give magistrate judges the authority to grant a continuance of a preliminary examination without the defendant's consent, and determined to endorse the proposal. Subsequently, the Rules Committee decided it would be more appropriate to propose an amendment to Federal Rule of Criminal Procedure 5(c) and advise Congress of the need for a parallel statutory change later in the rulemaking process. The matter was referred to the Advisory Committee on Criminal Rules, which elected to take no action on the matter. In light of the Rules Committee's determination not to pursue the matter, the Magistrate Judges Committee again considered the issue and recommended that the Judicial Conference endorse an amendment to 18 U.S.C. § 3060. The Judicial Conference determined to refer to both the Magistrate Judges Committee and the Committee on Rules of Practice and Procedure the issue of giving magistrate judges the authority to grant a continuance of a preliminary examination without the consent of the accused, with instructions to the Rules Committee to propose an amendment to Criminal Rule 5(c) consistent with the legislative amendment to 18 U.S.C. § 3060 which has been proposed by the Magistrate Judges

Committee.

INTERCIRCUIT AND INTRACIRCUIT ASSIGNMENT OF MAGISTRATE JUDGES

The temporary assignment of magistrate judges to other districts in emergency situations is permitted under 28 U.S.C. § 636(f). After opportunity for comment by the circuit judicial councils and on recommendation of the Magistrate Judges Committee, the Judicial Conference approved proposed Judicial Conference Guidelines for the Intercircuit and Intracircuit Assignment of United States Magistrate Judges for the temporary assignment of magistrate judges to other districts in emergency situations under 28 U.S.C. § 636(f).

AD HOC RECALL OF MAGISTRATE JUDGES

On recommendation of the Magistrate Judges Committee, the Judicial Conference approved two amendments to the Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Recall of United States Magistrate Judges. The first establishes workload standards for magistrate judges retired at less than full salary who are recalled to serve on a full-time basis, to ensure that the level of work provided is commensurate with the amount of recall compensation received. The second sets a cap (equal to the amount of compensation earned by an active part-time magistrate judge at the highest salary level (Level 1)) on the amount of annual salary that a retired magistrate judge may receive when recalled on a "when-actually-employed" basis.

MAGISTRATE JUDGES' RETIREMENT REGULATIONS

As with the Bankruptcy Committee (see *infra*, "Bankruptcy Judges' Retirement Regulations," p. 8), the Magistrate Judges Committee also recommended amendments to sections 6.03 and 12.02 of the Regulations of the Director Implementing the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988. The amendments, which were approved by the Conference, will conform the guidelines to recent statutory amendments.

CHANGES IN MAGISTRATE JUDGE POSITIONS

After consideration of the report of the Magistrate Judges Committee and the recommendations of the Director of the Administrative Office, the district courts, and the judicial councils of the circuits, the Judicial Conference approved the following changes in positions, 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.

FIRST CIRCUIT

District of Maine

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

SECOND CIRCUIT

Western District of New York

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

FOURTH CIRCUIT

Northern District of West Virginia

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

SEVENTH CIRCUIT

Southern District of Illinois

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

Southern District of Indiana

1. Increased the salary of the part-time magistrate judge position at New Albany from Level 8 (\$3,167 per annum) to Level 7 (\$5,279 per annum); and
2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

Western District of Wisconsin

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

EIGHTH CIRCUIT

District of Minnesota

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

District of South Dakota

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

NINTH CIRCUIT

Eastern District of California

1. Authorized an additional full-time magistrate judge position at Fresno;
2. Increased the salary of the part-time magistrate judge position at Redding from Level 5 (\$21,115 per annum) to Level 4 (\$31,672 per annum);*
3. Redesignated the part-time magistrate judge position at Redding as Redding or Susanville; *
4. Discontinued the part-time magistrate judge position at Susanville;* and
5. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

Northern District of California

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

Western District of Washington

1. Discontinued the part-time magistrate judge position at Olympic National Park;
2. Increased the salary of the part-time magistrate judge position at Vancouver from Level 6 (\$10,557 per annum) to Level 5 (\$21,115 per annum); and
3. Made no change in the number, locations, salaries or arrangements of the other magistrate judge positions in the district.

TENTH CIRCUIT

District of Wyoming

1. Increased the salary of the part-time magistrate judge position at Casper from Level 8 (\$3,167 per annum) to Level 7 (\$5,279 per annum); and
2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

COMMITTEE ACTIVITIES

The Committee reported on pending legislation, H.R. 1252 (105th Congress), which would amend the Judicial Conduct and Disability Act of 1980, 28 U.S.C. § 372(c), to provide that any complaint of judicial misconduct or disability filed under the Act that is not dismissed at the outset by the chief judge of the circuit in which the complained-against judge serves shall be transferred to another circuit for further complaint proceedings. The provision has been amended since the Judicial Conference opposed it in April 1997 (JCUS-SEP 97, pp. 81-82). The Committee advised

that no new Judicial Conference action was necessary, but that it would continue to monitor the legislation.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

SIZE OF GRAND JURY

H.R. 1536 (105th Congress) would reduce the size of a grand jury to not less than nine, nor more than thirteen persons and would require at least seven jurors to concur in an indictment so long as nine members were present. In 1975, the Advisory Committee on Criminal Rules favored similar legislation. However, the Committee on Rules of Practice and Procedure, agreeing with the present position of its Advisory Committee on Criminal Rules, recommended that the Judicial Conference oppose H.R. 1536 for three reasons: a reduced grand jury would increase the possibility of a runaway prosecution, have less diversity of viewpoints and experiences, and cause diminished citizen participation. The Judicial Conference agreed to oppose the legislation.

COMMITTEE ON SECURITY AND FACILITIES

FIVE-YEAR COURTHOUSE PROJECT PLAN

At its March 1997 session, the Judicial Conference approved a five-year plan of courthouse projects arrayed in priority order for fiscal years 1998-2002 (JCUS-MAR 97, p. 39). Because the President's fiscal year 1998 budget did not include any funding for courthouse construction projects, all projects in the 1998-2002 plan have been delayed at least one year. After consultation with the chief circuit judges and circuit executives, the Committee on Security and Facilities proposed a five-year courthouse construction plan for the fiscal years 1999-2003, which the Judicial Conference endorsed. The Conference also voted to delegate to the Security and Facilities Committee the authority to move projects not included in the President's fiscal year 1999 budget request, but shown in the fiscal year 1999 column of the plan, to fiscal year 2000.

GENERAL SERVICES ADMINISTRATION IMPROVEMENT ACT

A proposed bill, the General Services Administration Improvement Act of 1997, H.R. 2751 (105th Congress), would, among other things, require submission to Congress of courtroom utilization data for existing and proposed new courthouses, information on courtroom sharing, and conformance with standards of the *United States Courts Design Guide*. The bill would also require comment and transmittal of the *Design Guide* by GSA to Congress on an annual basis. Noting that the bill was unnecessary in light of existing judiciary initiatives and that it is inappropriate to legislate administrative prerequisites in the area of federal real estate, the Security and Facilities Committee recommended that the Judicial Conference oppose those provisions of H.R. 2751 that affect the judiciary. The Conference concurred in the Committee's recommendation.

FUNDS FOR NEW BUILDINGS

Funds borrowed by the government to finance the construction of buildings are accounted for in the federal budget as if they are spent in one to three years, even though, as in a mortgage, the funds plus interest might be paid to the entity from which they were borrowed over a 20- or 30-year period. H.R. 623 (105th Congress) would change the way these transactions are accounted for in the federal budget. The change would result in a more realistic and favorable treatment of capital

investments in the federal budget to the benefit of the judiciary. On recommendation of the Security and Facilities Committee, the Judicial Conference agreed to endorse H.R. 623 with respect to financing mechanisms for public buildings.

**AD HOC COMMITTEE TO STUDY MERITS OF
MOTIONS RELATED TO THE REPORT OF THE
AD HOC STRATEGIC PLANNING COMMITTEE
OF THE FEDERAL JUDICIAL CENTER**

**ADMINISTRATIVE OFFICE/FEDERAL JUDICIAL CENTER
RELATIONS**

In 1996, the Chief Justice appointed an Ad Hoc Strategic Planning Committee of the Federal Judicial Center to review and to make recommendations concerning the operations of the Federal Judicial Center in relation to its statutory missions. The Committee's report, approved by the FJC Board in June 1997, included several recommendations concerning the relationship between the Administrative Office and the Federal Judicial Center. The FJC Director's proposals (referred to as Motions A and B) for implementation of these recommendations were submitted to the Executive Committee, and in September 1997, the Judicial Conference authorized the creation of an ad hoc committee, consisting of members of the Conference, to study the merits of the two motions (JCUS-SEP 97, p. 47).

After hearing from both the Administrative Office and the Federal Judicial Center, as well as from a number of chairs of Judicial Conference committees, the Conference's Ad Hoc Committee revised the two motions and recommended their endorsement by the Judicial Conference. The Conference unanimously adopted the recommendations which follow. With regard to the four-person Judicial Conference/Federal Judicial Center Working Group described below, the Conference anticipates that in actual practice, the Working Group will function rarely, if ever, and any decisions it does make will result in accommodations that are acceptable to both directors.

The Judicial Conference agrees that:

a. The Federal Judicial Center (FJC) is the federal courts' primary educational agency, but the Administrative Office of the United States Courts (AO) nonetheless remains in control of its own educational programs. Under existing law, Conference policy, and established practice,

1. the FJC is responsible generally for judicial training, case and court management training, and professional management education and training of supervisory and professional personnel; and

2. the AO is responsible generally for education and training related to the proper performance of the administrative and operational duties vested in the Director of the AO by statute, and delegated by him to court personnel.

b. The Interagency Coordinating Committee of Senior Managers referred to in the report of the 1990 AO/FJC Task Force shall be reinstituted. Composed of an equal number of AO and FJC personnel and co-chaired by the designees of the AO and FJC Directors, this Committee shall meet regularly and institute procedures to ensure that the 1993 interagency agreement and this declaration of policy are implemented. In particular, the Committee shall perform the following functions:

1. assess the future education and training needs of the third branch;

2. collaborate in the planning and formulation of specific training programs to meet unsatisfied needs and respond to Conference committee requests in regard to education;
3. review periodically both existing as well as contemplated agency educational offerings, with each agency exchanging with the other in a timely fashion information concerning the design, substance, methodology, and faculty of these programs and whether an outside contractor or vendor has been or should be used;
4. reduce any overlap in educational programs offered by the agencies and avoid even the appearance of duplication;
5. coordinate with relevant committees of the Judicial Conference; and
6. establish as necessary protocols to govern interagency relations in the field of education and training.

The Judicial Conference approves the creation of a four-person Judicial Conference/Federal Judicial Center Working Group consisting of one member of the Conference and one member of the FJC Board (each to be designated by the Chief Justice), together with the Directors of the AO and the FJC, or their designees, to resolve interagency disputes between the FJC and the AO concerning education and training issues that cannot be resolved on the staff level. If the group cannot resolve an interagency dispute, it shall submit it to the Chief Justice for resolution or referral to the appropriate body. The Chief Justice shall have the discretion to dissolve the Working Group at any time he concludes that such action is in the best interests of the federal judiciary.

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

Except as otherwise specified, 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

* Approved by the Executive Committee on behalf of the Judicial Conference on February 11, 1998. See *supra*, "Miscellaneous Actions," p. 6.

1. Designated by the Chief Justice