

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

March 14, 2000

The Judicial Conference of the United States convened in Washington, D.C., on March 14, 2000, 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, Jr.,
District of New Hampshire

Second Circuit:

Chief Judge Ralph K. Winter, Jr.
Chief Judge Charles P. Sifton,
Eastern District of New York

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 Carolyn Dineen King
Judge Hayden W. Head, Jr.,

Judicial Conference of the United States

Southern District of Texas

Sixth Circuit:

Chief Judge Boyce F. Martin, Jr.
Judge Thomas A. Wiseman, Jr.,
Middle District of Tennessee

Seventh Circuit:

Chief Judge Richard A. Posner
Judge Robert L. Miller, Jr.,
Northern District of Indiana

Eighth Circuit:

Chief Judge Roger L. Wollman
Judge James M. Rosenbaum,
District of Minnesota

Ninth Circuit:

Chief Judge Procter Hug, Jr.
Judge Judith N. Keep,
Southern District of California

Tenth Circuit:

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

Eleventh Circuit:

Chief Judge R. Lanier Anderson III
Chief Judge Charles R. Butler, Jr.,
Southern District of Alabama

March 14, 2000

District of Columbia Circuit:

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

Federal Circuit:

Chief Judge Haldane Robert Mayer

Court of International Trade:

Chief Judge Gregory W. Carman

Circuit Judges W. Eugene Davis, David R. Hansen, Dennis G. Jacobs, Diana E. Murphy, Paul V. Niemeyer, Jane R. Roth, Anthony J. Scirica, Walter K. Stapleton, and William W. Wilkins, Jr., District Judges Carol Bagley Amon, Robin J. Cauthron, Edward B. Davis, John G. Heyburn II, D. Brock Hornby, Michael J. Melloy, Edward W. Nottingham, Harvey E. Schlesinger, and William J. Zloch, and Judge Richard W. Goldberg of the Court of International Trade attended the Conference session. Gregory B. Walters, Circuit Executive for the Ninth Circuit, was also present.

Senator Patrick Leahy and Representative Howard Coble spoke on matters pending in Congress of interest to the Conference. Attorney General Janet Reno addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice.

Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Clarence A. Lee, Jr., Associate Director for Management and Operations; William R. Burchill, Jr., Associate Director and General Counsel; Karen K. Siegel, Assistant Director, Judicial Conference Executive Secretariat; Michael W. Blommer, Assistant Director, Legislative Affairs; Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat; and David Sellers, Deputy Assistant Director, Public Affairs. Judge Fern Smith and Russell Wheeler, Director and Deputy Director of the Federal

Judicial Conference of the United States

Judicial Center, also attended the session of the Conference, as did James Duff, Administrative Assistant to the Chief Justice, and judicial fellows Amie Clifford, Richard Mendales, and Mark Miller.

REPORTS

Mr. Mecham reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office. Judge Smith spoke to the Conference about Federal Judicial Center programs, and Judge Diana E. Murphy, Chair 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 Pauline Newman of the Federal Circuit to replace District Judge Thomas F. Hogan; Judge Robert Bryan of the Western District of Washington to replace Chief Judge Jean C. Hamilton of the Eastern District of Missouri; and Judge Jean C. Hamilton to fill the unexpired term of Circuit Judge Robert M. Parker.

EXECUTIVE COMMITTEE

FINANCIAL DISCLOSURE REPORTS

On recommendation of the Executive Committee, the Judicial Conference reviewed a December 10, 1999, decision of the Committee on Financial Disclosure, made pursuant to authority delegated to it by the Conference, to deny a request by an Internet news organization, APBnews.com, for release of the financial disclosure forms of all Article III and magistrate judges. APBnews.com had indicated in its request that it intended to post the forms on the Internet. The Financial Disclosure Committee determined that allowing reports to be published on the Internet would be inconsistent with section 105 of the Ethics in Government Act of 1978 (5 U.S.C. app. § 105), which prohibits disclosure of a report to any person who has not made a written application stating that person's name, occupation and address; providing the name and

March 14, 2000

address of any other persons or organization on whose behalf the inspection or copy is requested; and further stating that the person is aware of the prohibitions on the obtaining or use of the report. The Committee also concluded that publication of the reports on the Internet would frustrate the intent of section 7 of the Identity Theft and Assumption Deterrence Act of 1998 (5 U.S.C. app. § 105(b)(3)) that authorizes the Conference to redact information in a financial disclosure report filed by a judge when the Conference, in consultation with the United States Marshals Service, decides that revealing personal and sensitive information could endanger the filer. The Committee on Security and Facilities concurred in the position of the Financial Disclosure Committee with regard to Internet posting of judges' financial disclosure reports.

The Executive Committee sought Conference consideration of the Financial Disclosure Committee's decision because its members believed that section 105(b)(2) does not authorize denial of a financial disclosure report because of the requester's stated intentions to publish the report. However, the Executive Committee was also of the view that the statute does not require the release for dissemination to the public of unredacted forms containing information that could endanger the filer, and that the Financial Disclosure Committee has the authority under the Identity Theft and Assumption Deterrence Act to make appropriate redactions and then provide the redacted forms to the requester.

After a full discussion of the complex issues raised, the Judicial Conference determined by a two-to-one margin to approve the Executive Committee's recommendation to rescind the December 10, 1999, decision of the Financial Disclosure Committee to withhold release of judges' financial disclosure reports where the requester indicates that the reports will be posted on the Internet. The Conference further agreed to direct the Committee on Financial Disclosure to exercise its delegated authority as follows:

- a. On an interim basis, when the Committee receives a request for a judicial officer's financial disclosure form that may result in the dissemination to the public of that form or the information contained therein, the Committee will invite the judicial officer to review the information contained in his or her form. Where the officer believes it appropriate, the officer may request redaction of personal and sensitive information that is otherwise confidential and could endanger the officer or other person if obtained by any member of the public hostile to the judicial officer. Upon receipt of a request for redaction, the Committee will, in consultation with the United States Marshals Service, grant

Judicial Conference of the United States

or deny the request after determining whether the information sought to be redacted is not otherwise easily available to the public and could, if obtained by a hostile member of the public, endanger the officer or other person; and

March 14, 2000

- b. On a permanent basis, the Committee will implement a procedure requiring judicial officers who believe redactions to be appropriate prior to public dissemination to request such redactions when the annual disclosure form is filed. The Committee will follow the procedures specified above in determining the merits of such requests.

Further, in lieu of a similar recommendation made by the Financial Disclosure Committee (*see infra*, “Financial Disclosure Reports,” pp. 16-17), the Judicial Conference determined to instruct the chairs of the Committees on Codes of Conduct, Financial Disclosure, and Security and Facilities to confer expeditiously with a view to proposing as soon as possible to their committees and then to the Judicial Conference legislative amendments to the Ethics in Government Act that accommodate the public’s need for information regarding the financial interests of judicial officers and the security of such officers.

JUDICIAL COMPENSATION

Under the Federal Employees Pay Comparability Act of 1990, 5 U.S.C. § 5301 *et seq.*, the President may establish geographic adjustments of basic pay for General Schedule employees in areas in which there exists a significant disparity in rates of pay offered by non-federal employers and those offered by the government. The judiciary, to the extent permitted by law, has extended such rates to its employees. However, locality pay adjustments are not currently available to officials whose pay is adjusted under the Employment Cost Index mechanism of the Ethics Reform Act of 1989 (*e.g.*, the Vice President, Executive Schedule officers, members of Congress, and judges). In response to an Office of Personnel Management legislative proposal to extend locality pay to the Vice President and all Executive Schedule officers, the Committee on the Judicial Branch recommended that the Judicial Conference support the proposal, with the understanding that if Congress elected to include itself in the legislation, the judiciary should be included as well, to the same extent, and without differential among judges. Subsequently, the judiciary was advised that legislation was to be introduced in Congress to extend locality pay to the Vice President, all Executive Schedule officers, *and* the judiciary, but not to Congress, with the locality pay adjustment to be applied to all judges equally at the Washington, D. C. rate, which is currently 9.05 percent. The Executive Committee determined to support this legislation on behalf of the Conference.

PROFESSIONAL LIABILITY INSURANCE

In September 1999, the Judicial Conference adopted two sets of guidelines implementing legislation authorizing the judiciary to provide reimbursement for a portion of the cost of professional liability insurance to certain groups within the judiciary. One set of guidelines pertained to federal public defender organization management and supervisory employees (JCUS-SEP 99, pp. 61-62) and the other set pertained to other judiciary supervisors and managers (JCUS-SEP 99, pp. 66-67). Subsequently, Congress amended the legislation to make the reimbursement benefit mandatory instead of discretionary (Public Law No. 106-58). Accordingly, the Committees on Defender Services and Judicial Resources recommended that the guidelines be amended to reflect this change and also to provide that maximum reimbursement would be limited annually to \$150, or one-half the cost of the insurance, whichever is less. The Executive Committee approved these recommendations on behalf of the Judicial Conference.

MANAGED CARE LEGISLATION

Both the Senate and the House of Representatives passed bills during the First Session of the 106th Congress that would provide additional rights and procedures for persons in managed care health plans (health maintenance organizations (HMOs)), as well as for certain other individuals with health insurance. The Committee on Federal-State Jurisdiction examined such legislation with particular focus on the availability of legal recourse in the federal courts against HMOs for treatment decisions. The Senate bill (S. 1344) would not create a personal injury action for damages in any court. The House bill (H.R. 2990) would amend the Employee Retirement Income Security Act of 1974 (ERISA) to preclude an ERISA preemption defense to any cause of action by a patient under state law to recover damages resulting from personal injury or for wrongful death in connection with the receipt of medical treatment. Alternative approaches establishing a personal injury cause of action for the negligent denial of medical benefits in federal court, though defeated in the House, remain under congressional consideration.

Personal injury claims arising from the denial of medical treatment have

March 14, 2000

traditionally and satisfactorily been resolved under state law and primarily in the state court system. Consistent with the Judicial Conference's longstanding position that Congress should refrain from granting jurisdiction to federal courts over disputes raising questions primarily of state law, the Federal-State Jurisdiction Committee recommended that the Judicial Conference urge Congress to provide that, in any managed care legislation agreed upon, the state courts be the primary fora for the resolution of personal injury claims arising from the denial of health care benefits, should Congress determine that such legal recourse is warranted. The Executive Committee, which was asked to consider this issue on an expedited basis so that the judiciary's position could be communicated to Congress before the congressional conference committee began its deliberation, approved the Federal-State Jurisdiction Committee's recommendation.

MISCELLANEOUS ACTIONS

The Executive Committee:

- Approved final financial plans for the Salaries and Expenses, Defender Services, Fees of Jurors and Commissioners, and Court Security appropriations accounts for the remainder of fiscal year 2000 and authorized the Director of the Administrative Office to make technical and other adjustments, as appropriate.
- At the request of the Committee on International Judicial Relations, endorsed the use of remaining United States Agency for International Development-Judicial Conference interagency funds to provide assistance to the judiciary of Nigeria, subject to certain conditions.
- Pursuant to Public Law No. 105-339, approved procedures submitted by the Administrative Office and the Federal Judicial Center to provide for veterans' preference in applications for employment and in the conduct of any reductions in force.
- On recommendation of the Committee on the Judicial Branch, amended section G.1.a of the Travel Regulations for United States Justices and Judges (which defines "non-case related travel"), to substitute in lieu of subsection (2) of the definition the following language: "(2) that involves judicial administration,

Judicial Conference of the United States

training, education, and extra-judicial activities as permitted by law and encouraged by the Code of Conduct for United States Judges;”.

- Agreed to adjust for inflation the maximum daily rate for reimbursement of itemized expenses for judges’ travel within the continental United States.
- Approved a recommendation of the Defender Services Committee that legislation be pursued authorizing reimbursement or indemnification of Criminal Justice Act (CJA) panel attorneys for civil malpractice and related actions arising from their CJA services. *See* JCUS-MAR 93, p. 27.
- Adopted a recommendation of the Judicial Resources Committee that the judgeship recommendations approved by the Conference in March 1999 for transmittal to Congress (JCUS-MAR 99, pp. 21-22) be amended to exclude the additional temporary judgeship for the District of Minnesota.
- Modified the procedure set forth in *The Judicial Conference of the United States and its Committees* for determining who shall attend a Conference session to provide that the outgoing chair of each committee attending the Conference, in consultation with the Judicial Conference Secretariat, should determine whether the outgoing or incoming chair will attend the session occurring just prior to the expiration of the outgoing chair’s term, without regard to whether an item is on the discussion calendar.
- Requested the Administrative Office to post on its website a list indicating which judges had hired law clerks for a particular year.
- On recommendation of the Committee on Financial Disclosure, approved deletion of Form AO 10A (as well as instructions and references thereto) from the regulations implementing the Identity Theft and Assumption Deterrence Act of 1998, to facilitate routine administrative changes to the form.

COMMITTEE ON THE ADMINISTRATIVE OFFICE

COMMITTEE ACTIVITIES

The Committee on the Administrative Office reported that it was briefed on the

March 14, 2000

progress of studies to assess the space and facilities program, court security program, information technology program, and national training needs. The Committee reviewed favorably the Administrative Office's efforts to ensure diversity in its workforce. The Committee also discussed long-range strategic issues for the Administrative Office. It reviewed initiatives underway in the agency to support the probation and pretrial services system. In addition, the Committee passed the following resolution in recognition of the Administrative Office and its Director, Leonidas Ralph Mecham:

In appreciation of continued excellent service to the federal judiciary by the Administrative Office of the U.S. Courts and its Director, Leonidas Ralph Mecham, the Committee on the Administrative Office recognizes the agency's efforts and accomplishments during 1999. Director Mecham's many successful initiatives included securing a fiscal year 2000 funding increase for the courts, when Congress had proposed reducing judiciary funding; obtaining an increase in judges' pay, only the second in seven years; opposing a Department of Justice appeal of the *Williams v. United States* lawsuit regarding judges' pay; achieving the passage of legislation protecting judges aged 65 and older from drastic increases in their life insurance premiums; and implementing an improved benefits program for judges and judiciary employees which offers unprecedented long-term care insurance and flexible spending accounts.

The Committee unanimously expresses its appreciation for the outstanding achievements of Director Mecham and of the Administrative Office during 1999.

COMMITTEE ON AUTOMATION AND TECHNOLOGY

LONG RANGE PLAN FOR INFORMATION TECHNOLOGY

Pursuant to 28 U.S.C. § 612 and on recommendation of the Committee on Automation and Technology, the Judicial Conference approved a 2000 update to the *Long Range Plan for Information Technology in the Federal Judiciary*. There were no substantive differences between the 1999 and 2000 updates.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

PLACE OF HOLDING BANKRUPTCY COURT

At the request of the Middle District of Florida and the Eleventh Circuit Judicial Council and in accordance with 28 U.S.C. § 152(b)(1), the Committee on the Administration of the Bankruptcy System recommended, and the Judicial Conference approved, the designation of Viera as an additional place of holding bankruptcy court in the Middle District of Florida.

COMMITTEE ON THE BUDGET

COMMITTEE ACTIVITIES

The Committee on the Budget reported that it had been advised of adjustments to the fiscal year 2001 budget request and had discussed procedures for preparation of the fiscal year 2002 budget request. The Committee was briefed on the explosion of drug and immigration cases along the southwest border and its adverse impact on court operations, on ongoing financial management improvement initiatives, and on a planned review of budget decentralization policies and procedures designed to ensure that the benefits of decentralization to the courts and the judiciary will be fully realized.

COMMITTEE ON CODES OF CONDUCT

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that it had received 43 new written inquiries and issued 43 written advisory responses with an average response time of 23 days. The Chairman received and responded to 19 telephonic inquiries, and individual Committee members responded to 104 inquiries from their colleagues.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

CASE ASSIGNMENT

The proposed Blind Justice Act of 1999 (S. 1484, 106th Congress) would require courts of appeals and district courts to assign all cases on a random basis, with limited exceptions for “related” and “technical” cases. The Judicial Conference has recently reaffirmed the judiciary’s strong support for the random assignment of cases (JCUS-MAR 99, p. 13). However, noting that all courts already employ random case assignment procedures, the Committee on Court Administration and Case Management concluded that the proposed legislation neglected to take into account the complexities associated with the random assignment process, and would unnecessarily interfere with the authority of judges to manage their caseloads in a fair and expeditious manner. The Committee raised several specific concerns with the proposed legislation and recommended that the Judicial Conference oppose the Blind Justice Act of 1999 and notify Congress of its concerns. The Conference approved the Committee’s recommendation.

COURT OF APPEALS MISCELLANEOUS FEE SCHEDULE

In September 1997, the Judicial Conference directed bankruptcy appellate panels (BAPs) to utilize the miscellaneous fee schedule for the courts of appeals to determine fees for services provided to the public (JCUS-SEP 97, p. 60). However, there is no fee in the appellate fee schedule for notices of appeal from BAPs commensurate with the \$5 notice of appeal fee set forth in the bankruptcy miscellaneous fee schedule for filing notices of appeal from the district court. To correct this discrepancy, the Conference adopted a recommendation of the Committee on Court Administration and Case Management, concurred in by the Committee on the Administration of the Bankruptcy System, to add a \$5 notice of appeal fee to the miscellaneous fee schedule for the courts of appeals as follows:

Upon the filing of any separate or joint notice of appeal or application for appeal from a Bankruptcy Appellate Panel, or notice of the allowance of an appeal from a Bankruptcy Appellate Panel, or of a writ of certiorari, \$5 shall be paid by the appellant or petitioner.

CIVIL JUSTICE REFORM ACT REPORTING REQUIREMENTS

In September 1999, the Judicial Conference adopted a recommendation of the Committee on Court Administration and Case Management to amend the instructions for the Civil Justice Reform Act report on civil motions pending over six months to state that for each district and magistrate judge, the pending date for a motion to be reported is 30 days after the motion is filed or, if the motion papers are not filed until the motion is fully briefed, then 30 days after the date the motion is first served (JCUS-SEP 99, pp. 57-58). Subsequently, the Committee was asked to revisit the issue to consider whether to use as the pending date 30 days from the date “the motion is fully submitted” to address the procedures of courts where motions are not filed until all responsive pleadings have been served, a position the Committee had earlier rejected. After careful consideration, the Committee declined to propose any modifications to the September 1999 Conference decision. The Conference discussed the issue at this session at the request of a Conference member, and it declined to make any changes to its September 1999 action on the matter.

COMMITTEE ON CRIMINAL LAW

FICTITIOUS LIENS AGAINST JUDICIAL OFFICERS

In September 1997, the Judicial Conference agreed to support legislation then being drafted by the Department of Justice that would have created a new federal criminal offense for harassing or intimidating a federal official, including a judicial officer, with respect to the performance of official duties, to include the filing of a lien on the real or personal property of that official (JCUS-SEP 97, p. 66). However, to date, the Department of Justice’s draft legislation has not been released or transmitted to Congress. In order to advance legislation on this issue, the Judicial Conference adopted a recommendation of the Committee on Criminal Law that the Conference modify its previous policy to authorize the judiciary itself to pursue such legislation.

CONDITIONS OF PROBATION AND SUPERVISED RELEASE

The Sentencing Reform Act of 1984 provided for a number of discretionary conditions of probation which are listed in 18 U.S.C. § 3563(b) as subsections (1) through (20). The Antiterrorism and Effective Death Penalty Act of 1996 changed the numbering of these conditions, but neglected to change references to them contained in 18 U.S.C. §§ 3563(a) (Mandatory conditions [of probation]) and 3583(d) (Conditions of supervised release), causing confusion and anomalous results. The renumbering has also resulted in the authorization of intermittent confinement (custody by the Federal Bureau of Prisons during nights, weekends, or other intervals of time) as a condition of supervised release when it was not previously statutorily available. The Committee on Criminal Law reviewed the current use of intermittent confinement as a condition of probation and supervised release and determined that the flexibility to use such a condition as a response to a violation should be preserved. On recommendation of the Committee, the Conference agreed to pursue legislation that would correct the cross-references in 18 U.S.C. §§ 3563(a) and 3583(d) to reflect the renumbering of 18 U.S.C. § 3563(b) by the Antiterrorism and Effective Death Penalty Act, except that the cross-reference in 18 U.S.C. § 3583(d) authorizing discretionary intermittent confinement as a condition of supervised release should be preserved, but its use limited to violation proceedings.

WORKPLACE DRUG TESTING PROGRAM/ZERO TOLERANCE POLICY

On recommendation of the Criminal Law Committee, the Judicial Conference adopted a workplace drug testing program for probation and pretrial services officers and officer assistants that includes applicant, random, reasonable suspicion, follow-up, and voluntary drug testing to be implemented by the Director of the Administrative Office. The Committee's recommendation was based on a determination that each component of the program is appropriate and feasible for officers in the judiciary. The Administrative Office will report all test results to the chief district judge or chief probation or pretrial services officer for appropriate personnel action.

The Conference also approved a recommendation of the Committee that the Conference adopt a zero tolerance policy for controlled substance (as defined in the Controlled Substance Act, 21 U.S.C. §§ 811-812) use by probation and pretrial

services officers and officer assistants, due to the special nature of the officers' investigative and supervision work and unique law enforcement mission within the judiciary. Zero tolerance calls upon the courts to take some action, up to and including dismissal, in the event the officer or officer assistant were to test positive for drug use. This policy expands the existing judicial branch policy on drug use in the workplace (*see* JCUS-MAR 97, p. 9) and conforms the practice in the federal probation and pretrial services system to the practice of other federal law enforcement agencies.

COMMITTEE ON DEFENDER SERVICES

DISCLOSURE OF CJA PANEL ATTORNEY PAYMENTS

In 1997, subsection (d)(4) of the Criminal Justice Act, 18 U.S.C. § 3006A, was amended to require that amounts paid to attorneys appointed under the CJA be made publicly available pursuant to a specific process. This amendment included a two-year sunset provision. To conform to the amendment, in March 1999, the Judicial Conference approved revisions to paragraph 5.01B of the Guidelines for the Administration of the Criminal Justice Act and Related Statutes, Volume VII, *Guide to Judiciary Policies and Procedures* (JCUS-MAR 99, pp. 15-16). The Committee on Defender Services has found that the revised guideline provides a workable mechanism for disclosing CJA panel attorney payment information, while at the same time affording attorneys reasonable notice prior to disclosure to allow them to request redaction of information to protect their clients' interests. There has been no reported difficulty with the procedure. On recommendation of the Committee, the Conference agreed to retain the revised guideline after the scheduled sunset, with the following minor revisions: (a) to indicate that for cases filed on or after January 25, 2000, the guideline will no longer be statutorily based; and (b) to reflect a further amendment to CJA subsection (d)(4), enacted as part of the Fiscal Year 2000 Consolidated Appropriations Act (Public Law No. 106-113), which states that in death penalty cases where the underlying alleged criminal conduct took place on or after

March 14, 2000

April 19, 1995, the amount of the fees shall not be considered a reason justifying limited disclosure of payments to attorneys.¹

DEFENDER ORGANIZATION FUNDING REQUESTS

Under its delegated authority from the Judicial Conference (JCUS-MAR 89, pp. 16-17), the Committee on Defender Services approved budgets for federal defender organizations in the amount of \$244,595,000 for fiscal year 2000.

COMMITTEE ON FEDERAL-STATE JURISDICTION

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction made a recommendation to the Judicial Conference regarding pending managed care legislation. In order to communicate a Conference policy to Congress expeditiously, the Executive Committee acted on this matter on behalf of the Conference. *See supra*, “Managed Care Legislation,” pp. 7-8. In addition, the Committee reported that it discussed asbestos legislation, mass torts, class action legislation, and rules governing attorney conduct.

COMMITTEE ON FINANCIAL DISCLOSURE

FINANCIAL DISCLOSURE REPORTS

On recommendation of the Committee on Financial Disclosure, the Judicial Conference approved an amendment to paragraph 4.0(b)(1) of the Regulations of the Judicial Conference of the United States on Access to Financial Disclosure Reports

¹ In accordance with the Defender Services Committee’s recommendation, the Judicial Conference approved the proposed revisions to paragraph 5.01B of the CJA Guidelines subject to the proviso that if the public disclosure provisions of 18 U.S.C. § 3006A(d)(4) were extended beyond their scheduled expiration date of January 24, 2000, the Guidelines should remain unchanged. The public disclosure provisions did expire as scheduled, and therefore this proviso is moot.

Filed by Judges and Judiciary Employees Under the Ethics in Government Act of 1978, As Amended, to remove the requirement that a requester provide his or her social security number on the request form.

The Committee also dealt extensively with a request by APBnews.com, an Internet news organization, for release of the financial disclosure forms of all Article III and magistrate judges so that they may be posted on the Internet. Its December 10, 1999, decision to deny the request was reconsidered by the Conference pursuant to a recommendation of the Executive Committee. Understanding that its decision was to be reconsidered, the Financial Disclosure Committee recommended that an ad hoc committee be established to develop a legislative proposal concerning the obligations of judicial officers to disclose. The Conference addressed the Committee's recommendation in the context of the recommendations of the Executive Committee on the same subject. *See supra*, "Financial Disclosure Reports," pp. 4-6.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that during the period from July 1, 1999 to December 31, 1999, a total of 98 intercircuit assignments, undertaken by 65 Article III judges, were processed and recommended by the Committee and approved by the Chief Justice. During calendar year 1999, 153 intercircuit assignments were processed and approved. In addition, the Committee aided courts requesting assistance in identifying and obtaining judges willing to take assignments.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported on its involvement in rule-of-law programs in or with delegations from Africa, Asia, Europe, the Middle East, and Latin America. The Committee also commended the government of Puerto Rico and members of its legal community who had helped found the Inter-American Center

for the Administration of Justice and Public Policy, which trains judges and defenders from Central and South America in common law procedures in a Spanish language environment.

COMMITTEE ON THE JUDICIAL BRANCH

THRIFT SAVINGS PLAN

Under 5 U.S.C. § 8433(h)(1)(A), judges and other employees who are still employed by the federal government are permitted a one-time-only withdrawal of any portion of funds from their Thrift Savings Plan (TSP) accounts at age 59 ½ (which is considered by the Internal Revenue Service to be the retirement age) or older. The regulations governing private sector plans place no restrictions on the number of in-service withdrawals allowed after age 59 ½ (26 C.F.R.

§ 1.401(k)-1(d)). Article III judges are not permitted to withdraw funds from the TSP in the nature of a retirement benefit until they become separated from federal service or take senior status. Because some judges may decide never to take senior status or may delay taking it beyond age 65, this one-time withdrawal feature places a particular hardship on them. On recommendation of the Committee on the Judicial Branch, the Judicial Conference agreed to endorse legislation that would amend 5 U.S.C. § 8433 to permit all TSP participants to withdraw their funds without restriction when they reach retirement age. The Conference further agreed that as a fallback position, in the event an amendment to § 8433 is not viable, legislation should be sought amending 5 U.S.C. § 8440a to repeal the rule requiring judges to separate from the government or elect senior status as a condition precedent to securing TSP funds.

LUMP-SUM PAYMENT OF ANNUAL LEAVE

Pursuant to 5 U.S.C. §§ 5551 and 5552, employees under the Leave Act, 5 U.S.C. § 6301 *et seq.*, are generally entitled to a lump-sum payment of their annual leave balance only when they separate from civilian government service by resignation, retirement, entry into active military duty, or death, and they may not receive payments when transferring between federal positions. Nevertheless, by longstanding practice, when career government employees are named to Article III judgeships (exempt from Leave Act coverage), they have received a lump-sum payment of their annual leave balance upon their appointment to the judicial office on the theory that their lifetime

appointment was inconsistent with the notion of their ever “separating” from the government so as eventually to receive a refund. Pursuant to new regulations issued by the Office of Personnel Management, however, judicial appointees will no longer receive a lump-sum payment at the time of appointment. Instead, consistent with the letter of 5 U.S.C. § 5551, the earned leave must be held in abeyance either for recredit if the employee transfers back to a Leave Act-covered position or for payment of a lump sum upon separation (at the rate earned when the presidential appointment was made). 5 C.F.R. § 550.1203(e). Such deferral could in some cases be tantamount to a forfeiture of the funds. To rectify this situation, the Judicial Conference adopted a recommendation of the Committee that it endorse legislation that would amend 5 U.S.C. § 5551 to restore the previous practice with regard to lump-sum payment of annual leave upon appointment to judicial office.

MILITARY DUAL COMPENSATION RESTRICTIONS

Section 651 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law No. 106-65) repealed the dual compensation restrictions which were found at 5 U.S.C. § 5532, applicable to retired military personnel reemployed in civilian positions. For most federal employees, including all non-Article III judges, this legislation ended the reductions in retired pay previously required of retired military service members who assume civilian federal employment. It is the view of the Department of Defense that 28 U.S.C. § 371(e) continues to prohibit the receipt of military retired pay by Article III judges. To permit judges to receive military retired pay in the same manner as other federal employees, on recommendation of the Committee, the Conference endorsed legislation that would amend 28 U.S.C. § 371 by repealing subsection (e), retroactive to October 1, 1999, with the understanding that an effective date of fiscal year 2001 may be substituted if the former date would jeopardize enactment of the provision.

COURT OF FEDERAL CLAIMS LEGISLATION

Life Insurance. The Court of Federal Claims sought to have included in the judiciary’s federal courts improvement bill (H.R. 1752, 106th Congress) a provision that would amend chapter 87 of title 5, United States Code, to provide that a retired Claims Court judge is a “judge of the United States” for purposes of Federal

March 14, 2000

Employees' Group Life Insurance (FEGLI) coverage. This would extend to these judges full FEGLI Basic Life insurance coverage into retirement with the same level of government contributions as Article III judges. It was the stated intention of the Court of Federal Claims in proposing this legislation also to extend to its judges the FEGLI "fix," *i.e.*, the benefit recently enacted by Congress that empowers the Conference, in its discretion, to authorize payment from appropriated funds of any increases imposed after April 24, 1999, in the life insurance premiums for Article III judges age 65 or above (Public Law No. 106-113). In August 1999, the Executive Committee, acting on behalf of the Conference, determined to oppose the Claims Court provision in order to study whether to extend such coverage to Claims Court judges as well as to bankruptcy, magistrate, and territorial judges (JCUS-SEP 99, p. 46). The Committee on the Judicial Branch has subsequently had the opportunity to consider the recommendations of the Committees on the Administration of the Bankruptcy and Magistrate Judges Systems on this issue. Citing legislative priorities and principles of equity, the Judicial Branch Committee recommended, and the Conference agreed, that the Conference should oppose the proposal that a judge of the Court of Federal Claims be deemed a "judge of the United States" for purposes of construing and applying chapter 87 of title 5, United States Code, and to the extent that it would extend the reach of the FEGLI "fix" to the judges of the Court of Federal Claims.

Health Benefits. In August 1999, the Executive Committee also opposed, on behalf of the Conference, a legislative proposal that would exempt Federal Claims Court judges from the requirement that a Federal Employees Health Benefits Program enrollee must have been enrolled in the program for at least five years prior to retirement in order to continue participation after retirement, so that the impact of the section on non-Article III judges could be studied (JCUS-SEP 99, p. 46). This exemption is currently provided only to an Article III judge who retires on senior status or a bankruptcy or magistrate judge who is recalled under 28 U.S.C. § 375. After considering the views of the Bankruptcy and Magistrate Judges Committees, the Judicial Branch Committee recommended that the Conference support an amendment to the extent that it would except retired judges of the Court of Federal Claims who are recalled to perform judicial duties under 28 U.S.C. § 178(d) from the five-year prior enrollment requirement in order to participate in the Federal Employees Health Benefits Program. The Judicial Conference approved the recommendation.

COMMITTEE ON JUDICIAL RESOURCES

COMMITTEE ACTIVITIES

The Judicial Resources Committee made two recommendations to the Judicial Conference that were acted upon by the Executive Committee due to time constraints. One dealt with a request of the District of Minnesota that a previously approved additional temporary judgeship (JCUS-MAR 99, pp. 21-22) be excluded from the Conference's judgeship recommendations. *See supra*, "Miscellaneous Actions," pp. 8-9. The second involved modifications to Judicial Conference guidelines for administering the professional liability insurance reimbursement program (JCUS-SEP 99, pp. 66-67). *See supra*, "Professional Liability Insurance," p. 7.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

RECALL REGULATIONS

On recommendation of the Committee on the Administration of the Magistrate Judges System, the Judicial Conference approved amendments to section 13(a)-(d) of the *ad hoc* and extended service recall regulations for retired magistrate judges to provide that: (a) for full-time out-of-district recalls of one to three months, a recalled judge may claim subsistence expenses of no more than 75% of the maximum *per diem* for the location where the judge is recalled; (b) for full-time out-of-district recalls exceeding three months, a recalled judge may claim subsistence expenses of no more than 60% of the maximum *per diem* for the location where the judge is recalled; and (c) the Director of the Administrative Office may adjust the reimbursement limits where it is demonstrated that such limits are either too high or too low to compensate retired judges fairly for recall service in the designated location. The purpose of these amendments is to provide magistrate judges, district courts, and circuit judicial councils with advance knowledge of the extent to which expenses will be reimbursed for any proposed recall.

March 14, 2000

Also on recommendation of the Committee, the Conference amended section 13(e) of the *ad hoc* and extended service recall regulations to provide for Committee review of any new request for recall service in which the magistrate judge's salary and reimbursable travel and subsistence expenses are expected to exceed an annual total of \$50,000. Such approval would provide a neutral evaluation of recall requests involving substantial expense to the judiciary.

CHANGES IN MAGISTRATE JUDGE POSITIONS

After consideration of the report of the 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.

FOURTH CIRCUIT

District of Maryland

1. Increased the salary of the part-time magistrate judge position at Hagerstown from Level 4 (\$32,749 per annum) to Level 2 (\$54,582 per annum);
2. Increased the salary of the part-time magistrate judge position at Salisbury from Level 6 (\$10,916 per annum) to Level 5 (\$21,833 per annum);
3. Redesignated the two full-time magistrate judge positions currently designated as Greenbelt or Prince Georges Plaza as Greenbelt;
4. Redesignated the full-time magistrate judge position currently designated as Greenbelt, Baltimore or Prince Georges Plaza as Greenbelt or Baltimore; and
5. Made no other change in the number, locations, or arrangements of the magistrate judge positions in the district.

Judicial Conference of the United States

FIFTH CIRCUIT

Eastern District of Louisiana

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

Southern District of Mississippi

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

EIGHTH CIRCUIT

Northern District of Iowa

1. Designated the full-time magistrate judge position at Sioux City to serve in the adjoining District of Nebraska and District of South Dakota; and
2. Made no other change in the number, locations, or arrangements of the magistrate judge positions in the district.

District of Nebraska

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

District of North Dakota

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

NINTH CIRCUIT

District of Alaska

1. Increased the salary of the part-time magistrate judge position at Ketchikan

March 14, 2000

from Level 8 (\$3,275 per annum) to Level 6 (\$10,916 per annum); and

2. 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 San Jose; and
2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

Southern District of California

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

District of Nevada

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

TENTH CIRCUIT

District of New Mexico

1. Authorized a part-time magistrate judge position at Roswell at Salary Level 7 (\$5,458 per annum); and
2. Redesignated the part-time magistrate judge position currently designated as Clovis or Portales or Roswell as Clovis or Portales.

District of Utah

Judicial Conference of the United States

1. Increased the salary of the part-time magistrate judge position at Saint George from Level 4 (\$32,749 per annum) to Level 2 (\$54,582 per annum); and
2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

ELEVENTH CIRCUIT

Middle District of Alabama

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

**COMMITTEE TO REVIEW CIRCUIT
COUNCIL CONDUCT AND DISABILITY ORDERS**

COMMITTEE ACTIVITIES

The Committee to Review Circuit Council Conduct and Disability Orders reported on the status of litigation arising from an order issued by the Judicial Council of the Fifth Circuit and affirmed by the Committee, imposing sanctions against a district judge.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure reported that it reviewed the status of a number of proposed rules changes and approved proposed amendments to the Appellate and Criminal Rules for publication and comment. The Committee also considered issues relating to rules governing attorney conduct and rules requiring non-governmental corporate parties to disclose financial interests, and embarked on a second comprehensive national local rules project.

March 14, 2000

COMMITTEE ON SECURITY AND FACILITIES

FIVE-YEAR COURTHOUSE PROJECT PLAN

After consultation with circuit judicial councils, the Committee on Security and Facilities proposed a five-year plan of courthouse construction projects for the fiscal years 2001-2005. The Judicial Conference approved the plan.

FEDERAL PROTECTIVE SERVICE REFORM ACT

Pursuant to 28 U.S.C. § 566(a), security for the federal judiciary is the responsibility of the United States Marshals Service (USMS). This responsibility overlaps with that of the General Services Administration's (GSA) Federal Protective Service in multi-tenant buildings housing both court and non-court units. To clarify the appropriate division of responsibility between these agencies, the Administrative Office, USMS, and GSA have executed a series of agreements relating to court security services which stipulate that the USMS provides security for federal judicial facilities, including many multi-tenant facilities that house court operations. In order to address concerns that certain provisions in the proposed Federal Protective Service Reform Act (H.R. 809, 106th Congress) could infringe upon the role of the USMS in providing security for the federal judiciary, on recommendation of the Committee, the Conference agreed to seek an amendment to the bill that would insert the following language as a new section 10 at the end of the bill:

None of the provisions in this Act shall be construed to interfere with, supersede, or otherwise affect the authority of the United States Marshals Service to provide security for the federal judiciary pursuant to 28 U.S.C. § 566 *et seq.*

SPACE ACQUISITION AND RENOVATION ALTERNATIVES

Many courts exist in crowded, insecure, and functionally obsolescent facilities that, nonetheless, will never be included in a Five-Year Courthouse Project Plan. Some local courts have been receiving direct offers from private developers and the

United States Postal Service to form partnerships either to construct new courthouses or renovate existing court facilities in Postal Service-owned buildings. Recognizing the potential benefits of partnerships with the private sector, the Committee determined to explore this alternative further. In the interim, it recommended that the Conference approve the following policy with regard to space acquisition and renovation alternatives: (a) courts should advise their judicial councils and the Administrative Office as soon as they are approached by non-judiciary parties proposing and recommending repair, alteration, or replacement of court facilities; (b) courts should be advised that no financial commitment to any such proposal can be made by a court or council on behalf of the judiciary due to funding constraints; and (c) the Committee on Security and Facilities should begin development of a program to address the needs of courts retaining current facilities that need repairs or alterations to improve operational functions and/or security. The Conference adopted the Committee's recommendation.

UNITED STATES COURTS DESIGN GUIDE

Ballistic-Resistant Glazing. The 1997 edition of the *United States Courts Design Guide* requires UL Standard 752, Level VIII ballistic-resistant glazing for windows located in courtrooms and chambers at ground level, and Level III ballistic-resistant glazing for windows in courtrooms located above the ground floor. No special glazing is required for judges' chambers windows located above the ground floor. Based on ballistic testing showing that Level IV glazing provides adequate protection and is less costly than Level VIII, the Committee recommended that the Conference amend the *Design Guide* to provide that, for new construction or major renovation projects, the ballistic-resistant glazing standard for windows in all courtrooms and chambers, regardless of where they are located in the courthouse, be UL Standard 752, Level IV, unless the United States Marshals Service determines that ballistic-resistant glazing is not needed. The Conference adopted the Committee's recommendation.

Bookshelves in Chambers. The *United States Courts Design Guide* provides that the General Services Administration is responsible for funding all fixed furniture, including bookshelves in judges' chambers, while the judiciary is financially responsible for all movable furniture and equipment. In order to clarify GSA's funding responsibility for fixed bookcases with adjustable bookshelves, the Conference adopted a recommendation of the Committee to amend the *Design Guide* to strike the

word “bookshelves” from the language in Table 5.1 listing “movable” furniture.

Jury Boxes in Bankruptcy Courtrooms. The 1997 edition of the *United States Courts Design Guide* provides that every bankruptcy courtroom “must” accommodate an eight-person jury box. The Committee recommended that the *Design Guide* be amended to state that an eight-person jury box should be provided “when determined necessary,” in order to clarify that jury boxes in bankruptcy courtrooms are not required in every new courthouse. The Conference voted to recommit the recommendation to the Security and Facilities Committee so that the Committee may obtain the views of the Committee on the Administration of the Bankruptcy System, provided that while the matter is under reconsideration, a moratorium will be imposed on the design or construction of jury boxes in new or existing bankruptcy courtrooms.

COURTROOM SHARING

The President’s fiscal year 2001 budget request for seven courthouse construction projects includes a statement that the request “assumes courtroom sharing.” The General Services Administration was directed by the Office of Management and Budget (OMB) to reduce the budget for each of the seven projects to reflect an OMB-generated policy on courtroom sharing that would allow only two courtrooms for every three judges, regardless of court type. OMB’s position is in direct contradiction to a Judicial Conference policy on courtroom sharing that provides for one courtroom for each active district judge and specific guidelines to determine the number of courtrooms for senior and visiting judges (JCUS-MAR 97, pp. 17-18). The Judicial Conference policy, which was developed after analysis of two major studies on courtroom utilization and case management, recognizes the indispensable need for a courtroom to fulfill the essential judicial responsibilities of criminal trials, sentencing, and civil cases. Congress has provided OMB with no authority over the provision of courtrooms for federal judges or over the underlying policy governing courtroom utilization. Adopting a recommendation of the Committee on Security and Facilities, concurred in by the Committee on Court Administration and Case Management, the Judicial Conference strongly condemned the unilateral efforts of the Office of

March 14, 2000

Management and Budget to impose a courtroom sharing policy on the judicial branch, as an unwarranted and inappropriate intrusion into the constitutionally mandated independence of the judiciary.

MAIL BALLOT

By mail ballot concluded on December 3, 1999, the Conference approved for transmission to the Supreme Court an amendment to Rule 26(b)(2) of the Federal Rules of Civil Procedure dealing with presumptive national limits on depositions and interrogatories. *See* JCUS-SEP 99, p. 74.

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