

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

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*SEPTEMBER 19, 2006  
WASHINGTON, D.C.*

*JUDICIAL CONFERENCE OF THE UNITED STATES  
CHIEF JUSTICE JOHN G. ROBERTS, JR.,  
PRESIDING  
JAMES C. DUFF, SECRETARY*

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**REPORT OF THE PROCEEDINGS  
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**September 19, 2006**

The Judicial Conference of the United States convened in Washington, D.C., on September 19, 2006, 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 Michael Boudin  
Judge Hector M. Laffitte,  
District of Puerto Rico

Second Circuit:

Chief Judge John M. Walker, Jr.  
Chief Judge Kimba M. Wood,  
Southern District of New York

Third Circuit:

Chief Judge Anthony J. Scirica  
Chief Judge Garrett E. Brown, Jr.,  
District of New Jersey

Fourth Circuit:

Chief Judge William W. Wilkins  
Judge David C. Norton,  
District of South Carolina

Fifth Circuit:

Chief Judge Edith Hollan Jones  
Chief Judge Glen H. Davidson,  
Northern District of Mississippi

*Judicial Conference of the United States*

Sixth Circuit:

Chief Judge Danny J. Boggs  
Judge Charles R. Simpson III,  
Western District of Kentucky

Seventh Circuit:

Chief Judge Joel M. Flaum  
Judge J. P. Stadtmueller,  
Eastern District of Wisconsin

Eighth Circuit:

Chief Judge James B. Loken  
Judge Lawrence L. Piersol,  
District of South Dakota

Ninth Circuit:

Chief Judge Mary M. Schroeder  
Judge Charles R. Breyer,  
Northern District of California

Tenth Circuit:

Chief Judge Deanell Reece Tacha  
Judge David L. Russell,  
Western District of Oklahoma

Eleventh Circuit:

Chief Judge J. L. Edmondson  
Chief Judge Robert L. Hinkle,  
Northern District of Florida

District of Columbia Circuit:

Chief Judge Douglas H. Ginsburg  
Chief Judge Thomas F. Hogan,  
District of Columbia

Federal Circuit:

Chief Judge Paul R. Michel

Court of International Trade:

Chief Judge Jane A. Restani

The following Judicial Conference committee chairs attended the Conference session: Circuit Judges Julia Smith Gibbons, Marjorie O. Rendell, Jane R. Roth, and David Bryan Sentelle; and District Judges Paul G. Cassell, W. Royal Furgeson, Jr., Nina Gershon, John Gleeson, D. Brock Hornby, Robert B. Kugler, David F. Levi, Howard D. McKibben, Gordon J. Quist, Lee H. Rosenthal, John R. Tunheim, and Thomas I. Vanaskie. Bankruptcy Judge A. Thomas Small and Magistrate Judge John M. Roper, Sr., were also in attendance. Gary H. Wentz of the First Circuit represented the circuit executives.

James C. Duff, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Clarence A. Lee, Jr., Associate Director for Management and Operations; William R. Burchill, Jr., Associate Director and General Counsel; Laura C. Minor, Assistant Director, and Jeffrey A. Hennemuth, Deputy Assistant Director, Judicial Conference Executive Secretariat; Cordia A. Strom, Assistant Director, Legislative Affairs; and David A. Sellers, Assistant Director, Public Affairs. District Judge Barbara Jacobs Rothstein and John S. Cooke, Director and Deputy Director of the Federal Judicial Center, and District Judge Ricardo H. Hinojosa, Chair of the United States Sentencing Commission, were in attendance at the session of the Conference, as were Jeffrey P. Minear and Sally M. Rider, Administrative Assistants to the Chief Justice. Scott Harris, Supreme Court Counsel, and the 2006-2007 Judicial Fellows also observed the Conference proceedings.

Attorney General Alberto R. Gonzales addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice. Senators Arlen Specter, Patrick J. Leahy, Christopher S. Bond, and Jeff Sessions, and Representatives Joseph Knollenberg and Lamar S. Smith spoke on matters pending in Congress of interest to the Conference.



## **REPORTS**

Mr. Duff reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office (AO). Judge Rothstein spoke to the Conference about Federal Judicial Center (FJC) programs and Judge Hinojosa reported on Sentencing Commission activities. Judge Hornby, chair of the Committee on the Judicial Branch, reported on judicial compensation and Judge Gibbons, chair of the Committee on the Budget, reported on judiciary appropriations.

## **EXECUTIVE COMMITTEE**

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### **RESOLUTION**

The Judicial Conference approved a recommendation of the Executive Committee to adopt the following resolution recognizing the substantial contributions made by the Judicial Conference committee chairs whose terms of service end in 2006:

The Judicial Conference of the United States recognizes with appreciation, respect, and admiration the following judicial officers:

**HONORABLE ROBERT B. KUGLER**  
Committee on the Administrative Office

**HONORABLE NINA GERSHON**  
Committee on the Administration of the Magistrate Judges System

**HONORABLE JANE R. ROTH**  
Committee on Space and Facilities

Appointed as committee chairs by the Chief Justice of the United States, these outstanding jurists have played a vital role in the administration of the federal court system. These judges served with distinction as leaders of their Judicial Conference committees while, at the same time, continuing to perform their duties as judges in their own courts. They have set a standard of skilled leadership and earned our deep respect and sincere gratitude for their innumerable contributions. We

acknowledge with appreciation their commitment and dedicated service to the Judicial Conference and to the entire federal judiciary.

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## **JUDICIAL ETHICS**

Media accounts alleging that certain judges may have participated in cases in which they had a financial interest or failed to include in financial disclosure reports their attendance at privately funded educational seminars have led to renewed congressional interest in judicial ethics, including efforts to impose an inspector general on the judiciary. The Executive Committee discussed the issue on a number of occasions and agreed that a strong, appropriate response was necessary to assure Congress and the public that the judiciary is committed to upholding the highest ethical standards and maintaining accountability. With the endorsement of the Chief Justice, the Committee, in August 2006, distributed to judges and congressional leadership a report on the status of the judiciary's efforts to address judicial ethics issues. In addition, the Committee asked the Codes of Conduct Committee to consider on an expedited basis proposals regarding the use of automated conflict-checking software (*see infra* "Judicial Ethics," p. 11). It had also previously asked the Judicial Branch Committee to make proposals to the Conference, in coordination with the Codes of Conduct Committee, concerning judges' attendance at privately funded educational seminars (*see infra* "Judges' Attendance at Privately Funded Educational Programs," p. 24).

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## **IMMIGRATION LEGISLATION**

In March 2006, anticipating quick action in Congress on pending immigration legislation, the Executive Committee approved two recommendations of the Federal-State Jurisdiction Committee on the Conference's behalf: (a) that the Conference oppose a provision that would require a "certificate of reviewability" from a single circuit judge before a Board of Immigration Appeals (BIA) decision could be reviewed in a court of appeals by a three-judge panel; and (b) that Congress be urged to provide the judicial branch with sufficient resources to carry out its responsibilities for handling any additional immigration caseload resulting from such legislation. The Executive Committee also reaffirmed, in the context of immigration cases, the Conference's previously stated opposition to the consolidation of appeals in a single court and determined to reiterate that position for purposes

of a Senate hearing on the matter. Further, the Committee agreed that any communication to Congress on this topic should also express support for additional resources for the executive branch to litigate and review immigration cases, and support for modifications to BIA composition and procedures, to enhance administrative review of these cases.

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## **COURT SPACE PROJECTS**

At the request of the Director of the Administrative Office, the Executive Committee considered, and then endorsed, requests for exemptions from the Judicial Conference’s prospectus-level space moratorium for court space projects in Charlotte, North Carolina; Toledo, Ohio; Orlando, Florida; Billings, Montana; Bangor, Maine; Springfield, Massachusetts; New Bern, North Carolina; and Cincinnati, Ohio. In addition, the Committee approved, on behalf of the Conference, a recommendation of the Committee on Space and Facilities that a judicial space emergency be declared with respect to the court facility in Billings, Montana. Also on behalf of the Conference and on recommendation of the Space and Facilities Committee, which had coordinated with the Budget Committee, the Executive Committee approved an exception to the Conference’s budget check process so that chambers could be obtained through a commercial lease for a newly appointed Ninth Circuit judge for whom an existing chambers suite was not available. The Executive Committee conditioned its actions with respect to the projects in Billings, Bangor, Springfield, New Bern, and Cincinnati and the Ninth Circuit judge’s chambers project on certain funding arrangements and on charging the additional rent associated with each project against the respective circuit council’s future space rental cap (*see infra* “Rent Budget Cap,” p. 10). In addition, it conditioned the Billings and Ninth Circuit chambers projects on application of the latest changes to the *U.S. Courts Design Guide*.

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## **MISCELLANEOUS ACTIONS**

The Executive Committee—

- Approved, on behalf of the Judicial Conference and on recommendation of the Committees on Court Administration and Case Management and Information Technology, an annual report to Congress on deferred court compliance with section 205 of the E-Government Act of 2002, and authorized transmittal of that report to Congress as specified in the Act;

- Agreed to a legislative strategy proposed by the Court Administration and Case Management Committee regarding the issue of cameras in the courtroom and delegated to that committee, assisted by the Administrative Office, the authority to respond to Congress on actions it may take on cameras issues and report to the Executive Committee;
- Pending final congressional action on the judiciary's appropriations for fiscal year 2007, approved fiscal year 2007 interim financial plans for the Salaries and Expenses, Defender Services, Court Security, and Fees of Jurors and Commissioners accounts and for the Electronic Public Access program, and endorsed a strategy for distributing court allotments among the court programs; and
- Recommended that the Conference approve memorial resolutions in memory of two former Conference members (*see infra* "Memorial Resolutions," pp. 38-41).

## COMMITTEE ON THE ADMINISTRATIVE OFFICE

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### COMMITTEE ACTIVITIES

The Committee on the Administrative Office reported that it discussed recently introduced legislation to establish an inspector general in the judiciary and the communication effort to explain the Judicial Conference's strong opposition to that proposal. This opposition arises from concerns that an inspector general would seriously undermine the principle of an independent federal judiciary and that the judiciary already has an extensive system for oversight and review that effectively addresses operational integrity and stewardship. The Committee endorsed several enhancements to the Administrative Office's audit and review program, including a more formal process to follow up on actions taken by courts to address audit findings. The Committee selected the first two recipients of its *Leonidas Ralph Mecham Award for Exemplary Service to the Courts*, created by the Committee to recognize individual Administrative Office staff for significant accomplishments.

## **COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM**

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### **BANKRUPTCY JUDGESHIPS**

In accordance with 28 U.S.C. § 152(b)(3), the Judicial Conference conducts a comprehensive review of all judicial districts every other year to assess the continuing need for authorized bankruptcy judgeships. By December 31 of each even-numbered year, the Conference reports its recommendations to Congress for the elimination of any authorized bankruptcy judgeship position that can be eliminated when a vacancy exists by reason of resignation, retirement, removal, or death. On recommendation of the Bankruptcy Committee, which relied on the results of the 2006 continuing-need survey, the Judicial Conference agreed to take the following actions:

- a. Recommend to Congress that no bankruptcy judgeship be statutorily eliminated; and
- b. Advise the Eighth and Ninth Circuit Judicial Councils, as appropriate, to consider not filling vacancies in the District of South Dakota, the District of Alaska, and the Central District of California that currently exist or may occur by reason of resignation, retirement, removal, or death, until there is a demonstrated need to do so.

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### **SELECTION AND APPOINTMENT REGULATIONS**

In March 2006, the Judicial Conference approved an amendment to section 2.01 of the Judicial Conference Regulations for the Selection, Appointment, and Reappointment of United States Bankruptcy Judges to make publication of judicial vacancy announcements through print advertisements in local newspapers optional, rather than required, and to permit electronic publication of those announcements (JCUS-MAR 06, pp. 9-10). At this session, on recommendation of the Committee, the Conference made a parallel change to section 5.02(a) of the regulations, dealing with reappointment notices, to permit publication of a notice of an incumbent's willingness to be reappointed to be made through electronic means and to make newspaper advertisement optional.

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## **DEBTOR AUDIT STANDARDS**

Section 603(a) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Pub. L. No. 109-8) requires the Judicial Conference to establish procedures in bankruptcy administrator districts to determine the accuracy, veracity, and completeness of petitions, schedules, and other information a debtor is required to provide in cases filed in chapter 7 or chapter 13 cases in which the debtor is an individual. Audits pursuant to § 603(a) must be in accordance with generally accepted auditing standards unless the Judicial Conference determines to develop alternative standards. Noting that the ten generally accepted auditing standards were developed in the context of auditing financial statements of businesses, and that § 603(a) applies by its terms to audits of individuals only, the Committee recommended alternative standards modeled after standards adopted by the Attorney General for judicial districts served by United States trustees. The proposed standards are consistent with generally accepted auditing standards. The Conference adopted the Committee's recommendation.

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## **COMMITTEE ACTIVITIES**

The Bankruptcy Committee reported that it approved implementation of a new bankruptcy judge recall registry system on the J-Net to enable courts needing assistance from a recalled judge to identify, quickly and easily, retired judges who have expressed a willingness to serve on recall. The Committee also forwarded to the Court Administration and Case Management Committee a number of recommendations for changes to the Bankruptcy Court Miscellaneous Fee Schedule (*see infra* "Miscellaneous Fees," pp. 12-14); endorsed a resolution in support of maintaining existing bankruptcy clerk's office staffing levels through the next fiscal year to ensure effective transition and implementation of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005; and endorsed a proposal that the Administrative Office make available electronically "fillable" versions of bankruptcy forms.

## **COMMITTEE ON THE BUDGET**

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### **FISCAL YEAR 2008 BUDGET REQUEST**

Noting the continuation of a constrained budget environment, the Budget Committee recommended a fiscal year 2008 budget request that was lower than the funding levels proposed by the program committees. The Judicial Conference approved the budget request subject to amendments necessary as a result of new legislation, other actions of the Conference, or any other reason the Executive Committee considers necessary and appropriate.

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### **FEDERAL PROTECTIVE SERVICE FUNDING**

Currently the Federal Protective Service (FPS) charges individual agencies on a pro-rata basis for the services it provides. Concluding that savings in administrative costs could be realized if the FPS were funded through direct appropriations to the Department of Homeland Security, the Budget Committee, at the request of the Judicial Security Committee, recommended that the Judicial Conference (a) ask Congress to provide direct appropriations to the FPS, and (b) make a request to the President to incorporate direct funding for FPS charges into the President's fiscal year 2008 budget request. The Conference adopted the Committee's recommendations.

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### **RENT BUDGET CAP**

On recommendation of the Budget Committee, and after discussion, the Judicial Conference set an annual cap on rent for all future rent requirements at an average annual growth rate of 4.9 percent for fiscal years 2009 through 2016 in order to control space rental costs. The amount of the cap is provisional based on information available to the Budget Committee at its July 2006 meeting and is subject to reconsideration when the fiscal year 2009 budget is formulated, should actions or events outside the control of the judiciary or the adoption of budget caps covering other budget categories require such reconsideration.

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## COMMITTEE ACTIVITIES

The Committee on the Budget reported that it considered strategies for developing budget caps for non-space areas of the Salaries and Expenses account to be used in formulating future budget requests and stated it would work with program committees to identify the impact of proposed caps in each area of the budget. It also discussed flexibility in budget decentralization rules with regard to ways to enable movement of funds from one court unit to another. The Committee supported the development of and continued to endorse a comprehensive financial management continuing education program for court staff, and it discussed the judiciary's ongoing efforts to acquire additional resources from Congress and ways to enhance congressional outreach.

## COMMITTEE ON CODES OF CONDUCT

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### JUDICIAL ETHICS

In response to a request from the Executive Committee (*see supra* “Judicial Ethics,” p. 5), and after consultation with several other Conference committees, the Committee on Codes of Conduct recommended that the Judicial Conference adopt a conflict-screening policy that mandates checking for financial conflicts of interest with the aid of computer software. The policy would be administered and directed by the circuit councils under the authority set forth in 28 U.S.C. § 332(d)(1) and by the individual courts not subject to the authority of a circuit council. After discussion, the Conference modified slightly and then adopted the Committee’s recommendation. Use of automated conflict screening is intended to be an addition to, and not a replacement for, each judge’s personal review of matters for conflicts.

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## COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Conference in March 2006, the Committee received 26 new written inquiries and issued 26 written advisory responses. During this period, the average response time for requests was 13 days. The Chairman received and responded to 39 informal inquiries (by telephone, electronic mail, or in



person), and the other Committee members responded individually to 157 informal inquiries from their colleagues.

## **COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT**

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### **MISCELLANEOUS FEES**

Chapter 15 Reopening Fee. Item 11 of the Bankruptcy Court Miscellaneous Fee Schedule provides that the fee for reopening a bankruptcy case is the same as the filing fee prescribed in 28 U.S.C. § 1930(a) for commencing a new case. The filing fee for commencing a chapter 15 case, however, is a miscellaneous fee authorized by 28 U.S.C. § 1930(b) and not a statutory fee set forth in § 1930(a); therefore, Item 11 does not provide a reopening fee for chapter 15 cases. On recommendation of the Committee on Court Administration and Case Management, the Conference agreed to amend Item 11 of the Bankruptcy Court Miscellaneous Fee Schedule to create a reopening fee for chapter 15 cases equal to the chapter 15 filing fee contained in Item 16 of the Bankruptcy Court Miscellaneous Fee Schedule as of the date of the request to reopen.

Exemptions from Reopening Fee. Item 11 of the Bankruptcy Court Miscellaneous Fee Schedule provides an exemption from the fee for reopening a bankruptcy case “for actions related to the debtor’s discharge.” Concerned that this exemption could be interpreted to apply in cases in which no discharge had been entered, the Committee recommended that Item 11 be amended to clarify the two situations in which the exemption from the reopening fee is applicable (i.e., reopening a case to enforce the discharge and reopening a case to file nondischargability complaints under Bankruptcy Rule 4007(b)) and to expressly state that the reopening fee applies to requests to reopen cases in which the court did not enter a discharge. The Conference approved the recommendation.

Chapter 7 Trustee Fee. Section 330(b) of the Bankruptcy Code requires that the trustee in a chapter 7 case be paid a fee of \$60–\$45 from the statutory filing fee and an additional \$15 to be prescribed by the Judicial Conference. For initial filings, the additional \$15 trustee fee is set forth in Item 9 of the Bankruptcy Court Miscellaneous Fee Schedule. In establishing the fee for reopening a chapter 7 case and the fee for splitting a joint chapter 7 case, Items 11 and 19 of the Bankruptcy Court Miscellaneous Fee Schedule,

respectively, require petitioners to pay the amount of the statutory filing fee but do not require payment of the additional \$15 trustee fee. In order to comply with the requirement of 11 U.S.C. § 330(b) regarding chapter 7 trustee fees, on recommendation of the Committee, the Conference agreed to amend the Bankruptcy Court Miscellaneous Fee Schedule to add a \$15 chapter 7 trustee fee to the fee for reopening a chapter 7 case (Item 11) and to the fee for splitting a joint chapter 7 case (Item 19).

Adversary Proceeding Fee. Item 6 of the Bankruptcy Court Miscellaneous Fee Schedule links the fee for filing an adversary proceeding to the statutory fee for filing a civil action. Title X of the Deficit Reduction Act of 2005 (Pub. L. No. 109-171) increased the civil action filing fee from \$250 to \$350, which has the effect of increasing the fee for filing an adversary proceeding, as well. Noting that the two types of actions can vary significantly, and that the amount in controversy in bankruptcy actions is typically much lower than that in civil actions, the Committee recommended that the fee for filing an adversary proceeding in bankruptcy be delinked from the civil action filing fee, that the fee remain \$250, and that the fee schedule be amended accordingly. The Conference adopted the Committee's recommendation.

Bankruptcy Appellate Docketing Fee. The fee for docketing an appeal or a cross appeal from a bankruptcy court determination (Items 15 and 21, respectively, of the Bankruptcy Court Miscellaneous Fee Schedule) is linked to the appellate court docketing fee (Item 1 of the Court of Appeals Miscellaneous Fee Schedule), which the Deficit Reduction Act of 2005 raised from \$250 to \$450. Since bankruptcy appeals are usually heard in the first instance in a district court or by a bankruptcy appellate panel, and then may be taken to a court of appeals, two docketing fees would be required in those cases in which a second appeal is taken. Because of the unique structure of the bankruptcy appellate process, the Committee recommended that the docketing fee for appeals and cross appeals from a bankruptcy court determination be de-linked from the appellate court docketing fee and remain at \$250, but that an additional \$200 fee be required if a direct appeal or cross appeal from the bankruptcy court to the court of appeals is granted, to equal the \$450 appellate court docketing fee. The Conference agreed to amend the fee schedule in accordance with the Committee's recommendation.

Bankruptcy Direct Cross-Appeal Docketing Fee. On recommendation of the Committee, the Conference agreed to amend Item 1 of the Court of Appeals Miscellaneous Fee Schedule to provide that no fees would be collected by the courts of appeals under that item for docketing direct cross

appeals in bankruptcy cases if fees had already been collected under Item 21 of the Bankruptcy Court Miscellaneous Fee Schedule for such appeals. A similar amendment to Item 1 was made in March 2006 with regard to direct bankruptcy appeals (JCUS-MAR 06, pp. 12-13).

Conversion Fees. On recommendation of the Committee, the Conference amended Item 10 of the Bankruptcy Court Miscellaneous Fee Schedule to include a general bankruptcy conversion fee to be assessed whenever the filing fee of the chapter to which a case is converted exceeds the filing fee for the chapter under which the case was initially filed. This fee is equal to the difference in the filing fees. However, in the event a case is converted to a chapter with a lower filing fee, a refund would not be granted. Conversions from chapter 7 or 13 to chapter 11 are specifically excluded because fees are assessed for these conversions pursuant to 28 U.S.C. § 1930(a).

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## **ELECTRONIC PUBLIC ACCESS**

Fee Schedule. Currently, the Electronic Public Access (EPA) Fee Schedule prohibits users of the Public Access to Court Electronic Records (PACER) system who are exempt from EPA fees from selling the information they receive from that system; however, it does not prohibit users from disseminating the same information at no charge. Therefore, the Committee recommended that the fee schedule be amended to prohibit any transfer of case information received under a fee exemption absent express authorization from the court. The Committee also recommended that language be added to the fee schedule policy notes to state that this prohibition does not apply to the quotation or reference to such materials in a scholarly or other similar work. The Conference adopted the Committee's recommendations.

Crime Victim Notification Data. To assist the Department of Justice in fulfilling its statutory obligation under the Crime Victims' Rights Act, 18 U.S.C. § 3771(a)(2), to notify crime victims of upcoming proceedings in federal cases, the Judicial Conference, on recommendation of the Committee, authorized the Administrative Office to enter into a memorandum of understanding with the Department of Justice to provide the Department with an electronic feed of case information, with the following conditions:

- a. the Department will not be required to pay the EPA fees for the information received, but agrees to reimburse the judiciary for the costs incurred in programming the data feed;

- b. the data transferred is limited to the information required to fulfill the victim-notification responsibilities set by statute;
- c. the data is provided directly to the Department's Victim Notification System (VNS);
- d. the Department agrees to use the information only for victim notification; and
- e. the Department agrees not to sell or transfer the information other than for the purposes of victim notification (with an exception for transfers to judicial branch organizations, such as pretrial services and probation offices).

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## **JURY MATTERS**

Jury Service. To impress upon the public the serious nature of jury service, on recommendation of the Committee, the Judicial Conference agreed to seek amendments to the statutes establishing penalties for failure to appear in response to summonses relating to jury service, 28 U.S.C. §§ 1864(b) and 1866(g), to increase the maximum amount of the fine from \$100 to \$5,000, and to offer an option for community service.

Grand Juror Handbook. The Conference adopted a Committee recommendation to amend the *Handbook for Federal Grand Jurors* to conform with the Model Grand Jury Charge revisions approved by the Conference in March 2005 (JCUS-MAR 05, p. 12), with two additional changes for clarity.

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## **CONSOLIDATION OF DISTRICT AND BANKRUPTCY COURT CLERKS' OFFICES IN THE DISTRICT OF COLUMBIA**

Section 156(d) of title 28 requires Judicial Conference and congressional approval of plans to consolidate bankruptcy and district court clerks' offices. In March 1998, the Conference adopted procedures for considering consolidation plans (JCUS-MAR 98, pp. 10-11). Pursuant to these procedures, the Committee, in consultation with the Bankruptcy Committee, reviewed a joint proposal from the district and bankruptcy courts of the District of Columbia to consolidate their clerks' offices. The plan had been endorsed by their circuit judicial council. Concluding that the proposal

could be expected to produce cost savings and that there would not be a decrease in the quality of services to the judges, the bar, and the public, the Committee recommended that the Conference endorse the consolidation. The Conference agreed to the Committee's recommendation, and Congress will be notified of the Conference's action.

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## **COMMITTEE ACTIVITIES**

The Committee on Court Administration and Case Management reported that it considered, among other things, a wide array of issues pertaining to the judiciary's records management program, and that it offered assistance to the Administrative Office in this area. The Committee also discussed recent reports relating to judges who have issued rulings in cases in which they may have had a conflict of interest due to financial interests in one of the parties, and expressed its view to the Executive Committee that circuit judicial councils should mandate use of the automated conflict-checking capabilities of the Case Management/Electronic Case Files (CM/ECF) system. The Committee also reviewed the ongoing cost-containment efforts relating to libraries and law books, the law books and computer-assisted legal research budget request for fiscal year 2008, and the final steps in the complete migration from WestMate software to the current web-based Westlaw legal research service.

## **COMMITTEE ON CRIMINAL LAW**

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### **FOREIGN INTELLIGENCE SURVEILLANCE COURT**

A bill pending in the 109<sup>th</sup> Congress (S. 2453) would require the Foreign Intelligence Surveillance Court to sit en banc on a quarterly basis. The Committee noted that members of the court are widely dispersed and that the frequency of travel contemplated in the legislation would be costly and inefficient, but concluded that meeting en banc, as appropriate to ensure uniformity and consistency in decision-making, would be beneficial. On recommendation of the Committee, the Conference agreed to support legislation that would authorize judges on the Foreign Intelligence Surveillance Court to sit en banc, but to express its preference that such sittings be authorized to occur at the court's discretion. The Conference adopted the Committee's recommendation.

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## **UNITED STATES SENTENCING COMMISSION**

The Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today (PROTECT) Act of 2003 (Pub. L. No. 108-21) amended 28 U.S.C. § 991, regarding composition of the U. S. Sentencing Commission. It replaced the requirement that at least three of the Commission's voting members must be federal judges with a provision that not more than three such members may be federal judges. In September 2003, the Judicial Conference expressed opposition to that provision, along with several others in the PROTECT Act, noting that the judiciary and the Sentencing Commission had not been consulted regarding the legislation (JCUS-SEP 03, pp. 18-20). At this session, citing, among other things, the unique expertise on sentencing issues that judges provide, the Committee recommended, and the Conference agreed, that the judiciary affirmatively seek restoration of the statutory requirement that at least three federal judges be included among the voting members of the Sentencing Commission.

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## **SUPERVISED RELEASE**

Generally, the maximum length of a term of supervised release is determined by the classification of the offense committed. The Committee expressed the view that greater discretion to tailor the duration of a term of supervised release to the specifics of a case would improve its effectiveness. On recommendation of the Committee, the Judicial Conference agreed to support an amendment to 18 U.S.C. § 3583(b) to give the court authority to impose a longer term of supervised release, based on specific findings, if the unusual circumstances of a case indicate that a longer term is needed to rehabilitate the offender, protect society, and otherwise serve the interest of justice.

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## **PROFITING FROM A CRIME**

On recommendation of the Committee, the Judicial Conference determined to support legislation that would establish "not profiting from a crime" as a mandatory condition of probation and of supervised release and to support similar legislation (to the extent it relates to the federal courts and the administration of justice) to prevent criminals from profiting from their crimes.

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## **RESTITUTION**

Currently, there is no authorization under federal law for general restitution to crime victims. A judge may order restitution only if the loss suffered by the victim falls within certain categories specified by statute. On recommendation of the Committee, the Judicial Conference agreed to support legislation that would authorize general restitution in any criminal case at the discretion of the judge when the circumstances of the case warrant it.

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## **SENTENCING IN COCAINE CASES**

Under the Anti-Drug Abuse Act of 1986 (Pub. L. No. 99-570), 100 times as much powder cocaine as crack cocaine is needed to trigger the same mandatory minimum sentences. Noting concern that this disparity could have a corrosive effect on public confidence in the courts, the Committee recommended that the Judicial Conference oppose the existing difference between crack and powder cocaine sentences and support the reduction of that difference. After discussion, the Conference adopted the Committee's recommendation.

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## **RESIDENTIAL REENTRY CENTERS**

As a result of recent case law, a disparity exists among the circuits with regard to the extent to which an inmate in Bureau of Prisons custody may serve a term of incarceration in a residential reentry center. Noting the statutory requirement that sentencing judges impose sufficient punishment, but no more than is necessary to achieve the penological goals of the statute, the Committee recommended that the Conference support legislation to resolve the statutory ambiguities between 18 U.S.C. § 3624(c) and 18 U.S.C. § 3621(b) that have given rise to the intercircuit disparity. The Conference adopted the Committee's recommendation.

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## **CRIME VICTIMS RIGHTS ADVISORY GROUP**

On recommendation of the Committee, the Judicial Conference agreed to recommend to the U.S. Sentencing Commission that it establish a Crime

Victims Rights Advisory Group, analogous in structure to the existing Practitioners Advisory Group and Probation Officers Advisory Group. Such a group would facilitate the exchange of ideas and information between crime victim advocates and the Sentencing Commission.

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## COMMITTEE ACTIVITIES

The Committee on Criminal Law reported that on March 16, 2006, its chair testified on behalf of the Conference before the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security about the impact of the 2005 Supreme Court decision in *United States v. Booker*. He noted that patterns of federal sentencing have not changed dramatically following *Booker* and urged that the courts of appeals be allowed to work through uncertainties caused by *Booker* and establish a jurisprudence of “reasonableness” review. The Criminal Law Committee endorsed the development of an automated system to transmit sentencing documentation to the U.S. Sentencing Commission and the Bureau of Prisons, endorsed centralizing Probation/Pretrial Services Automated Case Tracking System (PACTS) servers in a contract facility, and encouraged the use of evidence-based practice research in the supervision and treatment of federal defendants and offenders.

## COMMITTEE ON DEFENDER SERVICES

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### COMMITTEE ACTIVITIES

The Committee on Defender Services reported that it had selected the Second, Sixth, and Ninth Circuits to participate in a pilot project under which the Defender Services appropriation will, for up to three years, fund three circuit positions to support the process of case budgeting, which is a high-priority cost-containment initiative. The Committee endorsed, for dissemination, a list of suggested “good practices” identified by the Vera Institute of Justice in its January 2006 report, “Good Practices for Panel Attorney Programs in the U.S. Courts of Appeals.” Consistent with the goals of the judiciary’s study on administrative services, the Committee approved a new protocol for maximizing the utilization of federal defender organization personnel through the sharing of services of certain non-attorney staff, within prescribed parameters. The Committee also approved federal defender organization budgets under its delegated authority from the Judicial Conference (JCUS-MAR 89, pp. 16-17).



## **COMMITTEE ON FEDERAL-STATE JURISDICTION**

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### **VENUE**

In March 2006, the Judicial Conference adopted several recommendations for changes to the statutory provisions governing venue (28 U.S.C. § 1391 et seq.) (JCUS-MAR 06, p. 17). At this session, in continuance of its jurisdictional improvements project, the Committee recommended, and the Conference approved, seeking the following additional changes to clarify and improve the venue statutes:

- a. Amend 28 U.S.C. § 1391 to authorize a civil action to be filed in any division of a district, subject to the power of the district court to provide by local rule or court order for the initial filing in a particular division and for the transfer of any civil action between divisions of the district;
- b. Amend 28 U.S.C. § 1404 to authorize the district court, in its discretion, to transfer a civil action or other proceeding of a civil nature anywhere within the district for trial or for any other phase of the litigation;
- c. Amend 28 U.S.C. § 1391 to specify that district courts shall disregard for venue purposes aliens and United States citizens who have their domicile in another country; and
- d. Amend 28 U.S.C. § 1391 to grant a venue defense to permanent resident aliens who are domiciled in the United States.

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### **TERRITORIAL COURT INTERPRETER PROGRAMS**

A bill pending in the 109<sup>th</sup> Congress, S. 2611, the Comprehensive Immigration Reform Act of 2006, would authorize financial assistance for state court interpreter programs. At the request of the Pacific Islands Committee of the Ninth Circuit Judicial Council, which noted that local courts in the Pacific island territories are experiencing the same challenges as the state courts with regard to providing effective court interpreting services, the Federal-State Jurisdiction Committee recommended that the Judicial Conference seek inclusion of the United States territories and former trust territories in any bill that authorizes or appropriates federal funding for state

court interpreter programs. The Conference adopted the Committee's recommendation.

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## **COMMITTEE ACTIVITIES**

The Committee on Federal-State Jurisdiction reported that it gave extensive consideration to immigration reform legislation pending in the 109<sup>th</sup> Congress and considered proposed legislation, not yet introduced in Congress, that would affect the jurisdiction of the Court of International Trade. The Committee received an update on the final regulations of the Social Security Administration pertaining to the disability claims process and was briefed on the capital habeas corpus study being undertaken by the Administrative Office and the Federal Judicial Center in consultation with this and other Conference committees. The Committee also discussed the federalism implications of proposed Federal Rule of Evidence 502, which seeks to address problems with subject-matter waiver, inadvertent disclosure, enforceability of confidentiality orders, and selective waiver.

## **COMMITTEE ON FINANCIAL DISCLOSURE**

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### **COMMITTEE ACTIVITIES**

The Committee on Financial Disclosure reported that as of July 6, 2006, the Committee had received 3,745 financial disclosure reports and certifications for calendar year 2005, including 1,209 reports and certifications from Supreme Court justices, Article III judges, and judges of special courts; 333 reports from bankruptcy judges; 508 reports from magistrate judges; and 1,695 reports from judicial employees. The Committee also provided an update on the judiciary's legislative initiative to have the Judicial Conference's authority to redact sensitive information from financial disclosure reports restored. That authority, which was contained in 5 U.S.C. app. § 105(b)(3)(E), expired on December 31, 2005. The Committee also reported that in response to recent media attention, on May 16, 2006, its chair sent a memorandum to all judges reminding them of their obligation to report educational trips and seminars reimbursed or paid for by private educational or nonprofit organizations.

## **COMMITTEE ON INFORMATION TECHNOLOGY**

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### **LONG RANGE PLAN FOR INFORMATION TECHNOLOGY**

Pursuant to 28 U.S.C. § 612 and on recommendation of the Committee on Information Technology, the Judicial Conference approved the fiscal year 2007 update to the *Long Range Plan for Information Technology in the Federal Judiciary*. Funds for the judiciary's information technology program will be spent in accordance with this plan.

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### **COMMITTEE ACTIVITIES**

The Committee on Information Technology reported that as part of its ongoing efforts to identify and implement more cost-effective service delivery models, it approved the consolidation of servers for the Probation/Pretrial Services Automated Case Tracking System (PACTS) and plans to review recommendations regarding Financial Accounting System for Tomorrow (FAS<sub>4</sub>T), Lotus Notes e-mail, and Jury Management System (JMS) servers. The Committee endorsed limited access to the judiciary's Data Communications Network for the United States Tax Court, the United States Court of Appeals for the Armed Forces, the United States Court of Appeals for Veterans Claims, and the Rules Committees' official reporters and consultants. The Committee also discussed available mechanisms to reduce the amount of unwelcome e-mail, also known as "spam," and endorsed efforts by the Administrative Office to implement measures at the national gateways to limit the amount of spam.

## **COMMITTEE ON INTERCIRCUIT ASSIGNMENTS**

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### **COMMITTEE ACTIVITIES**

The Committee on Intercircuit Assignments reported that during the period from January 1, 2006 to June 30, 2006, a total of 63 intercircuit assignments, undertaken by 45 Article III judges, were processed and recommended by the Committee and approved by the Chief Justice. The Committee continued to disseminate information about intercircuit assignments to increase awareness and facilitate the use of visiting judges and regularly aided courts requesting assistance by identifying and obtaining judges willing to take assignments.

## **COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS**

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### **COMMITTEE ACTIVITIES**

The Committee on International Judicial Relations reported on its involvement in rule of law and judicial reform activities throughout the world, highlighting those in Albania, Equatorial Guinea, Indonesia, Korea, the Russian Federation, and Ukraine. The Committee completed its work with the American Bar Association on a U.S. Department of State-funded project on judicial integrity involving Albania, Indonesia, and Kenya.

## **COMMITTEE ON THE JUDICIAL BRANCH**

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### **JUDICIAL SURVIVORS' ANNUITIES SYSTEM**

Tax Treatment of Judges' Contributions. Currently, judges' contributions to the Judicial Survivors' Annuities System (JSAS) are made after federal, state, and local taxes have been deducted from the judges' paychecks. On recommendation of the Committee on the Judicial Branch, the Judicial Conference agreed to seek legislation that would provide for judges' contributions to JSAS to be made using pre-tax instead of after-tax dollars.

Annuity Benefit Levels. In response to indications that some judges would be willing to pay, out-of-pocket, for a higher level of JSAS benefits, the Committee recommended that the Conference seek legislation to allow judges to voluntarily increase their contributions to JSAS in order to increase their survivors' annuities. The Conference adopted the Committee's recommendation.

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### **TRAVEL REGULATIONS FOR UNITED STATES JUSTICES AND JUDGES**

Evacuation, Safe Haven, and Other Special Allowances. The Judicial Conference approved an amendment to the Travel Regulations for United States Justices and Judges, recommended by the Committee, to establish a permanent policy on the payment of evacuation, safe haven, or other special allowances to judges in the event of a disaster. Such a policy will enable courts to promptly establish alternate work locations and resume normal court operations as early as possible in the wake of a disaster.

Judges with Special Needs. The judges' travel regulations currently allow the Director of the Administrative Office to authorize reimbursement for travel and subsistence expenses for a family member or travel attendant to accompany a judge with special needs, but not for the expense of personal care services that may be provided by such an attendant. Noting that executive branch travel regulations were recently amended to permit reimbursement for the latter expenses, and that such reimbursement is both necessary and appropriate, the Committee recommended, and the Conference approved, an amendment to the judges' travel regulations to authorize payment for the services of an attendant traveling with a judge to accommodate the judge's special needs.

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### **JUDGES' ATTENDANCE AT PRIVATELY FUNDED EDUCATIONAL PROGRAMS**

The Judicial Branch Committee recommended and, after discussion, the Judicial Conference slightly modified and then approved a policy intended to ensure greater transparency and accountability with regard to judges' attendance at privately funded educational programs. The policy requires non-government educational program providers (other than state and local bar associations, subject-matter bar associations, judicial associations, the Judicial Division of the American Bar Association, and the National Judicial College) that wish to pay or reimburse expenses incurred by federal judges in connection with attendance at programs whose significant purpose is the education of federal or state judges, to disclose certain information about the programs and their sources of funding. Providers are subject to the disclosure requirements if they wish to reimburse or pay judges' expenses above the threshold amount at which judges must report reimbursements on their annual financial disclosure reports (currently \$305). Judges may not accept such reimbursements unless they first ascertain that the program providers have made the required disclosures, and they must report their attendance within 30 days of the conclusion of the program. Both the seminar provider disclosures about programs and the judges' disclosures about attendance at programs will be publicly available on the internet. The policy becomes effective January 1, 2007.

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### **COMMITTEE ACTIVITIES**

The Committee on the Judicial Branch reported that it continues to actively address problems confronting the judiciary, including the inadequacy

of judicial compensation and survivors' benefits. The Committee is also taking steps to enhance communications between the judiciary and Congress and the media. These activities, combined with the Committee's development of a policy that addresses the issue of judges' attendance at privately funded educational programs, are intended to further the broader objective of maintaining and improving judicial independence.

## **COMMITTEE ON JUDICIAL RESOURCES**

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### **STAFFING FORMULAS**

At the request of the Committee on Judicial Resources, the Administrative Office conducted a review of the district and bankruptcy clerks' offices staffing formulas adopted in September 2004 (JCUS-SEP 04, pp. 20-21), to assess the impact of the CM/ECF system and other innovations that may have led to efficiencies and increased effectiveness in the judiciary, and to address concerns raised by the Administrative Office's District Clerks Advisory Group with regard to the district clerk's office staffing formula. Based on that review, the Committee recommended, and the Conference approved, new staffing formulas for district and bankruptcy clerks' offices, to be implemented in fiscal year 2007. The district clerk's office formula will be revisited in two years and the bankruptcy clerk's office formula will be reassessed on a somewhat shorter cycle to take into account changes in bankruptcy clerk's office procedures resulting from passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

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### **COURT-SIZING FORMULAS**

Court-sizing formulas are used to determine the appropriate grades and salaries of court unit executives, including district and bankruptcy clerks of court, and by extension, chief deputy clerks. The court-sizing formulas for district and bankruptcy clerks take into account the numbers of court unit employees based on 100 percent of the relevant staffing formulas, as well as the number of authorized judgeships. Since the new staffing formula for bankruptcy clerks' offices will result in a decrease in staffing allocations for some courts, the Committee recommended that the Conference approve technical adjustments to the court-sizing formula for bankruptcy clerks of court, so that their grades are not adversely affected solely by virtue of implementation of the new staffing formula. As in the past, adjustments to court unit executive grades will continue to follow increases and decreases in

workload. The Committee also recommended that the Conference delegate to the Committee on Judicial Resources the authority to make such technical adjustments to any court-sizing formulas in the future, as needed, when the respective staffing formulas are revised. The Conference adopted the Committee's recommendations.

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## **COMPENSATION COST-CONTAINMENT INITIATIVES**

In 2004, the Executive Committee asked the Committee on Judicial Resources to consider cost-containment initiatives that could be implemented in fiscal year 2005 and beyond. Among the short-term actions taken to contain compensation costs was the elimination of funding for the longevity bonus program<sup>1</sup> and for new positions for the swing pool secretarial program<sup>2</sup> for fiscal years 2005 and 2006. At this session, the Judicial Conference approved the Committee's recommendations to continue the suspension of the longevity bonus program pending completion of a court compensation study currently underway, and to eliminate permanently centralized funding of new and/or replacement positions for the swing pool secretary program, for all court units.

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## **TEMPORARY EMERGENCY FUND**

The Temporary Emergency Fund (TEF) provides money to circuit judicial councils for temporary staffing emergencies in chambers. The funds may also be reprogrammed for use in tenant alterations. The funds have been distributed to the circuits each year based on the number of authorized judgeships in each circuit, with 5 percent held in reserve and managed by the Administrative Office. In response to concerns that TEF funding levels have been declining in recent years and are not sufficient to address the need for emergency personnel in some courts, the Committee recommended that the

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<sup>1</sup>Under the longevity bonus program, employees who are at the top step of a salary range are eligible for a 1 percent cash bonus on an annual basis if certain criteria are met.

<sup>2</sup>The swing pool secretary program was established to provide secretarial assistance to judges for short periods of time when hiring a temporary replacement for principal secretarial staff would not be feasible.

Conference approve the allocation of all TEF funding to the circuit judicial councils without maintaining a 5 percent reserve. The Committee further recommended that the Conference stress the importance of using these funds for staff, rather than alterations. The Conference adopted the Committee's recommendations.

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## **LAW CLERK QUALIFICATIONS**

In recent years, the Judicial Conference expanded the qualification standards for "elbow" law clerks to allow experience as a pro se law clerk or as a staff attorney to be considered as equivalent to elbow law clerk experience for purposes of establishing the grade level for elbow law clerks (JCUS-SEP 03, p. 28; JCUS-MAR 04, p. 20). Since there appears to be no reason to distinguish bankruptcy appellate panel law clerk experience for these purposes, at this session the Committee recommended that the Conference approve an expansion of the qualification standards for elbow law clerks to consider bankruptcy appellate panel law clerk experience as creditable for purposes of establishing grade eligibility. The Conference adopted the Committee's recommendation.

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## **ALTERNATIVE DISPUTE RESOLUTION**

In March 1998, the Judicial Conference approved "basic" and "robust" staffing factors for clerk's office positions performing duties related to alternative dispute resolution (ADR) (JCUS-MAR 98, pp. 20-21). The basic staffing factor was intended to apply to most district courts' ADR programs, while the robust factor was intended for a limited number of courts with extensive ADR programs. Based on the number of cases participating in the ADR programs in the Central District of California and the Middle District of Pennsylvania, and on the number of hours spent processing these cases, the Committee recommended that the Conference approve the requests of those districts for application of the robust staffing factor for clerk's office positions with duties related to ADR. The Conference approved the Committee's recommendations.



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## **COURT INTERPRETERS**

Based on established criteria, the Committee on Judicial Resources recommended, and the Judicial Conference approved, one additional Spanish staff court interpreter position for fiscal year 2008 for the Western District of Texas, and accelerated funding for that position in fiscal year 2007. On the Committee's recommendation, the Conference declined to approve two additional Spanish staff court interpreter positions for the District of New Mexico.

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## **FAIR EMPLOYMENT PRACTICES**

On recommendation of the Committee, the Judicial Conference approved changing the date for submission of *The Judiciary Fair Employment Practices Annual Report* from the March to the September session of the Judicial Conference by amending the last sentence of the Conference's resolution on equal employment opportunity (*see* JCUS-MAR 80, p. 5). This will allow the Administrative Office sufficient time to complete the complex, multi-step process required to produce the detailed report.

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## **COMMITTEE ACTIVITIES**

The Committee on Judicial Resources reported that it endorsed a vision and goals, which will serve as the basis for future funding requests and action planning for the judiciary's human resources program. The Committee also endorsed the establishment by the Administrative Office of a group, with representatives from all court unit types, to study the "core modeling" methodology for use in work measurement and to prepare a report to be presented to the Committee at its December 2006 meeting.

## **COMMITTEE ON JUDICIAL SECURITY**

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### **COMMITTEE ACTIVITIES**

The Committee on Judicial Security reported that it continued its discussion on court security officer (CSO) staffing, which was aided by the feedback provided at the first meeting of an advisory group of U.S. Marshals

Service staff. It also discussed preliminary steps to transfer responsibility for establishing the CSO hearing standards from the judiciary to the Marshals Service. In addition, the Committee discussed the successful implementation of the Home Intrusion Detection Systems Program.

## **COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM**

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### **SELECTION AND APPOINTMENT OF MAGISTRATE JUDGES**

Senior Judge Participation. Pursuant to 28 U.S.C. § 631(a) and the Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Appointment and Reappointment of United States Magistrate Judges, magistrate judges are currently selected by majority vote of the active district judges of a court from a list provided by a merit selection panel. An amendment to the Senate's version of the proposed Comprehensive Immigration Reform Act of 2006 (S. 2611, 109<sup>th</sup> Cong.) would specifically confer on senior judges the right to vote on the appointment of magistrate judges in their districts. Noting that the current method of appointment is effective, the Committee on the Administration of the Magistrate Judges System recommended that the Conference oppose the amendment. The Conference adopted the Committee's recommendation.

Electronic Publication of Notices. In light of the ready availability and low cost of electronic publication of notices, the Committee recommended, and the Judicial Conference approved, amendments to Sections 2.01 and 6.03(a) of the Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Appointment and Reappointment of United States Magistrate Judges to require wide circulation of magistrate judge position vacancy announcements and notices of consideration of reappointments, and to make publication of such notices through print advertisements in local newspapers and legal periodicals optional rather than required. Similar revisions were made to the selection and appointment regulations for bankruptcy judges in March 2006 and at this Conference session (*see* JCUS-MAR 06, pp. 9-10 and "Selection and Appointment Regulations," *supra*, p. 8).

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## **CHANGES IN MAGISTRATE JUDGE POSITIONS**

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

### **SECOND CIRCUIT**

Eastern District of New York

Redesignated one of the magistrate judge positions currently designated as Central Islip as Brooklyn or Central Islip.

### **THIRD CIRCUIT**

District of Delaware

1. Authorized an additional full-time magistrate judge position at Wilmington.
2. Made no other change in the location or arrangements of the existing magistrate judge position in the district.

### **FOURTH CIRCUIT**

Northern District of West Virginia

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

### **FIFTH CIRCUIT**

Middle District of Louisiana

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

Eastern District of Texas

1. Authorized an additional full-time magistrate judge position for the district, to be located at Marshall.
2. Made no other change in the number, locations, or arrangements of the magistrate judge positions in the district.

**NINTH CIRCUIT**

District of Alaska

Authorized filling the vacant magistrate judge position at Anchorage with the understanding that the upcoming vacancy created by the retirement of the current full-time magistrate judge at that location in November 2007 will not be filled.

District of Idaho

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

District of Oregon

1. Increased the salary of the part-time magistrate judge position at Pendleton from Level 6 (\$12,755 per annum) to Level 5 (\$25,512 per annum).
2. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

**ELEVENTH CIRCUIT**

Northern District of Alabama

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

Northern District of Georgia

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

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## **ACCELERATED FUNDING**

On recommendation of the Committee, the Conference agreed to designate the new full-time magistrate judge positions at Wilmington, Delaware and Marshall, Texas for accelerated funding in fiscal year 2007.

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## **COMMITTEE ACTIVITIES**

The Committee on the Administration of the Magistrate Judges System reported that pursuant to Judicial Conference policy regarding the review of magistrate judge position vacancies (JCUS-SEP 04, p. 26), the Committee determined that vacancies in four district courts should be filled. The Committee approved an initiative to automate the list of retired magistrate judges who are willing and available to serve on recall and to post the list on the J-Net so that it can be viewed by chief judges and other court personnel seeking the services of a recalled magistrate judge. The Committee considered statistics on the gender and ethnic diversity of magistrate judges and agreed that the chair will send a letter to each court that receives approval to fill a magistrate judge position vacancy to urge the court to consider the importance of diversity in the magistrate judge appointment process.

## **COMMITTEE ON RULES OF PRACTICE AND PROCEDURE**

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### **RULES IMPLEMENTING THE E-GOVERNMENT ACT**

To implement the E-Government Act of 2002 (Pub. L. No. 107-347), the Committee on Rules of Practice and Procedure submitted to the Judicial Conference a proposed amendment to Appellate Rule 25 (Filing and Service), and proposed new Bankruptcy Rule 9037 (Privacy Protection for Filings Made with the Court), Civil Rule 5.2 (Privacy Protection for Filings Made with the Court), and Criminal Rule 49.1 (Privacy Protection for Filings Made with the Court), together with Committee Notes explaining their purpose and intent. The Act requires the Supreme Court to prescribe rules “to protect privacy and security concerns relating to electronic filing of documents and the public availability . . . of documents filed electronically.” The proposed amendment and new rules are based on Judicial Conference policy regarding the redaction of certain personal information from court filings (JCUS-SEP/OCT 01, pp. 48-50; JCUS-SEP 03, pp. 15-16). The Judicial Conference

approved the amendment and new rules and authorized their transmittal to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

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## **FEDERAL RULES OF APPELLATE PROCEDURE**

*See supra* “Rules Implementing the E-Government Act,” pp. 32-33, regarding a proposed amendment to Appellate Rule 25 (Filing and Service).

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## **FEDERAL RULES OF BANKRUPTCY PROCEDURE**

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Bankruptcy Rules 1014 (Dismissal and Change of Venue), 3007 (Objections to Claims), 4001 (Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements), 6006 (Assumption, Rejection or Assignment of an Executory Contract or Unexpired Lease), and 7007.1 (Corporate Ownership Statement), and proposed new Bankruptcy Rules 6003 (Interim and Final Relief Immediately Following the Commencement of the Case — Applications for Employment; Motions for Use, Sale, or Lease of Property; and Motions for Assumption or Assignment of Executory Contracts), and 9005.1 (Constitutional Challenge to a Statute — Notice, Certification, and Intervention), together with Committee Notes explaining their purpose and intent. The Judicial Conference approved the rules amendments and new rules and authorized their transmittal to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law. *See also supra* “Rules Implementing the E-Government Act,” pp. 32-33, regarding a proposed new Bankruptcy Rule 9037 (Privacy Protection for Filings Made with the Court).

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## **IMPLEMENTATION OF THE BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005**

Following passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the Act), the Executive Committee, acting on behalf of the Judicial Conference, authorized distribution to the courts of proposed interim bankruptcy rules that could be adopted in individual districts by local

rule or general order to facilitate uniform practice under the Act, pending amendment of the Federal Rules of Bankruptcy Procedure (JCUS-SEP 05, p. 5). At this session, the Committee on Rules of Practice and Procedure proposed an amendment to Interim Bankruptcy Rule 1007 with a recommendation that it be distributed to the courts and adopted by standing order or local rule to take effect on October 1, 2006. The proposed amendment addresses problems arising from the debtor's obligation to file a certificate showing completion of a credit counseling course prior to commencing a bankruptcy case, by providing debtors a 15-day grace period within which to file the certificate. The Committee also submitted proposed revisions to Official Forms 1, 5, 6, 9, 22A, 22C, and 23, and new Exhibit D to Official Form 1, which include revisions implementing the proposed amendment to Interim Rule 1007 and new statistical reporting requirements mandated by the Act. The Judicial Conference approved distributing to the courts the amendment to Interim Rule 1007 and approved the revisions to the Official Forms. The effective date of the revised Official Forms is October 1, 2006.

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## **FEDERAL RULES OF CIVIL PROCEDURE**

The Committee on Rules of Practice and Procedure submitted to the Conference a proposed comprehensive style revision of Civil Rules 1-86 and the Illustrative Forms contained in the Appendix of Forms of the Federal Rules of Civil Procedure, to clarify and simplify them without changing their substantive meaning. Similar revisions have already been made to the Federal Rules of Appellate Procedure (JCUS-SEP 97, p. 82) and the Federal Rules of Criminal Procedure (JCUS-SEP/OCT 01, p. 70). The Committee also proposed minor substantive amendments to proposed restyled Civil Rules 4 (Summons), 9 (Pleading Special Matters), 11 (Signing of Pleadings, Motions, and Other Papers; Representations to Court; Sanctions), 14 (Third-Party Practice), 16 (Pretrial Conferences; Scheduling; Management), 26 (General Provisions Governing Discovery; Duty of Disclosure), 30 (Depositions Upon Oral Examination), 31 (Depositions Upon Written Questions), 40 (Assignment of Cases for Trial), 71.1 (Condemning Real or Personal Property), and 78 (Motion Day). Finally, the Committee proposed style changes to pending amendments (scheduled to take effect in December 2006) to Civil Rules 5.1 (Constitutional Challenge to a Statute — Notice, Certification, and Intervention), 33 (Interrogatories to Parties), 34 (Production of Documents, Electronically Stored Information, and Things and Entry Upon Land for Inspection and Other Purposes), 37 (Failure to Make Disclosure or Cooperate in Discovery; Sanctions), 45 (Subpoena), and 50 (Judgment as a

Matter of Law in Jury Trials; Alternative Motion for New Trial; Conditional Rulings) and to proposed new Civil Rule 5.2 (Privacy Protection for Filings Made with the Court) (*see supra* “Rules Implementing the E-Government Act,” pp. 32-33). The Judicial Conference approved the amendments and authorized their transmittal to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

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## **FEDERAL RULES OF CRIMINAL PROCEDURE**

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Criminal Rules 11 (Pleas), 32 (Sentencing and Judgment), 35 (Correcting or Reducing a Sentence), and 45 (Computing and Extending Time), together with Committee Notes explaining their purpose and intent, and a recommendation to abrogate the form entitled, “Model Form for Use in 28 U.S.C. § 2254 Cases Involving a Rule 9 Issue” contained in the Appendix of Forms to the Rules Governing Section 2254 Cases in the United States District Courts. The Judicial Conference approved the amendments and the recommendation to abrogate the model form and authorized their transmittal to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law. *See also supra* “Rules Implementing the E-Government Act,” pp. 32-33, regarding a proposed new Criminal Rule 49.1 (Privacy Protection for Filings Made with the Court).

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## **COMMITTEE ACTIVITIES**

The Committee on Rules of Practice and Procedure reported that it approved for publication proposed amendments and additions to the Federal Rules of Bankruptcy Procedure and Official Forms to implement the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. The proposed changes are based substantially on the interim rules, modified as appropriate after considering comments from the bench and bar as a result of the use of the interim rules. The Committee also approved for publication proposed amendments to the Federal Rules of Criminal Procedure and a new Criminal Rule, as well as a proposed new Federal Rule of Evidence. The comment period expires on February 15, 2007.



## COMMITTEE ON SPACE AND FACILITIES

### *U.S. COURTS DESIGN GUIDE*

As part of the judiciary's long-term cost-containment strategy, the Committee on Space and Facilities has been conducting a comprehensive review of the *U.S. Courts Design Guide* to identify revisions that would reduce costs without affecting functionality. Revisions pertaining to court office space and chambers suites, as well as certain technical revisions, have already been adopted (JCUS-SEP 05, pp. 39-40; JCUS-MAR 06, pp. 28-29). In continuation of this effort, the Conference took the following actions with regard to Committee recommendations concerning the *Design Guide*:

- a. Agreed, after discussion, to apply the standards of the new 2007 edition of the *U.S. Courts Design Guide* to the design and construction of new buildings and annexes, all new leases, and repair and alteration projects where new space, including courtrooms and chambers, is planned for an entire court unit;
- b. Agreed, after discussion, to amend the *Design Guide* to state that when designing for new construction, the court must adopt a palette of finishes as the new building standard and apply that standard to all future renovation projects in that courthouse;
- c. Adopted a policy that once a courtroom configuration is agreed upon by a court, that layout will be the standard courtroom configuration for that judge type in that project, and changes to the standard courtroom configuration will be included among the exceptions that must be approved by the Committee on Space and Facilities, or the Judicial Conference, as appropriate;
- d. Adopted a policy that a circuit judicial council must specifically approve any attorney lounge for a district or bankruptcy court;
- e. Endorsed a standard that provides a separate dining area for judges only when a cafeteria is planned for that building;
- f. Agreed to require, with regard to access or raised flooring, that (a) the floor finish facilitate access to the underfloor cabling and wiring without complete removal and replacement of floor covering; and (b) high quality carpet tile, vinyl composition tile (for high traffic or utility spaces such as computer rooms), "quick release" nonadhesive

carpet strips, or “quick release” adhesive broadloom carpet be used as the floor finish or covering;

- g. Declined to approve sample floor plans for appellate, district, bankruptcy, and magistrate judge courtrooms that depict ramps as the preferred method to accommodate persons with disabilities; and
- h. Approved a number of technical revisions to the *Design Guide* pertaining to shared support space, CM/ECF space, mechanical systems, ceiling heights, and lighting.

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## **BUDGET CHECK PROCESS**

A budget check process was adopted by the Judicial Conference in September 2004 as a space cost-control mechanism and is applicable to all prospectus and non-prospectus space actions (JCUS-SEP 04, pp. 35-36). At this session, the Committee recommended, and the Conference adopted, the following with respect to budget checks:

- a. the budget check process is applicable to requests from the General Services Administration (GSA) for input into feasibility studies; and
- b. with regard to chambers space requests for judges taking senior status or for their replacements needed within the next 24 months, the budget check process is streamlined as follows: Circuit judicial councils will conduct a budget analysis jointly with the Administrative Office with review by the Committee on Space and Facilities, prior to transmitting any space request to GSA. Requests for courtrooms associated with these judges will be subject to the regular budget check process.

The Committee also recommended that the projects in Greenville, South Carolina; Harrisburg, Pennsylvania; San Antonio, Texas; San Jose, California; and Anniston, Alabama, which already have authorization from Congress to begin design and are therefore not subject to the budget check process, proceed with the following conditions: they will incorporate all approved revisions to the *U.S. Courts Design Guide*, they will not exceed the amount of square footage authorized by Congress for the judiciary in the projects, including the specific number of courtrooms and chambers, and the rent resulting upon the completion of these projects will be charged against the future annual rent budget caps (*see supra* “Rent Budget Cap,” p. 10). The Conference adopted the Committee’s recommendations.

In addition, the Conference adopted a Committee recommendation to approve exceptions to the budget check process for non-prospectus space projects in Hato Rey, Puerto Rico; Port Huron, Michigan; Jackson, Tennessee; and Las Cruces, New Mexico, on the condition that the projects be funded from the local or circuit council tenant alterations funds and any additional rent that will be accrued because of the alteration will be charged against the circuit councils' future space rental caps.

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## **COMMITTEE ACTIVITIES**

The Committee on Space and Facilities reported that it is continuing to test the new long-range facilities planning methodology called asset management planning as a cost-containment initiative. Another such initiative, the rent validation project, which involves reviewing space assignments, GSA rent charges, appraisals, and rental rates, will be completed within one year.

## **MEMORIAL RESOLUTIONS**

The Judicial Conference approved the following resolutions noting the deaths of the Honorable Edward R. Becker of the Third Circuit Court of Appeals and the Honorable Howard T. Markey, who had served on the Federal Circuit Court of Appeals:

The Judicial Conference of the United States notes with profound sadness the death of the Honorable Edward R. Becker of the United States Court of Appeals for the Third Circuit, on Friday, May 19, 2006, in Philadelphia, Pennsylvania. Judge Becker's very distinguished career on the federal bench spanned nearly 36 years, beginning in 1970 with an appointment, at age 37, to the United States District Court for the Eastern District of Pennsylvania. He became an appellate judge in 1982 and served as chief judge of his circuit and, therefore, a member of this body from 1998 to 2003. As a senior judge, he continued to perform valuable service until shortly before his death.

During his lengthy tenure, Judge Becker made significant and enduring contributions to federal judicial administration, both in his own circuit and at the national level.

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In 1979, he was appointed by Chief Justice Warren Burger to what is now known as the Judicial Conference Committee on Criminal Law, where he served for 11 years, including 3 years as committee chair. Recognizing his keen analytical abilities, broad knowledge of the judicial process and judiciary programs, and remarkable work ethic, Chief Justice William Rehnquist called upon Judge Becker in 1990 to serve for nearly five and a half years on the Committee on Long Range Planning, where he played a leading role in producing the judiciary's first comprehensive long-range plan. At approximately the same time he served a four-year term on the Board of the Federal Judicial Center, which benefitted from his renowned pragmatism and efficiency as well as many years of judging experience. Soon after he became a Conference member, Chief Justice Rehnquist asked him to serve on the Executive Committee, a forum in which his customary energy and creativity were brought to bear on the problems of the judiciary as a whole.

While devoting considerable time to administrative matters, Judge Becker was also a towering legal scholar, responsible for many influential rulings that often anticipated changes in the law later adopted by the Supreme Court. In recognition of his numerous contributions to the law and the administration of justice, the American Judicature Society bestowed upon him the 20th annual Edward J. Devitt Distinguished Service to Justice Award in 2002.

A man of high principle and unquestioned integrity, Judge Becker was admired not only for his superior intellect and powerful decisions, but also his great courage, ceaseless determination, personal humility, and respect for all persons no matter their station in life. He earned the esteem and affection of everyone with whom he worked, was widely revered as a leader, counselor, and friend, and was well-known for a musical talent that he loved to share. The nation has lost one of its finest jurists, and we have lost a dear colleague with whom it was an occasional privilege to "charge up San Juan Hill." We will long remember Edward Becker and honor his plentiful achievements.

As a sign of their affection and respect, the members of the Judicial Conference convey their deepest sympathies to Judge Becker's widow, Flora, and to his other family members.

\* \* \*

With profound sadness, the Judicial Conference of the United States notes the death of the Honorable Howard T. Markey, Chief Judge of the United States Court of Customs and Patent Appeals from 1972 to 1982, and then Chief Judge of the United States Court of Appeals for the Federal Circuit from its inception (in 1982) until 1990. He served with great distinction and the widespread acclaim of judges from throughout the judiciary until his retirement to academia in 1991.

Chief Judge Markey was a giant of the federal judiciary; while he was ably leading both courts, he was also shaping the course of judicial administration of the entire Third Branch. By the end of his tenure, he was the senior member of the Judicial Conference, having served from 1972 to 1990. For many years, he chaired the committee now called the Committee on Codes of Conduct. In this capacity, he wrote many of the leading opinions construing and applying in particular cases the ethical canons applicable to federal judicial officers. He also served on the Executive Committee and the Committee on Court Administration, and he chaired the Committee on the Bicentennial of the Constitution and the Ad Hoc Committee on the International Appellate Judges Conference of 1989/90.

Although the chief judge of a busy court with numerous areas of jurisdiction, he nevertheless sat repeatedly with all other courts of appeals around the country. He is believed to be the only judge to have sat with every regional circuit. In addition, he carried a full caseload with his court, sitting more often than any other active judge on the Federal Circuit.

Chief Judge Markey led his two courts with extraordinary energy and efficiency, frequently returning a portion of the annual appropriation by the Congress to the U.S. Treasury. He led a lean court in which each judge had only

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two law clerks. He lived out the motto posted in his chambers which read, “The best possible decision, in the shortest possible time, at the least possible cost.”

Throughout his Judicial Conference, Conference committee, and court service, Chief Judge Markey was a forceful and renowned judicial leader, who rightly earned the respect of fellow judges, lawyers, and other persons with whom he dealt. A larger-than-life personality, he is well remembered by many for his endless store of jokes, fascinating anecdotes and instructive stories, as well as for his Irish wit and charm. He inspired his colleagues, and many others. In 1998, in recognition of his many judicial achievements, the National Courts Building was renamed by Act of Congress the “Howard T. Markey National Courts Building.” America has lost an extraordinary patriot, jurist, and judicial leader. Many have lost a good friend.

As a sign of their admiration, affection and deep respect the members of the Judicial Conference wish to convey their heartfelt sympathies to Chief Judge Markey’s surviving family, especially his sister, Catherine; sons, Jeffrey and Christopher; and daughter, Jennifer.

## **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

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