

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

March 15, 2022

The Judicial Conference of the United States convened on March 15, 2022, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Jeffrey R. Howard
Judge Aida M. Delgado-Colón,
District of Puerto Rico

Second Circuit:

Chief Judge Debra Ann Livingston
Chief Judge Stefan R. Underhill,
District of Connecticut

Third Circuit:

Chief Judge Michael A. Chagares
Chief Judge Freda L. Wolfson,
District of New Jersey

Fourth Circuit:

Chief Judge Roger L. Gregory
Judge John Bailey,
Northern District of West Virginia

Fifth Circuit:

Chief Judge Priscilla Richman
Chief Judge S. Maurice Hicks, Jr.,
Western District of Louisiana

Sixth Circuit:

Chief Judge Jeffrey S. Sutton
Judge Sara Lioi,
Northern District of Ohio

Seventh Circuit:

Chief Judge Diane S. Sykes
Chief Judge Jon DeGuilio,
Northern District of Indiana

Eighth Circuit:

Chief Judge Lavenski R. Smith
Chief Judge John R. Tunheim,
District of Minnesota

Ninth Circuit:

Chief Judge Mary H. Murguia
Judge Leslie E. Kobayashi,
District of Hawaii

Tenth Circuit:

Chief Judge Timothy M. Tymkovich
Judge Claire V. Eagan,
Northern District of Oklahoma

Eleventh Circuit:

Chief Judge William H. Pryor, Jr.
Chief Judge Scott Coogler,
Northern District of Alabama

District of Columbia Circuit:

Chief Judge Srikanth Srinivasan
Chief Judge Beryl A. Howell,
District of Columbia

Federal Circuit:

Chief Judge Kimberly A. Moore

Court of International Trade:

Chief Judge Mark A. Barnett

Also participating in this session of the Conference via teleconference were the following Judicial Conference committee chairs: Circuit Judges Jennifer Walker Elrod, D. Michael Fisher, Michael Y. Scudder, Richard J. Sullivan; District Judges Micaela Alvarez, John D. Bates, Sara Darrow, Audrey G. Fleissig, Nicholas G. Garaufis, Jeffrey J. Helmick, Marcia Howard, Kevin Michael Moore, Randolph D. Moss, Patrick J. Schiltz, Rodney W. Sippel, Sidney H. Stein; and Bankruptcy Judge Dennis Dow. Circuit Judge Amy J. St. Eve, chair of the Committee on the Budget, attended the session in person. Attending as the bankruptcy judge and magistrate judge observers, respectively, were Bankruptcy Judge Margaret M. Mann and Magistrate Judge Patricia D. Barksdale. Lorie Robinson of the Fifth Circuit represented the circuit executives.

Participating from the Administrative Office of the United States Courts were Judge Roslynn R. Mauskopf, Director; Lee Ann Bennett, Deputy Director; William S. Meyers, Acting General Counsel; Katherine H. Simon, Secretariat Officer, and WonKee Moon, Supervisory Attorney Advisor, Judicial Conference Secretariat; David T. Best, Legislative Affairs Officer; and David A. Sellers, Public Affairs Officer. John S. Cooke, Director, Federal Judicial Center, as well as Judge Charles R. Breyer, Acting Chair, and Kenneth P. Cohen, Staff Director, United States Sentencing Commission, also participated, as did Jeffrey P. Minear, Counselor to the Chief Justice, and Ethan V. Torrey, Supreme Court Legal Counsel.

Via teleconference, Attorney General Merrick B. Garland addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice. Senators Patrick Leahy, Dick Durbin, and Sheldon Whitehouse and Representatives Darrell Issa, Hank Johnson, Jim Jordan, and Steve Womack spoke on matters pending in Congress of interest to the Conference.

REPORTS

Judge Mauskopf reported to the Judicial Conference on the judicial business of the courts and on matters relating to the Administrative Office. Mr. Cooke spoke to the Conference about Federal Judicial Center programs, and Judge Breyer reported on United States Sentencing Commission activities. Judge St. Eve presented a special report on budgetary matters.

ELECTION

The Judicial Conference elected to the Board of the Federal Judicial Center for a term of four years, Judge Ransey Guy Cole, Jr., United States Court of Appeals for the Sixth Circuit, to succeed Judge Duane Benton, United States Court of Appeals for the Eighth Circuit.

EXECUTIVE COMMITTEE

JUDICIARY ACCOUNTABILITY ACT OF 2021

The “Judiciary Accountability Act of 2021” (JAA), introduced in the U.S. House of Representatives as H.R. 4827 and the U.S. Senate as S. 2553 in July 2021, would significantly change how the judicial branch handles workplace misconduct. The legislation would extend to all judiciary employees the protections and remedies of certain employment discrimination laws applicable to executive and legislative branch employees (see Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2; Age Discrimination in Employment Act of 1967, 29 U.S.C. § 633a; section 501 of the Rehabilitation Act of 1973, 29 U.S.C. § 791; and sections 102 through 104 of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12112-12114), and would protect whistleblowers in the federal judiciary from retaliation. The JAA would establish within the judiciary a Commission on Judicial Integrity and associated offices, including an Office of Judicial Integrity and an Office of Special Counsel for Equal Employment Opportunity, composed in part of individuals selected by or in consultation with the executive and legislative branches, and expressly excluding current and former judicial branch officers and employees from certain positions in the JAA structure. The Commission and associated offices would implement and oversee a judiciary workplace misconduct prevention program, including a nationwide system for confidential reporting and investigating workplace misconduct (including subpoena power). The JAA would also impose congressional reporting requirements. Further, the bill would make significant changes to the judicial conduct and disability

process, including specifying that resignation, retirement, or death of a judge shall not be grounds for dismissal of a complaint or conclusion that a complaint is no longer necessary, and establishing membership requirements for special committees and judicial councils involved in judicial conduct and disability proceedings.

Previously, the Executive Committee acted on behalf of the Judicial Conference on an expedited basis to oppose the JAA, and referred the bill to the Committees on Judicial Resources, Audits and Administrative Office Accountability, Codes of Conduct, Defender Services, the Judicial Branch, and Judicial Conduct and Disability for further study (JCUS-SEP 2021, p. 6). They provided their views on the bill to the Executive Committee.

On recommendation of the Committees on Judicial Resources, Codes of Conduct, the Judicial Branch, and Judicial Conduct and Disability (as indicated below), the Executive Committee, acting on behalf of the Judicial Conference on an expedited basis, determined to oppose the Judiciary Accountability Act of 2021 or any similar legislation to the extent that it:

- a) Replaces the judiciary's current decentralized structure for addressing workplace conduct issues with a centralized one that would be less effective; (*Committee on Judicial Resources*)
- b) Removes avenues for reporting misconduct, possibly discouraging the reporting of misconduct; (*Committee on Judicial Resources*)
- c) Imposes extensive public reporting requirements that could compromise confidentiality; (*Committee on Judicial Resources*)
- d) Establishes a broader scope of workplace protections for the judiciary than those applicable to other branches of government; (*Committee on Judicial Resources*)
- e) Requires that any entity, other than the Committee on Codes of Conduct, recommend revisions to the Codes of Conduct for Judges, Judicial Employees, and Federal Public Defender Employees directly to the Judicial Conference because it creates a structure that unnecessarily duplicates the work of the Committee; (*Committee on Codes of Conduct*)
- f) Permits any entity, other than the Committee on Codes of Conduct, to provide confidential ethics advice to judges or employees because it

infringes on the Committee’s authority and may create confusion within the judiciary; *(Committee on Codes of Conduct)*

- g) Authorizes any entity to issue subpoenas without an exception for the Committee on Codes of Conduct’s advice because it imposes an intrusive requirement that would interfere with existing policies and procedures regarding the confidentiality of ethics advice and may undermine the role of the Committee by discouraging judges and employees from seeking guidance; *(Committee on Codes of Conduct)*
- h) Infringes on judicial branch self-governance and undermines the integrity of the branch by replacing the judicial branch personnel at the local, circuit-wide, and national levels, with individuals who are employed by a “judiciary” entity that is centralized at the national level and does not operate under the supervision or direction of a circuit council, the Judicial Conference, or the Administrative Office Director; *(Committee on the Judicial Branch)*
- i) In a manner similar to an Inspector General, it could threaten the independence of judicial decision making, implicate judicial autonomy, and impair the administration of justice, by inserting Congress and the executive branch within internal judiciary governance, in the form of a Commission with vast reporting and investigative authorities, including subpoena powers, appointed by and in continual communication with the political branches, creating a risk that it could be used by the political branches or others to influence, intimidate, harass, or punish judges or could target its investigative resources at judges based on their decisions, perceived political affiliations, or the party of their appointing president; *(Committee on the Judicial Branch)*
- j) Essentially codifies—and to some extent duplicates—existing procedures under the Judicial Conduct and Disability Act and Rules, which may limit the judiciary’s flexibility to amend its procedures to account for changing circumstances or future developments; *(Committee on Judicial Conduct and Disability)*
- k) Would centralize the reporting and processing of workplace misconduct claims (including claims that could potentially lead to judicial conduct and disability proceedings), contrary to best practices, which emphasize the importance of multiple advice and reporting options; *(Committee on Judicial Conduct and Disability)*

- l) Threatens to undermine the delicately crafted incentive structure Congress established in the Judicial Conduct and Disability Act that encourages judicial resignation in appropriate circumstances; *(Committee on Judicial Conduct and Disability)*
- m) Substantially alters the Judicial Conduct and Disability process so that it would no longer adequately reflect judicial self-regulation and independence, and unnecessarily inserts the executive and legislative branches into the realm of judicial discipline; and *(Committee on Judicial Conduct and Disability)*
- n) Threatens the confidentiality of judicial conduct and disability proceedings, which could impact decisional independence and be a deterrent to reporting. *(Committee on Judicial Conduct and Disability)*

FIVE-YEAR COMMITTEE REVIEW

Under long-standing policy, each Judicial Conference committee is required, at five-year intervals, to reexamine its mission, functions, and structure, and to make a recommendation to the Executive Committee on whether or not it should continue to exist (JCUS-SEP 1987, p. 60). Pursuant to this mandate, each committee completed a self-evaluation questionnaire and submitted it to the Executive Committee for consideration at its February 2022 meeting. The Executive Committee made no changes to the committee structure itself but agreed to amend the jurisdictional statements of the following committees, either at the committee's request or after consultation with that committee, to better reflect each committee's responsibilities: Bankruptcy, Budget, Defender Services, Judicial Resources, Rules of Practice and Procedure, and the Rules Advisory Committees. Also, the Executive Committee determined not to recommend any changes to committee composition at this time.

MISCELLANEOUS ACTIONS

The Executive Committee—

- Approved further adjustments to the fiscal year (FY) 2022 budget request to include a portion of additional security and infrastructure requirements identified in 2021 and thus far unfunded by Congress and to reflect a

subsequent action of the Judicial Conference with regard to the court security account and technical adjustments.

- Approved an amendment to the FY 2023 budget request to include additional funding related to IT infrastructure and for courthouse hardening.
- Agreed with the determination of the Judicial Branch Committee that inflationary adjustments to judges' maximum daily travel subsistence allowance and maximum reimbursement for the actual cost of meals should be allowed to go into effect (see *Guide to Judiciary Policy*, Vol. 19, Ch. 2, §§ 250.20.20(b)(1) and 250.20.30).

COMMITTEE ON AUDITS AND ADMINISTRATIVE OFFICE ACCOUNTABILITY

COMMITTEE ACTIVITIES

The Committee on Audits and Administrative Office (AO) Accountability reported that it was updated on the status and results of various audits and engagements, including cyclical financial audits of court units and federal public defender organizations. As a continued response to the pandemic, all audits executed during 2021 were conducted remotely. The Committee was briefed on the AO's progress in addressing improvements in various aspects of AO contract management. The Committee responded to the request of the judiciary's planning coordinator to report on potential efficiencies and cost containment measures learned from the COVID-19 pandemic and the judiciary's continued reliance of technology to enable and potentially improve access to justice, post pandemic. The Committee discussion focused on the challenges of supporting accountability functions in a remote environment (i.e., property management) and how increased IT needs have impacted work, including the need for a more hybrid environment.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

REGULATIONS FOR FIVE-YEAR RECALL OF RETIRED BANKRUPTCY JUDGES

The Bankruptcy Administration Improvement Act of 2020 (BAIA), Pub. L. No. 116-325 (Jan. 12, 2021), amended 28 U.S.C. § 375, a statute that authorizes the

five-year recall of retired bankruptcy and magistrate judges, requiring the Judicial Conference to promulgate regulations to implement the provision. On recommendation of the Committee on the Administration of the Bankruptcy System, the Conference approved draft regulations for five-year recall terms for retired bankruptcy judges under 28 U.S.C. § 375, *Five-Year Recall of Retired Bankruptcy Judges*, *Guide to Judiciary Policy*, Volume 3, Chapter 16, and delegated to the Bankruptcy Committee authority to make non-substantive, technical, and conforming changes to the regulations as needed.

The final regulations include provisions that discourage courts from requesting five-year recalls of retired bankruptcy judges receiving less than full-salary annuities (or annuities not within five percent of the salary of the office at the time the recall is requested), in order to contain potential costs and to prevent individual judges from receiving “windfalls” in additional wages and recomputed annuities; require circuit judicial councils to develop standards for determining what constitutes substantial service; require circuit judicial councils to certify initially and annually thereafter that the recalled bankruptcy judge is performing substantial service; and require the approval of the Committee for funding of all requests for five-year recalls, a more stringent requirement than the existing ad hoc and extended service recall regulations that require Committee approval only for recalls that involve staff or are expected to cost more than \$10,000 per year.

COMMITTEE ACTIVITIES

The Bankruptcy Committee reported that it continues to consider whether to identify additional courts to participate in the bankruptcy judgeship vacancy pilot, approved by the Judicial Conference in September 2014 (JCUS-SEP 2014, p. 7), but decided again to defer the matter until bankruptcy filings increase. The Committee received an update on the potential impact of projected bankruptcy filing increases during and after recovery from the COVID-19 pandemic and discussed how to employ existing bankruptcy judicial and technological resources more efficiently. Finally, the Committee continues to pursue initiatives related to diversity and the bankruptcy bench and bar through outreach to and education of law students and attorneys. The Committee is partnering with the Committee on the Administration of the Magistrate Judges System to host a second national diversity event, “Roadways to the Bench: Who Me? A Bankruptcy or Magistrate Judge?”

COMMITTEE ON THE BUDGET

COMMITTEE ACTIVITIES

The Committee on the Budget reported that it discussed the judiciary’s overall budget outlook, the continued importance of congressional outreach, the ongoing impact of the COVID-19 pandemic on the judiciary’s budget, judicial security initiatives, and the need for the judiciary to continue to evaluate ways to operate more efficiently without negatively affecting its mission. Additionally, the Budget Committee provided suggestions on the judiciary’s strategic planning process to the Executive Committee and approved adjustments to national average salaries as recommended by the Budget Advisory Council for use beginning in the fiscal year (FY) 2023 financial plan and FY 2023 budget re-estimates to Congress.

COMMITTEE ON CODES OF CONDUCT

CODE OF CONDUCT FOR JUDICIAL EMPLOYEES

On recommendation of the Committee on Codes of Conduct, the Judicial Conference adopted amendments to the Code of Conduct for Judicial Employees and delegated to the Codes Committee the authority to make non-substantive or technical amendments. In Canon 4A, the amendments clarify that military service qualifies as a permissible outside activity, and in Canon 4D, the amendments permit certain legal work by judicial employees in the military reserves (including the national guard), so long as the work does not involve the entry of an appearance in any civilian federal, state, or local court or administrative agency and does not involve a matter of public controversy or an issue likely to come before the judicial employee’s court.

MANDATORY CONFLICT SCREENING POLICY

At the request of the Administrative Office Director, the chair of the Committee on Codes of Conduct formed the Ad Hoc Subcommittee on Conflict Screening, comprised of members of the Committees on Codes of Conduct, Financial Disclosure, and Judicial Conduct and Disability, to review existing policies and guidance related to conflict screening, serve as a clearinghouse for information about ongoing efforts nationwide to address and strengthen conflict screening, and consider potential recommendations for improvement. The Subcommittee reviewed recent media reports raising situations in which judges did not recuse from matters in which

they had a financial conflict of interest and noted that the need to ensure compliance with ethical rules and responsibilities is essential to ensuring public trust. The Subcommittee subsequently developed proposed amendments to the Judicial Conference Mandatory Conflict Screening Policy (JCUS-SEP 2006, p. 11; *Guide to Judiciary Policy*, Vol. 2, Part C, Ch. 4) that included the following:

- A statement that the mandatory conflict screening policy, which requires the use of automated conflict screening, applies to *financial* conflicts of interest, and that courts and judges are also encouraged to use automated conflict screening for other types of conflicts that would require a judge to disqualify from a proceeding;
- A statement of the main responsibilities of the Administrative Office, judges, courts, and circuit councils related to conflict screening;
- A Model Conflict Review Certification Statement that each judge would complete and submit on a semi-annual basis, or more frequently if required by the circuit council, which confirms that the judge reviewed their financial holdings and the financial holdings of a spouse and any minor child residing in the judge's household, and that the judge has prepared or updated their financial recusal list to include all financial conflicts known to the judge; and
- A Model Conflict Screening Implementation Plan that each circuit council would implement, consistent with the mandatory conflict screening policy.

The Committee on Codes of Conduct reviewed and discussed the proposed amended policy and recommended that the Judicial Conference adopt amendments to the Mandatory Conflict Screening Policy and delegate to the Committee the authority to make non-substantive or technical amendments. The Judicial Conference approved the recommendation.

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Judicial Conference in September 2021, the Committee received 15 new written inquiries and issued 13 written advisory responses. During this period, the average response time for requests was 13 days. In addition, the Committee chair responded to 26 informal inquiries, individual Committee members responded to 155, and

Committee counsel responded to 841, for a total of 1,022 responses to informal inquiries.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

PACER FEES

The judiciary provides electronic public access to court documents primarily through the Public Access to Court Electronic Records (PACER) service, which, pursuant to Public Law No. 102-140, is funded by electronic public access (EPA) user fees set by the judiciary. Congress does not appropriate funds for the operation of the PACER service. Except in limited circumstances, PACER users are charged a per page fee for searches, with no fee owed unless a PACER account holder accrues charges of more than \$30.00 in a quarterly billing cycle (JCUS-SEP 2019, p. 9). The Committee on Court Administration and Case Management considered feedback from the Administrative Office's EPA Working Group on the feasibility of the Committee's proposal to make PACER searches free for non-commercial users. Noting that making searches free would require extensive development work to the current PACER system and all operational versions of the Case Management/Electronic Case Files system (currently 17) and impact several aspects of the EPA program, including fee revenue, program requirements, and system performance, the Working Group recommended that the Committee endorse making searches free for non-commercial users in any future modernized systems. After considering this feedback, the Committee on Court Administration and Case Management recommended that the Conference endorse making all searches free of charge for all non-commercial users of any future new modernized case management, electronic filing, and public access systems implemented by the judiciary. The Conference endorsed the proposal.

RECORDS MANAGEMENT

The retention and disposition of judiciary records is controlled by records disposition schedules (RDSs) jointly established by the Judicial Conference and the National Archives and Records Administration (NARA). At this session, the Judicial Conference considered four recommendations of the Committee on Court Administration and Case Management related to these schedules, as set forth below.

Temporary Administrative Records. Instead of the current system which requires courts to retain temporary administrative records (such as personnel actions,

payroll and leave administration, procurement and budget, and information technology) for a period ranging from one to seven years after the occurrence of a triggering event, the Court Administration and Case Management Committee recommended amendments to RDSs 1 and 2 to simplify the schedules by instituting a more uniform retention period. Generally, the amendments require that temporary administrative records be kept for either three or seven years after the applicable triggering event. The Judicial Conference approved the Committee's recommendation and agreed to transmit to NARA for its concurrence amendments to RDSs 1 and 2 to simplify the retention of temporary administrative records.

Audio Recordings of Bankruptcy Proceedings. To add new guidance for digital audio recordings of bankruptcy proceedings and their corresponding digital notes (when applicable), and provide retention guidance for legacy paper logs, databases, indices, or lists used to inventory and locate sound recordings within the court's collection of audio cassette tapes and reel-to-reel tapes, the Committee recommended that the Conference amend RDS 2. The Judicial Conference approved the Committee's recommendation and agreed to transmit to NARA for its concurrence amendments to RDS 2 to update the retention schedule for audio recordings of bankruptcy proceedings.

General Correspondence Files. At its September 2020 session, the Judicial Conference approved the Committee's recommendation that the RDSs be amended to allow general correspondence files to be destroyed "when business use ceases" (JCUS-SEP 2020, pp. 20-21). Subsequently, to accurately describe the records that need to be retained and suit the judiciary's business needs, NARA suggested that the "Transitory Records" Item 5.2.010 from the General Records Schedule be added to the judiciary's RDSs to allow the judiciary to classify general correspondence files as "transitory" and destroy them when they are no longer needed for business use. To effectuate the Judicial Conference's September 2020 position, the Committee recommended that the Judicial Conference approve amendments to RDSs 1 and 2 that incorporate NARA's suggestion. The Conference approved amendments to RDSs 1 and 2 to permit general correspondence files to be destroyed when no longer needed for business use.

Employment Dispute Resolution Records. To reflect recent changes to the judiciary's employment dispute resolution process and associated records following the Judicial Conference's adoption of a revised *Model EDR Plan* and a *Model Federal Public Defender Organization EDR Plan* (JCUS-SEP 2018, pp. 29-30; JCUS-SEP 2019, pp. 21-22; JCUS-SEP 2021, pp. 23-24), the Committee recommended that the Judicial Conference approve amendments to RDSs 1, 2, and 3. The Committee observed that these changes simply align the description of the records with the judiciary's business practices and do not depart from the retention period set forth in

the General Records Schedule. The Conference approved amendments to RDSs 1, 2, and 3 to reflect recent changes to the judiciary’s employment dispute resolution process and associated records.

PLACES OF HOLDING COURT

At the request of the Western District of Texas, and on recommendation of the Committee on Court Administration and Case Management, the Judicial Conference agreed to seek legislation to amend 28 U.S.C. § 124(d)(6) to add Alpine, Texas as a place of holding court in that district. The district sought this change to accommodate litigants and the public in the Alpine area, who currently must travel approximately 102 miles to the Pecos courthouse to conduct court business.

AUDIO STREAMING PILOT PROGRAM

In March 2020, the Judicial Conference authorized a two-year pilot program to evaluate district court streaming of live audio of proceedings in civil cases of public interest and delegated the authority to issue and amend guidelines consistent with the parameters of the pilot to the Committee (JCUS-MAR 2020, p. 9). Subsequently, the Conference amended the scope of the pilot to permit participation by a limited number of bankruptcy courts, the U.S. Court of Federal Claims, and the U.S. Court of International Trade, and extended the pilot to March 2023 (JCUS-MAR 2021, pp. 13-14; JCUS-SEP 2021, pp. 11-12). Currently, pilot courts broadcast only real-time audio of livestreamed proceedings to their YouTube page. Agreeing that the benefits of expansion in terms of public access and education outweighed the drawbacks, the Committee recommended that the Judicial Conference expand the scope of the audio streaming pilot project to authorize participating pilot courts to post audio recordings of livestreamed proceedings to the court’s YouTube page for up to one year following the proceeding, subject to the ultimate discretion of the presiding judge. The Judicial Conference approved the Committee’s recommendation.

CIVIL LITIGATION MANAGEMENT MANUAL

Under the Civil Justice Reform Act of 1990 (CJRA), the Judicial Conference is required to prepare and periodically revise a manual containing “a description and analysis of the litigation management, cost and delay reduction principles and techniques, and alternative dispute resolution programs considered most effective by

the Judicial Conference, the Director of the Federal Judicial Center, and the Director of the Administrative Office of the United States Courts.” (See 28 U.S.C. § 479(c)). In March 2001, on recommendation of the Committee on Court Administration and Case Management, the Judicial Conference approved publication of the *Civil Litigation Management Manual* (JCUS-MAR 2001, p. 15). In March 2010, the Conference approved the second edition (JCUS-MAR 2010, p. 8). The Committee on Court Administration and Case Management recommended that the Judicial Conference approve a revised version that addresses further amendments to the Rules and discusses current case management techniques. The Conference approved the revised version of the *Civil Litigation Management Manual* and delegated to the Court Administration and Case Management Committee the authority to make technical and/or conforming, noncontroversial amendments to the manual.

COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported that it was updated on the status of the independent assessment of CM/ECF by 18F, a digital consultancy within the General Services Administration’s Federal Acquisition Service, and endorsed 18F’s recommendation that the judiciary use modern technology and architecture to build a new case management and electronic filing system. The Committee also discussed the benefits of designing a new cloud-based search module for both the public and internal court users as a possible first new feature and expressed preliminary support for a draft version of a CM/ECF modernization plan under development by the Administrative Office (AO). The Committee also considered initiatives it could pursue, on its own and in partnership with other committees, to promote diversity within the judiciary. Finally, the Committee discussed the successful termination of the 10-year, statutorily established patent pilot (Pub. L. 111-349), followed by the AO Director’s transmission of a final report on the pilot to Congress.

COMMITTEE ON CRIMINAL LAW

COMMITTEE ACTIVITIES

The Committee on Criminal Law reported that it continues to work with the United States Sentencing Commission, the Federal Judicial Center, and other stakeholders on the pilot study approved by the Judicial Conference related to the inclusion of comparative sentencing statistics in presentence reports. The Committee also reported that it continues its efforts to review and address how the federal

criminal justice system has implemented the Bail Reform Act and its goals of reducing unnecessary pretrial detention. Among other things, the Committee plans to include sessions on pretrial release and detention on the agenda for the next National Sentencing Policy Institute, scheduled for October 2022. Finally, on behalf of the Department of Justice (DOJ), Kenneth Polite, the newly appointed Assistant Attorney General, Criminal Division, updated the Committee on the policies of the new administration related to prosecutorial charging and the reduction of violent crime.

COMMITTEE ON DEFENDER SERVICES

COMMITTEE ACTIVITIES

The Committee on Defender Services reported that it discussed efforts to establish federal defender organizations (FDOs) in all districts with sufficient caseload and agreed to continue to encourage the establishment of FDOs in those districts that currently operate without an FDO to support high-quality representation under the Criminal Justice Act (CJA), consistent with Judicial Conference policy (JCUS-SEP 2018, p. 39). The Committee also discussed the proposed Judiciary Accountability Act, which would change how federal public defender organizations (FPDOs) and other judiciary units handle workplace misconduct issues, and communicated its views to the Executive Committee. As part of this communication, the Committee also urged the Executive Committee and the Administrative Office's Office of Judicial Integrity to take additional steps to encourage courts of appeals to adopt and implement the *Model FPDO Employment Dispute Resolution Plan*, which the Judicial Conference approved in September 2021 (JCUS-SEP 2021, pp. 23-24). As courts resume normal operations, the Committee discussed the need for continuances in light of obstacles to case preparation that defense counsel encountered during the COVID-19 pandemic, as well as the need to consider the defense perspective when addressing long-range planning issues such as the use of remote proceedings in non-emergencies. Finally, the Committee received information about steps taken to mitigate fiscal year 2022 funding shortfalls for eVoucher, the judiciary's electronic CJA voucher processing system, and reiterated its support for adequately funding eVoucher development, including modernization.

COMMITTEE ON FEDERAL-STATE JURISDICTION

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported that it received a final report from the Federal Judicial Center on a survey regarding attorneys' preference of forum between state and federal court. It also received a report on behalf of the state chief justice members of the Committee on state court's efforts to mitigate disruptions caused by the COVID-19 pandemic, concerns regarding the backlog of cases resulting from the pandemic, and other issues of importance to state courts. The Committee discussed the filing and transfer of cases in district courts with divisions and potential procedural reforms. The Committee was briefed on legislative matters of interest, including immigration reform, the enforceability of mandatory arbitration clauses, and an update on the "State Antitrust Enforcement Venue Act of 2021" (H.R. 3460; S. 1787). The Committee discussed the ongoing impact of *McGirt v. Oklahoma*, 591 U.S. ___, 140 S. Ct. 2452 (2020) on federal and tribal court jurisdiction in Oklahoma.

COMMITTEE ON FINANCIAL DISCLOSURE

AUTOMATING THE RELEASE OF REPORTS

To increase transparency and help improve public confidence in the judiciary without compromising safety, the Committee on Financial Disclosure recommended that the Judicial Conference authorize automated release online of finally certified financial disclosure reports for judges in a way that would allow immediate access to the reports upon the submission of an application to access the reports. Because reports will be prepared for release when filed, the Committee noted that judges need to assess their security situations and request redaction, if appropriate, at the time of filing, and they will retain the opportunity to request redaction at any other time based on changes to their security situations. The Committee observed that making reports available upon request via a judiciary website once they are ready for release will increase judiciary control over the release of appropriately redacted reports and provide more timely access to reports so that the judiciary remains the authoritative source of the reports. The Committee also recommended that it be delegated the authority to set the parameters for the implementation of this authorization. The Judicial Conference approved the recommendations.

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported that it was updated on efforts to develop and implement a new electronic financial disclosure system that would include features needed for filing financial disclosure reports, as well as features needed for redacting and releasing reports. The Committee approved revisions to the report redaction and release regulations in the *Guide to Judiciary Policy (Guide)*, Volume 2, Part D, Chapter 5, in consultation with the U.S. Marshals Service, to clarify for filers which information may be appropriately redacted. The financial disclosure regulations in the *Guide*, Volume 2, Part D, Chapter 1, and the Filing Instructions for Judicial Officers and Employees (Filing Instructions) were revised to emphasize that financial disclosure reporting requirements are distinct from judicial recusal requirements and to refer filers to the appropriate guidance for conflict screening. The Committee also revised the Filing Instructions to remove sensitive security information and to replace non-public guidance with publicly available guidance and authorized the release of the revised Filing Instructions to the public, including posting on the U.S. Courts website. As of November 29, 2021, the Committee had received 4,092 financial disclosure reports and certifications for calendar year 2020 (out of a total of 4,101 required to file), including 1,321 annual reports and certifications from Supreme Court justices and Article III judges; 321 annual reports from bankruptcy judges; 581 annual reports from magistrate judges; 1,869 annual reports from judicial employees; and 427 reports from nominee, initial, and final filers.

COMMITTEE ON INFORMATION TECHNOLOGY

COMMITTEE ACTIVITIES

The Committee on Information Technology reported that it received an update on efforts to move the judiciary out of the San Diego internet data center while minimizing operational disruptions to the courts. To strengthen the judiciary's security posture, the Committee endorsed recommendations from the Judiciary IT Security Task Force to implement zero-trust architecture across the judiciary and explore additional solution offerings with a goal toward national expansion and use of enterprise multi-factor authentication. In addition, the Committee supported the recommendation of 18F, a consultancy located within the General Services Administration's Federal Acquisition Service, that the judiciary use modern technology and architecture to build a new case management and electronic filing

system, and the chair endorsed it on the Committee’s behalf. Also, the Committee agreed that, as a matter of long-term strategic planning, it is an opportune time to develop and institute a multi-year IT modernization and security plan for the judiciary’s entire IT infrastructure and established an IT Committee subgroup to develop the plan in collaboration with the Administrative Office. The Committee endorsed a change to the *Guide to Judiciary Policy* that mandates the use of a standard warning banner that users see when logging in to judiciary systems (see *Guide to Judiciary Policy*, Vol. 15, Ch. 5, § 515.30). Finally, the Committee endorsed the judiciary’s implementation of a cloud VPN service that, upon implementation, will provide enhanced security and consistent access management for employees remotely accessing all judiciary assets, irrespective of their location.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that 96 Article III judges undertook 123 intercircuit assignments from July 1, 2021, to December 31, 2021. During this time, the Committee continued to disseminate information about intercircuit assignments and aided courts requesting assistance by identifying and obtaining judges willing to take assignments. The Committee also reviewed and concurred with nine proposed intercircuit assignments of bankruptcy judges and six of magistrate judges.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported on international rule of law work that was supported by federal judges from October 1, 2020, through September 30, 2021. In advance of the Committee’s November 2021 meeting, written reports concerning federal judicial Rule of Law activities were provided by the Administrative Office (AO), Federal Judicial Center, Congressional Office for International Leadership, U.S. Department of State/International Narcotics and Law Enforcement Bureau, U.S. Department of Justice Office of Overseas Prosecutorial Development Assistance and Training, U.S. Patent and Trademark Office, U.S. Commerce Department – Commercial Law Development Program, U.S. Agency for International Development (USAID), and Federal Court Clerks Association. The Committee received updates from the Counselor to the Chief Justice and the AO’s Associate Director for the Department of Program Services. The Committee discussed

international work by federal judges during the pandemic with epidemiologist Dr. Jonathan M. Zenilman, focusing on the factors for consideration by judges and judiciary staff travelling internationally and by courts receiving foreign judicial officers. Judge Thomas Hardiman, Chair of the Judiciary Information Technology (IT) Security Task Force, provided information about the Task Force’s mission to examine the judiciary’s cybersecurity posture and risks to the judiciary’s IT infrastructure that arise when judges and judiciary employees travel abroad. The Committee also held a meeting with the Director, Deputy Director, and Senior Rule of Law advisors at the USAID Center for Democracy, Human Rights and Governance regarding support to the agency’s international Rule of Law programs.

COMMITTEE ON THE JUDICIAL BRANCH

AMENDMENTS TO THE TRAVEL REGULATIONS

The Committee on the Judicial Branch recommended amendments and clarifications to the Travel Regulations for Justices and Judges, *Guide to Judiciary Policy*, Volume 19, Chapter 2, including amended language to clarify when judges may be reimbursed for travel and subsistence to attend an investiture ceremony and decrease the distance threshold applicable to judges’ eligibility for subsistence reimbursement from 40 miles to 30 miles. The Conference approved the recommendation.

COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that it discussed recent legislative items of interest to the judiciary, including those related to judicial security, judgeships, workplace conduct, and the judiciary’s case management system. The Committee received virtual briefings from Senator Richard Durbin, Chair, Senate Judiciary Committee and Representative Henry C. Johnson, Chair, House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet. Judge Benita Y. Pearson, Chair of the Committee on Financial Disclosure’s Subcommittee on Public Access and Security, joined the Committee for a discussion of developments related to automating the release of financial disclosure reports. The Committee also received briefings from the Administrative Office’s Judiciary Integrity Officer on the status of workplace conduct initiatives and from the Human Resources Office on the status of judges’ compensation, benefits, and retirements. In addition, the Committee continued its discussion regarding concerns about disinformation and the politicization of the branch and was briefed on civics education activities across the judiciary.

COMMITTEE ON JUDICIAL CONDUCT AND DISABILITY

COMMITTEE ACTIVITIES

The Committee on Judicial Conduct and Disability reported that it discussed and considered complaint-related matters under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351–364 (Act), and the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules). The Committee also discussed the ongoing work of the Federal Judiciary Workplace Conduct Working Group and the Ad Hoc Subcommittee on Conflict Screening. The Committee and its staff have also continued to address inquiries regarding the Act and the Rules, and to give other assistance as needed to circuit judicial councils and chief judges.

COMMITTEE ON JUDICIAL RESOURCES

CHAMBERS LAW CLERK QUALIFICATION STANDARD

In September 1994, the Judicial Conference re-established a policy requiring two years of elbow law clerk experience, or “that type of experience,” in the federal judiciary to qualify for the Judiciary Salary Plan (JSP)-14 grade level, for elbow law clerks who enter duty after October 31, 1994 (JCUS-SEP 1994, p. 59). The Judicial Conference later expanded that policy to allow federal judiciary experience as a pro se law clerk to be considered as equivalent to elbow law clerk experience for purposes of establishing grade level (JCUS-SEP 2003, p. 28), as well as staff attorney experience (JCUS-MAR 2004, p. 20), bankruptcy appellate panel law clerk experience (JCUS-SEP 2006, p. 27), and death penalty clerk experience (JCUS-MAR 2007, pp. 23-24). To recognize the service of Supreme Court Fellows to the judiciary, in September 2020, the Conference approved expanding the policy to include experience in the Supreme Court Fellows Program as creditable for purposes of establishing JSP-14 grade eligibility (JCUS-SEP 2020, p. 29). To recognize the important contributions of others with legal work experience in the judiciary, the Committee on Judicial Resources recommended that the Judicial Conference approve as qualifying legal work experience for chambers law clerks at JSP-14 grade level any legal work experience in any position in a court unit or federal public defender organization within the federal judiciary for which a Juris Doctor and membership of the bar of a state, territory, or federal court of general jurisdiction is a minimum qualification requirement, or as a Supreme Court Fellow. The Conference approved the Committee’s recommendation.

COURT REPORTER STAFFING ALLOCATION

The Judicial Conference adopted a staffing formula for court reporters and approved a process for authorizing and allocating court reporter positions pursuant to 28 U.S.C. § 753(a) (JCUS-SEP 2017, p. 18; JCUS-SEP 2018, pp. 24-26). The Committee considered a request from the chief judge of the Eastern District of Oklahoma for additional court reporter resources above the Conference authorized level to assist with the increased caseload as a result of *McGirt v. Oklahoma*, 591 U.S. ___, 140 S. Ct. 2452 (2020). Because it is evident the district will require more resources going forward and to provide continuity by allowing visiting judges to step into a courtroom with experienced staff and enable the court to maintain its increased caseload more efficiently than using contract or visiting court reporters, the Committee recommended that the Judicial Conference approve setting the authorization and allocation levels for court reporter positions for the Eastern District of Oklahoma to no less than 3.0 full-time equivalent positions for fiscal years 2022 and 2023. The Conference approved the Committee’s recommendation.

COURT PERSONNEL SYSTEM BENCHMARKS

In September 2007, the Conference approved new Court Personnel System (CPS) benchmarks to more accurately reflect job duties and responsibilities performed in the courts (JCUS-SEP 2007, pp. 24-25). In January 2017, the Administrative Office (AO) launched a comprehensive review of the CPS benchmarks, and in March 2019, the Judicial Conference approved changes to the CPS benchmarks for information technology positions (JCUS-MAR 2019, pp. 28-29). In 2020, the AO continued the benchmark review by analyzing the administrative support benchmarks, and the Committee on Judicial Resources recommended that the Judicial Conference approve changes to the CPS benchmarks, including renaming the Human Resources and/or Training Technician benchmark to Human Resources and/or Training Assistant, abolishing the Procurement Services Technician benchmark, and updating the representative duties for many of the benchmarks. The Conference approved the recommended changes.

PROBATION AND PRETRIAL SERVICES OFFICER QUALIFICATION STANDARD

The qualification standard for probation and pretrial services officer positions was established by the Judicial Conference in March 1987 and later amended in March 1991 (JCUS-MAR 1987, pp. 26-27; JCUS-MAR 1991, pp. 16-17). The Judicial Resources Committee recommended that the Judicial Conference approve revisions to the qualification standard for probation and pretrial services officer positions (*Guide to Judiciary Policy*, Vol. 12, Ch. 5, Appx. 5G), including changes to the general experience, education, and specialized experience required for appointment. The Conference approved the revisions.

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that it asked the AO and Federal Judicial Center to work collaboratively to conduct a study on chambers staffing allocation needs of chief district judges and determine criteria that can be applied to all district courts. Further, on request of the Committee on the Administration of the Bankruptcy System, the Committee also authorized and directed the AO to collect, compile, store, and report new bankruptcy case data and statistics on chapter 15 cases, the pro se status of parties in adversary proceedings, and cases proceeding under subchapter V of chapter 11, to facilitate an upcoming study of the bankruptcy case weighting formula and statistical data collection overall.

COMMITTEE ON JUDICIAL SECURITY

COMMITTEE ACTIVITIES

The Committee on Judicial Security reported that it was briefed on efforts to secure funding for courthouse hardening efforts aimed at preventing unauthorized entry by individuals and groups attempting to breach court facilities. The Committee also was updated on the implementation of the Judiciary Vulnerability Management Program, which will provide dedicated support to federal judges, local courts, and judiciary personnel to enhance the delivery of security services. The U.S. Marshals Service (USMS) updated the Committee on its plan to transition the Home Intrusion Detection Systems (HIDS) program, which provides security systems for judges' primary residences, from a single national service provider to a reimbursement program whereby judges will select their HIDS from a local provider and be

reimbursed by the USMS. The Committee was also updated on the USMS’s expanded Open-Source Intelligence Unit, which will enable the USMS to proactively monitor online threats and concerning communications made to judges.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

REGULATIONS FOR FIVE-YEAR RECALL OF RETIRED MAGISTRATE JUDGES

The Bankruptcy Administration Improvement Act of 2020 (BAIA), Pub. L. No. 116-325 (Jan. 12, 2021), amended 28 U.S.C. § 375, a statute that authorizes the five-year recall of retired bankruptcy and magistrate judges, to require the Judicial Conference to promulgate regulations to implement the provision. On recommendation of the Committee on the Administration of the Magistrate Judges System, the Conference approved draft regulations for five-year recall terms for retired magistrate judges under 28 U.S.C. § 375, *Five-Year Recall of Retired Magistrate Judges, Guide to Judiciary Policy*, Volume 3, Chapter 17, and delegated to the Magistrate Judges Committee authority to make non-substantive, technical, and conforming changes to the regulations as needed.

The final regulations include provisions that discourage courts from requesting five-year recalls of retired magistrate judges receiving less than full-salary annuities (or annuities not within five percent of the salary of the office at the time the recall is requested), in order to contain potential costs and to prevent individual judges from receiving “windfalls” in additional wages and recomputed annuities; require courts and circuit judicial councils to certify initially and annually thereafter that the recalled magistrate judge is performing substantial service, defined as an annual workload that is equal to or greater than the annual workload that an average full-time magistrate judge in active service performs in three months; and require the approval of the Committee all requests for five-year recalls that involve staff or are expected to cost more than \$10,000 per year.

CHANGES IN MAGISTRATE JUDGE POSITIONS

After considering the recommendation of the Committee on the Administration of the Magistrate Judges System and the views of the Administrative Office and the affected district court and circuit judicial council, the Judicial Conference designated

the salary of the part-time magistrate judge position at Gainesville in the Northern District of Florida at Level 3 (currently \$61,658 per annum), effective April 1, 2022.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Magistrate Judges System reported that it considered ten district-wide surveys and, where appropriate, endorsed suggestions regarding magistrate judge utilization in those districts. Between its June 2021 and December 2021 meetings, the Committee, through its chair, approved filling 20 magistrate judge position vacancies in 18 district courts (JCUS-SEP 2004, p. 26), and the Committee approved four recall requests and one request to modify the recall of a magistrate judge serving with staff in one district, to allow that judge to assist another district in a different circuit. At its December 2021 meeting, the Committee also approved filling two magistrate judge position vacancies and fully approved requests from 12 courts for the recall, extension of recall, or extension of staff support for 16 retired magistrate judges, except for one instance in which the Committee declined to approve a request for clerk’s office support, citing the existing resources in the court as sufficient. The Committee continued its work on revising the *Suggestions for Utilization of Magistrate Judges* and anticipates considering a final revised version in June 2022. Finally, the Committee is partnering with the Committee on the Administration of the Bankruptcy System to host a second national diversity event, “Roadways to the Bench: Who Me? A Bankruptcy or Magistrate Judge?”

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure reported on its progress with rules amendments that would provide for procedures during future emergencies as directed by the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, 134 Stat. 281. The proposed emergency rules for the Appellate, Bankruptcy, Civil, and Criminal Rules were published for comment from August 2021 to February 2022. The emergency rules are on track to take effect in December 2023, if approved at each stage of the Rules Enabling Act process, and if Congress takes no contrary action. The Committee also reported on the status of restyling the Bankruptcy Rules. Approximately two-thirds of the restyled rules were published for comment in 2020 and 2021, and the remaining restyled rules will be considered at the Bankruptcy Rules Advisory Committee’s meeting in March 2022 for approval to be published for comment in August 2022. The projected publication schedule puts the

restyled rules on track to be considered for final approval by the Committee at its June 2023 meeting and recommended to the Judicial Conference at its fall 2023 meeting.

COMMITTEE ON SPACE AND FACILITIES

SPACE PLANNING POLICY FOR NEW COURTHOUSE CONSTRUCTION PROJECTS

The space planning process for new courthouses, annexes, and additions is lengthy, often taking years, or even decades, from the time a new facility is first contemplated until it is constructed and occupied. Given that length of time and the change in stakeholders, such as new chief judges, the Committee on Space and Facilities determined that additional requirements are needed in the space planning process to ensure that the circuit, the district, the Committee, and the Administrative Office (AO) have aligned expectations and commitments and avoid misunderstandings. In an effort to ensure expectations are aligned in the future, the Committee recommended that the Judicial Conference approve a space planning policy requiring the circuit judicial council and the chief judge of the appropriate district court certify, as part of their approval of an AnyCourt Program of Requirements and the associated courtroom and chambers utilization matrix for new courthouse construction projects, their commitment to any necessary relocation of judges and/or closure of facilities associated with the planned project, subject to exemptions due to unforeseen circumstances beyond the court's control. The certification should confirm that any facility to be closed in conjunction with the occupancy of the new space will also be deemed to be no longer necessary consistent with 28 U.S.C. § 462(b) following the opening of the new courthouse; identify the number and type of judges to be housed in the new facility as a result of the consolidation or relocation of court operations; and be provided to and acknowledged by all judges in the affected district, as well as any later-confirmed judge in the district at the time the judge's duty station is established. The Conference approved the policy.

FEASIBILITY STUDIES

In accordance with the Asset Management Planning policy, courthouse construction projects must have a completed General Services Administration (GSA) feasibility study prior to being placed on the *Federal Judiciary Courthouse Project Priorities (CPP)* list (JCUS-MAR 2008, p. 26). After considering the space, security,

and building needs at the courthouses in Raleigh, North Carolina, and Tampa, Florida, the Committee on Space and Facilities recommended that the Judicial Conference request that the GSA conduct Phase I feasibility studies for those courthouses. The Judicial Conference approved the recommendation.

COMMITTEE ACTIVITIES

The Committee on Space and Facilities reported that it agreed to request that the General Services Administration (GSA) conduct a Phase II feasibility study for McAllen, Texas. In addition, the Committee approved three requests for funding for No Net New projects in support of the Judicial Conference’s No Net New policy adopted in September 2013 (JCUS-SEP 2013, p. 32), all subject to funding availability. The Committee also approved a temporary amendment (expiring in December 2023) to the No Net New Business Rules to delegate to the AO the authority to approve supplemental funding for projects in certain limited circumstances. The Committee continues its work with AO staff and its partners at the GSA to identify and evaluate judiciary locations most at risk from severe weather and climate events and identify potential mitigation measures, and with AO staff to gather information on funding strategies. Further, the Committee discussed the need to proactively re-examine the judiciary’s space needs due to ongoing and expected future flexible work arrangements due to the COVID-19 pandemic and to determine if there are opportunities to make the branch more efficient and contain costs.

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