

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

March 12, 1991

The Judicial Conference of the United States convened on March 12, 1991, 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 Stephen G. Breyer  
Chief Judge Frank H. Freedman,  
District of Massachusetts

Second Circuit:

Chief Judge James L. Oakes  
Chief Judge Charles L. Brieant,  
Southern District of New York

Third Circuit:

Chief Judge Dolores K. Sloviter  
Chief Judge John F. Gerry,  
District of New Jersey

Fourth Circuit:

Chief Judge Sam J. Ervin, III  
Judge Frank A. Kaufman,  
District of Maryland

Fifth Circuit:

Chief Judge Charles Clark  
Chief Judge Barefoot Sanders,  
Northern District of Texas

Sixth Circuit:

Chief Judge Gilbert S. Merritt  
Chief Judge Eugene E. Siler,  
Eastern District of Kentucky

Seventh Circuit:

Judge Richard A. Posner<sup>1</sup>  
Judge Sarah Evans Barker,  
Southern District of Indiana

Eighth Circuit:

Chief Judge Donald P. Lay  
Chief Judge Donald E. O'Brien  
Northern District of Iowa

Ninth Circuit:

Chief Judge J. Clifford Wallace  
Chief Judge William D. Browning,  
District of Arizona

Tenth Circuit:

Judge Monroe G. McKay<sup>2</sup>  
Chief Judge Earl E. O'Connor,  
District of Kansas

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<sup>1</sup>Designated by the Chief Justice in place of Chief Judge William J. Bauer, who was unable to attend.

<sup>2</sup>Designated by the Chief Justice in place of Chief Judge William J. Holloway, who was unable to attend.

Eleventh Circuit:

Chief Judge Gerald B. Tjoflat  
Judge Anthony A. Alaimo,  
Southern District of Georgia

District of Columbia Circuit:

Chief Judge Abner J. Mikva  
Chief Judge Aubrey E. Robinson, Jr.,  
District of Columbia

Federal Circuit:

Chief Judge Helen W. Nies

Court of International Trade:

Chief Judge Edward D. Re

Circuit Judges Richard S. Arnold and Deanell Reece Tacha; Senior Circuit Judges Thomas M. Reavley and Otto R. Skopil, Jr.; District Judges Wayne E. Alley, Robert C. Broomfield, Lloyd D. George, and Robert M. Parker; and Senior District Judges Vincent L. Broderick and Walter T. McGovern attended all or some of the sessions of the Conference. Circuit Executives Vincent Flanagan (First Circuit), Steven Flanders (Second Circuit), John P. Hehman (Third Circuit), Samuel W. Phillips (Fourth Circuit), Lydia Comberrel (Fifth Circuit), James A. Higgins (Sixth Circuit), Collins T. Fitzpatrick (Seventh Circuit), June L. Boadwine (Eighth Circuit), Gregory B. Walters (Ninth Circuit), Eugene J. Murret (Tenth Circuit), Norman E. Zoller (Eleventh Circuit), and Linda Finkelstein (District of Columbia Circuit) were also present.

The Attorney General of the United States, Dick Thornburgh, and Congressman William J. Hughes, Chairman of the House Judiciary Subcommittee on Intellectual Property and Judicial Administration, addressed the Conference on matters of mutual interest to the Department of Justice, the Congress, and the Conference.

L. Ralph Mecham, Director of the Administrative Office of the United States Courts, attended the sessions of the Conference, as did James E. Macklin, Jr., Deputy Director; William R. Burchill, Jr., General Counsel; Arthur White, Deputy Legislative and Public Affairs Officer; Karen K. Siegel, Chief, and Wendy Jennis, Deputy Chief, Office of the Judicial Conference Secretariat; and

David A. Sellers, Public Information Officer. Judge William W. Schwarzer and Charles W. Nihan, Director and Deputy Director of the Federal Judicial Center, also attended the sessions of the Conference, as did Lawrence H. Averill, Jr., Administrative Assistant to the Chief Justice, and Judicial Fellows Anthony Champagne, Robert Peck, and Mary Radford.

### **REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS**

The Director of the Administrative Office of the United States Courts, L. Ralph Mecham, reported to the Judicial Conference on the activities of the agency during 1990. He also submitted to the Conference a brief report summarizing the workload of the federal judiciary during calendar year 1990.

#### **JUDICIAL BUSINESS OF THE COURTS**

Mr. Mecham reported that during the year ended December 31, 1990, the number of cases appealed to the 12 regional courts of appeals rose two percent to 40,982, due primarily to an 11 percent increase in criminal appeals from the U.S. district courts. Drug-related appeals, which accounted for 58 percent of all criminal appeals filed, increased nearly 15 percent over 1989. Dispositions increased almost six percent this year, to an all-time high of 39,825, but remained below the level of filings, resulting in a nearly four percent increase in the pending caseload by year's end. Filings in the U.S. Court of Appeals for the Federal Circuit rose five percent to 1,474, primarily due to a 22 percent increase in appeals from the Merit Systems Protection Board. Terminations were virtually unchanged this year at 1,418 cases. Since filings outnumbered terminations, the pending caseload rose by almost nine percent. Much of this increase was due to appeals from the Court of Veterans Appeals and the Department of Veterans Affairs.

In the U.S. district courts, the number of civil filings declined again in 1990 to 211,626 cases, a drop of 13,703 (six percent) from 1989. The five percent decline in total district court filings during the past year resulted primarily from a continuing decline in two types of civil suits involving federal benefits: the recovery of defaulted student loans and the recovery of overpayment of veterans' benefits. (Actions to recover on defaulted student loans fell 47 percent while actions to recover overpayment of veterans' benefits decreased 34 percent.) In addition, actions against the U.S. involving disallowance of Social Security benefits have likewise continued to retreat from highs established in the mid-1980s, declining 23 percent between 1989 and 1990. Another major factor which contributed to the decline in civil filings was the 1989 legislation which increased the jurisdictional amount in diversity cases from \$10,000 to \$50,000. In 1990, diversity cases declined 14 percent.

The drop in 1990 civil filings was paralleled by a decline in terminations. The number of dispositions fell six percent to 212,497, slightly outpacing filings. This resulted in a drop of less than one percent in the pending caseload.

Criminal filings rose one percent in 1990, from 47,779 in 1989 to 48,250 in 1990. Over the last five years, criminal filings have grown by 13 percent. Drug cases continue to represent a large portion of total criminal filings, comprising 26 percent. Most significant, however, is that drug filings decreased five percent in 1990, the first decline since 1979. Much of the decrease is due to a 43 percent decline in drug filings in the Southern District of Texas. However, weapons and firearms filings rose 20 percent, and immigration cases increased 15 percent. Dispositions of criminal cases increased by only one percent this year to 44,756, up from 44,068 cases last year. With filings still exceeding terminations, the pending caseload rose nearly 11 percent. On December 31, 1990, there were 36,886 pending criminal cases involving 55,397 defendants.

Bankruptcy filings continued to increase to record levels in 1990, up 15 percent to 782,960 cases. The increase was primarily in non-business cases, up 16 percent over last year and comprising 92 percent of the total filings. While dispositions were up 11 percent to 658,889, the pending caseload rose 14 percent to an all-time high of 1,033,230 as of December 31, 1990.

Mr. Mecham also reported that as of March 12, 1991, there were 23 vacancies among the 179 judgeship positions authorized for the courts of appeals, 11 of which were in new positions created December 1, 1990. There were 120 vacancies in the 649 positions authorized for the United States district courts, 74 of which were in new positions. There was one vacancy on the Court of International Trade.

#### ACTIVITIES OF THE ADMINISTRATIVE OFFICE

Mr. Mecham reported that the size of the Administrative Office staff declined steadily relative to the growth of the judiciary during the 1980s, and this trend is continuing in the 1990s. Administrative Office staff represented about 3.5 percent of the total judiciary staff in 1982. This is expected to drop to 2.4 percent in 1992, a 31 percent decrease. The ratio of court employees serviced by the Administrative Office is projected to be 41 to 1 in 1992, up from 29 to 1 in 1982, an increase of 41 percent.

An important legislative achievement in 1990 was enactment of the Administrative Office of the United States Courts Personnel Act (Public Law 101-474), which provides the Administrative Office with authority to develop its own personnel system. The legislation will permit more flexibility in employee

development and enable employees to move with ease from the Administrative Office to the courts and vice versa, thus greatly enhancing the agency's ability to meet the future needs of the courts.

Among the Administrative Office's top priorities in the 102nd Congress will be persuading the Congress of the need to grant the judiciary independent real property authorities (JCUS-SEP 89, p. 81). The provision of space and facilities is the only administrative area in which the judiciary, a separate and independent branch of government, is fully dependent on another branch of government. Other legislative priorities include the creation of new bankruptcy judgeships (*e.g.*, *infra* p. 10), the enhancement of the Judicial Survivors' Annuities System (*infra* p. 19), and the repeal of Section 140 of Public Law 97-92 so that judges will receive automatic annual cost-of-living adjustments (JCUS-SEP 90, p. 62).

The Judiciary Automation Fund has been a great boon to the Administrative Office's efforts to automate the courts by providing a stable, multi-year source of funding for the expansion, management, and use of automated systems. Currently, more than 50 percent of the courts are operational on the Integrated Case Management System (ICMS) electronic docketing and case management systems, and approximately 14,000 personal computers have been installed in the courts. Under the direction of the Judicial Conference Committee on Automation and Technology, the focus for 1991 and beyond will be the continuing installation and expansion of the ICMS systems in the courts, the further acquisition of office automation equipment, and the installation of a system-wide data communications network.

In carrying out the policies of the Judicial Conference and in its continuing support of the Conference and its committees, the Administrative Office made significant strides in many other areas in 1990, including assisting the Committee on Space and Facilities in the complete revision of judicial space standards and the issuance of the U. S. Courts Design Guide (*infra* p. 32); continued progress on the Judiciary Office Building, which is ahead of schedule and under budget; issuance of a new program manual for bankruptcy clerks; the creation of the Article III Judges Division; the continued decentralization of administrative functions, including budget decentralization; the revision and issuance of an updated Probation and Pretrial Services Manual; the continued expansion of the federal public defenders program and the establishment of additional death penalty resource centers; expansion of the electronic home monitoring program; and the completion of six court operations and administration surveys to assess the state of administrative operations in the courts.

Mr. Mecham concluded that the year ahead will present many challenges: assisting the courts in implementing the Civil Justice Reform Act (Public Law 101-650), preparing for new judges, expanding automation in the courts, working with the Congress to obtain the resources and legislative changes the judiciary needs, revising work measurement formulas, providing increased training opportunities, and continuing the decentralization of administrative activities. The Administrative Office's primary goal will continue to be, as it has always been, to provide the courts with the highest level of service possible so that they can accomplish their critical mission.

### **REPORT OF THE DIRECTOR OF THE FEDERAL JUDICIAL CENTER**

The Director of the Federal Judicial Center, Judge William W Schwarzer, reported on highlights of the training programs being conducted by the Center. These include the resumption of sentencing institutes, a new focus on science and technology issues in litigation, and joint projects with various organizations including the American Law Institute (ALI-ABA), Harvard University and the American Bar Association, Georgetown University and George Mason University, extending the reach of the Center's programs. For the first time, the Center is co-sponsoring with the State Justice Institute a national conference on state-federal judicial issues. The Center is also devoting increasing amounts of resources to the training of supporting personnel at all levels.

The Center has in recent months made a major effort to assist the courts in preparing to implement the Civil Justice Reform Act, developing material for the guidance of chief judges and advisory groups and providing support to the Judicial Conference Committee on Court Administration and Case Management. The Act has led to a renewed emphasis on case management training for judges and supporting personnel.

The Research Division is completing a comprehensive study of the impact of Rule 11 for the Advisory Committee on Civil Rules. It is also assisting the Judicial Conference Committee on Criminal Law and Probation Administration in developing recommendations for revision of the sentencing guidelines and of mandatory minimum sentencing laws.

The Center's new Publications Division recently published a Judicial Writing Manual and has several other projects in preparation. It will shortly publish, under the title Directions, the first issue of a serial journal reporting on the work of the Center.

The Center Board has authorized the establishment of a new Technology Division which will focus on technology applications to support FJC activities

and the assessment of how new technologies can meet the needs of courts and facilitate case management.

### **ELECTIONS**

The Judicial Conference elected to membership on the Board of the Federal Judicial Center, Judge Edward R. Becker of the United States Court of Appeals for the Third Circuit (for a term of four years to succeed Circuit Judge J. Clifford Wallace), and Judge Martin L. C. Feldman of the United States District Court for the Eastern District of Louisiana (for a term of four years to succeed District Judge William C. O'Kelley).

### **EXECUTIVE COMMITTEE**

#### **RESOLUTION**

In recognition of the outstanding work of Chairman Cynthia Holcomb Hall and the members of the Ad Hoc Committee on the Fifth International Appellate Judges Conference in organizing and conducting this important international event, the Executive Committee recommended, and the Conference approved, adoption of the following resolution:

The Judicial Conference of the United States recognizes with appreciation, respect and admiration the

HONORABLE CYNTHIA HOLCOMB HALL  
HONORABLE SHIRLEY ABRAHAMSON  
HONORABLE WILLIAM J. BAUER  
HONORABLE JAMES R. BROWNING  
HONORABLE RUTH BADER GINSBURG  
HONORABLE H. ROBERT MAYER  
HONORABLE J. CLIFFORD WALLACE

Chairman and members of the Ad Hoc Committee on the Fifth International Appellate Judges Conference of 1990.

Established in October, 1987, the Committee was instrumental in the planning and execution of the Fifth International Appellate Judges Conference held in Washington, D. C. from September 11-14, 1990. The outstanding leadership of Judge Hall, and the dedication and hard work of the Committee members, resulted in a resoundingly successful International Conference, hosting approximately 130 international delegates from 90 countries, the Chief Justices of 37 states, and



the Judicial Conference of the United States. Despite the substantial time required to accomplish the task before them, Judge Hall and the Committee members continued to perform their regular judicial duties as Judges of their respective courts.

Judge Hall and the members of the Committee have earned our deep respect and sincere gratitude for their commitment to the success of this important international event and our hearty congratulations for a job well done.

#### ETHICS REFORM ACT

Section 319 of the Judicial Improvements Act of 1990 (Public Law 101-650) amended the Ethics Reform Act (5 U.S.C. App. 7, § 502) to allow senior judges to earn compensation for teaching without regard to the outside earned income limitation applicable to active judges, but neglected to extend this exemption to retired Supreme Court justices. On recommendation of the Committee on the Judicial Branch, the Executive Committee voted to seek legislation exempting retired Supreme Court justices' compensation for teaching from the Ethics Reform Act's outside earned income limitation in the same manner as now provided for senior judges.

#### COMPOSITION OF CIRCUIT JUDICIAL COUNCILS

Another section of the Judicial Improvements Act (§ 323, P.L. 101-650) amended 28 U.S.C. § 332(a)(1) relating to the composition of judicial councils. As amended, section 332(a)(1) specifies that circuit judicial councils shall consist of the chief judge of the court of appeals plus an equal number of circuit and district judges.

Although the section is inartfully drafted and technical amendments will be sought, the General Counsel of the Administrative Office interpreted the section as amended to provide that the **number** of judges on the judicial council shall be established by majority vote of all circuit and district judges of the circuit in regular active service, whereas the **method** of selection is (and has been since 1981) left to the determination of each circuit. The Executive Committee concurred in the General Counsel's interpretation, and chief circuit judges were so advised.

#### GEOGRAPHIC PAY INCREASES FOR SUPPORTING PERSONNEL

Pursuant to his authority under the Federal Employees Pay Comparability Act of 1990 (Public Law 101-509), the President approved an eight percent

geographic pay increase, effective January 14, 1991, for non-Senior Executive Service executive branch personnel in the consolidated metropolitan statistical areas (CMSAs) in and around New York City, Los Angeles, and San Francisco. To the extent that employees were already receiving special pay rates as geographic pay adjustments, the President authorized only the amount necessary to raise their pay to eight percent over the regular pay rate.

After considering the President's action, and due to the importance of the issue and its long-term impact, the Executive Committee voted to poll the Conference on whether to implement geographic pay increases in the judiciary.

By mail ballot, the Judicial Conference approved the Executive Committee's recommendation that the Conference maintain parity with the executive branch by adopting geographic pay increases of up to eight percent for court support personnel (excluding court unit heads and those employees whose salaries are established by law) in the following three consolidated metropolitan statistical areas:

New York-Northern New Jersey-Long Island NY-NJ-CT CMSA;  
San Francisco-Oakland-San Jose, CA CMSA; and  
Los Angeles-Anaheim-Riverside, CA CMSA.

It was also agreed that before any geographic pay increases are adopted in other areas, standards for approval, based upon the living costs of residents in such areas and upon market comparability of private and other public sector wage scales, and a process for application for such pay increases, will be established and promulgated.

#### ADDITIONAL BANKRUPTCY JUDGESHIPS

In order to respond to sharp and steady increases in bankruptcy filings, the Executive Committee voted to recommend that Congress authorize one additional bankruptcy judgeship in each of two districts, the District of South Carolina and the Northern District of Georgia.

#### CRIMINAL JUSTICE ACT COMPENSATION

On recommendation of the Defender Services Committee, the Executive Committee approved the immediate implementation of an alternative attorney compensation rate under the Criminal Justice Act of \$75 per hour for in- and out-of-court time in United States v. Noriega, pending in the Southern District of Florida. The unusual action was taken because of the complexity, high profile, expected duration, and international implications of the Noriega case.

## ADMINISTRATIVE RULEMAKING

In its April, 1990 report (pp. 148-149), the Federal Courts Study Committee recommended that 28 U.S.C. § 331 should be amended to recognize the authority of the Judicial Conference to issue administrative rules. Although this item was initially identified by the Executive Committee as appropriate for inclusion in non-controversial "housekeeping" legislation, a Conference member subsequently suggested that the matter was not without controversy. A three-judge subcommittee, chaired by Judge Sarah Barker, was appointed to study the issue and recommend Conference action. At its September 1990 session (JCUS-SEP 90, p. 62), the Conference postponed consideration, pending further review by the Barker Subcommittee.

With no presently pending proposals on this subject in the Congress, nor any likely in the near future, the Barker Subcommittee and the Executive Committee agreed that action on this matter should be deferred indefinitely.

## MISCELLANEOUS ACTIONS

The Executive Committee revised the jurisdictional statements for the Committees on Automation and Technology, Codes of Conduct, Court Administration and Case Management, Court and Judicial Security, Judicial Resources, Long Range Planning, and the Review of Circuit Council Conduct and Disability Orders; approved the request of the Director of the Administrative Office that registry fund fees be recurring and extended to criminal cases; approved a spending plan for the fiscal year 1991 for the "Salaries and Expenses" appropriation and revised the plan to permit implementation of geographic pay increases; approved resolutions of appreciation for Congressman Robert W. Kastenmeier, former chairman of the House Judiciary Subcommittee on Courts, Intellectual Property, and the Administration of Justice, and for Director Mecham and his Legislative Affairs staff; requested that the Court and Judicial Security Committee examine how local court security committees operate to effect security in the courts, that the Bankruptcy Committee consider possible rules or statutory changes to relieve bankruptcy judges of burdensome signature requirements, and that the Administrative Office Committee review reports and publications produced by the agency to ascertain whether modifications to statutory or Conference requirements would be in order; noted with approval a plan of the Director of the Administrative Office to contract for an information resource management review of the judiciary's automation program; agreed to assess Judicial Conference agendas in advance and advise Conference attendees of the projected duration of Conference sessions; imposed the requirement that all pilot programs that will form the basis for the development of permanent programs with system-wide application or impact should be approved by the Judicial Conference rather than by

individual committees; reconstituted the Legislative Liaison Group to include Conference committee chairmen or their designees; agreed that, with the approval of the chairman, chief judges should be notified of Conference committee meetings in their districts; and disapproved a suggestion that the Administrative Office deduct Federal Judges Association dues from the salaries of judge members and remit the funds to the Association.

#### **COMMITTEE ON THE ADMINISTRATIVE OFFICE**

The Committee on the Administrative Office reported that it had considered two letters regarding Administrative Office programs, both of which were satisfactorily resolved. The Committee received briefings and reviewed Administrative Office activities, including the substantial use of advisory committees of court personnel; status of decentralization efforts; automation program update and the independent consultants' review of the program; implementation efforts for new legislation, such as the Civil Justice Reform Act and the Administrative Office Personnel Act; updates on administrative and program division activities; and a report on evaluations and investigations.

#### **COMMITTEE ON AUTOMATION AND TECHNOLOGY**

##### **AUTOMATION**

On recommendation of the Committee on Automation and Technology, the Judicial Conference approved the fiscal year 1991 update to the Long Range Plan for Automation in the U.S. Courts. This update, with a central theme of building effective partnerships throughout the judiciary to support the automation program, reemphasizes the importance of the JURIST concept to achieving the objectives of the program. The goal of JURIST is to provide easy and reliable access to fully integrated office automation, court automation, and data communications through a single workstation.

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

##### **CRITERIA FOR ADDITIONAL BANKRUPTCY JUDGESHIPS**

On recommendation of the Committee on the Administration of the Bankruptcy System, the Conference approved case weights for bankruptcy cases developed by the Federal Judicial Center and adopted the following policy statement regarding requests for additional bankruptcy judgeships:

In assessing a court's need for additional judicial resources, the Bankruptcy Committee will review a number of work load factors.

The first factor considered will be the weighted caseload of the bankruptcy court, as derived from the Bankruptcy Judge Time Study. Also considered will be the nature and mix of the court's caseload; historical caseload data and filing trends; geographic, economic, and demographic factors in the district; the effectiveness of case management efforts by the court; the availability of alternative solutions and resources for handling the court's work load; the impact that approval of requested additional resources would have on the court's per judgeship caseload; and any other pertinent factors.

Generally, it is expected that, in addition to other judicial duties, a bankruptcy court should have a caseload of 1,500 annual case-related hours per judgeship to justify additional judicial resources. Requests for additional bankruptcy judgeships will be considered by the committee as part of a biennial, national survey process. The committee will consider judgeship requests on an ad hoc basis only in emergency situations where there is a clear and compelling need for immediate additional judicial resources.

The Conference also approved an expedited procedure for conducting the 1991 survey of bankruptcy judgeship needs. Thereafter, recommendations for approval of bankruptcy judgeships will be presented at the fall meeting of the Judicial Conference in odd-numbered years.

#### **COMMITTEE ON THE BICENTENNIAL OF THE CONSTITUTION**

The Committee on the Bicentennial of the Constitution reported that it had approved several projects commemorating the bicentennial of the Bill of Rights, including a conference for the federal judiciary, a secondary education project, and the provision of Bill of Rights plaques to major state libraries, to libraries in the United States territories, and at major historical and national sites. In addition, the Committee will sponsor a summer stipend program in honor of the centennial of the Circuit Court of Appeals Act of 1891.

#### **COMMITTEE ON THE BUDGET**

##### **BUDGET DECENTRALIZATION**

The Judicial Conference approved the expansion of the budget decentralization pilot program to all courts on a voluntary basis over a three-year period beginning October 1, 1991, with the understanding that each court must adopt procedures governing the budget approval and reprogramming

process prior to acceptance into the program, and that the program must conform to existing law.

### **COMMITTEE ON CODES OF CONDUCT**

The Committee on Codes of Conduct reported that, since its last report, the Committee had received 33 written inquiries and issued 41 advisory responses. The Chairman also responded to 39 telephone inquiries and other Committee members responded to 74 inquiries that did not require a reference to the Committee. The Committee also reported that it was preparing a videotape on ethical problems that frequently confront judges, which will be used as part of the Federal Judicial Center's orientation program for new judges.

### **FEDERAL ETHICS LAW REFORM**

The Judicial Conference approved the Committee's recommendations that (a) the "Regulations of the Judicial Conference of the United States Under Title III of the Ethics Reform Act of 1989 Concerning Gifts" be amended to authorize the Committee to render advisory opinions interpreting Title III of this Act (5 U.S.C. §§ 7351 and 7353) and the regulations; and (b) the "Regulations of the Judicial Conference of the United States Under Title VI of the Ethics Reform Act of 1989 Concerning Outside Earned Income, Honoraria, and Outside Employment" be amended to exclude part-time magistrate judges from the bar on the receipt of honoraria. See JCUS-SEP 90, p. 64.

### **CONFLICT-OF-INTEREST RULES FOR PART-TIME MAGISTRATE JUDGES**

The Conference amended Rule 7 of the "Conflict-of-Interest Rules for Part-time Magistrate Judges" to prohibit part-time magistrate judges who are designated to conduct civil consent trials under 28 U.S.C. § 636(c) from appearing as counsel in any civil or criminal case in the district to which he or she is appointed.

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

#### **CIVIL JUSTICE REFORM ACT**

In light of the enactment of the Civil Justice Reform Act of 1990 (Public Law 101-650), which incorporates many of the specific provisions of a 14-point "Plan to Address Cost and Delay in Civil Litigation and to Improve Case Management" adopted by the Conference in 1990 (see JCUS-SEP 90, p. 56), the

Conference approved a recommendation of the Committee on Court Administration and Case Management to rescind the 14-point Plan, except as already implemented. The Conference also designated the following ten courts, as recommended by the Committee, to serve as pilot districts pursuant to § 105(b) of the Civil Justice Reform Act: the Southern District of New York, the District of Delaware, the Eastern District of Pennsylvania, the Southern District of Texas, the Western District of Tennessee, the Eastern District of Wisconsin, the Southern District of California, the Western District of Oklahoma, the District of Utah, and the Northern District of Georgia.

#### JURY MATTERS

Due to the generally positive results of a two-year experiment with a one-step summoning and qualification procedure conducted by the Administrative Office under the direction of the Committee, the Conference agreed to seek permanent legislation to amend the Jury Selection and Service Act (28 U.S.C. § 1878) to provide district courts the option of selecting jurors either under the present two-step process or, subject to Judicial Conference guidelines, with the use of a single procedure for qualifying and summoning potential jurors. In addition, the Conference approved revisions of the AO Form JS-12 ("Report on Operation of the Jury Selection Plan") to (a) provide categories for reporting race distribution figures that correspond to the racial categories appearing on the juror qualification questionnaire; (b) provide a separate category to account for hispanic ethnicity; and (c) include comparisons of jury wheel data against general population data from the Form JS-12(a).

In response to a request for assistance from the Internal Revenue Service, the Judicial Conference approved a Committee recommendation that all forms of the juror qualification questionnaire be amended to include a request for jurors voluntarily to provide their social security numbers. A Privacy Act statement will also be included on the questionnaire.

At its September 1990 session (JCUS-SEP 90, p. 86), the Judicial Conference approved a recommendation of the former Committee on Judicial Improvements to seek legislation to amend the Jury Selection and Service Act to permit travel by aircraft within the contiguous 48 states by grand jurors when weather conditions warrant. In anticipation of the enactment of such legislation, the Conference approved guidelines proposed by the Committee on Court Administration and Case Management for inclusion in Volume I, Chapter VI, Part B of the Guide to Judiciary Policies and Procedures, to take effect upon enactment of legislation permitting such travel.

## MISCELLANEOUS FEES

In March, 1990 (JCUS-MAR 90, p. 21), the Judicial Conference approved initial rates for public access to court electronic records (PACER) services in district and bankruptcy courts. The Committee, which had been delegated authority to set PACER fees (JCUS-MAR 89, pp. 19-20), advised the Conference of its concern that performance of the financial functions associated with the maintenance of PACER accounts could have a serious impact on clerks' offices. Eventually, this billing function will be combined with the fine and restitution functions to be performed by the National Fine Center; however, the Center will not begin operation until later this year. In the interim, the Administrative Office recommended, and the Committee approved, the use of a 900 number. In addition, the \$60 subscription fee, which included 60 minutes of usage, was modified to a straight \$1 per minute charge, to facilitate the 900 number billing method.

## COMMITTEE ON COURT AND JUDICIAL SECURITY

### OFF-SITE SECURITY

The Committee on Court and Judicial Security reported on its discussions with the Director of the U.S. Marshals Service concerning off-site security of judicial officers. The Chairman has communicated his concerns regarding off-site security directly to the Attorney General.

## COMMITTEE ON CRIMINAL LAW AND PROBATION ADMINISTRATION

### SENTENCING COMMISSION

The Judicial Conference approved for submission to the United States Sentencing Commission the 1990 Annual Report of the Judicial Conference of the United States to the United States Sentencing Commission, prepared in accordance with 28 U.S.C. § 994(o).

## QUALIFICATION STANDARDS FOR PROBATION AND PRETRIAL SERVICES OFFICERS

Pursuant to a change in the mandatory retirement age for all law enforcement officers eligible to retire under federal retirement provisions (Federal Law Enforcement Pay Reform Act of 1990, Public Law 101-509), the Conference approved a requirement that first-time candidates for the positions of probation officer, pretrial services officer, probation officer assistant, and pretrial services officer assistant must not have achieved their thirty-seventh birthday. This is a



modification to an earlier requirement which limited candidates to those who had not achieved their thirty-fifth birthday (see JCUS-MAR 87, pp. 26-27).

#### **LEGISLATION TO AUTHORIZE PROBATION AND PRETRIAL SERVICES OFFICERS TO CARRY FIREARMS**

At its last session (JCUS-SEP 90, p. 69), the Conference approved a legislative proposal to authorize federal judges to carry firearms. At this session, on recommendation of the Committee on Criminal Law and Probation Administration, the Judicial Conference approved draft legislation to authorize United States probation and pretrial services officers, with the approval of their courts, to carry weapons under regulations adopted by the Director of the Administrative Office. Such legislation would (a) correct the situation in which the security of probation and pretrial services officers is left to the vagaries of state law; (b) remove the uncertainty of the authority of officers who must cross state lines in the course of their duties; and (c) clarify the removability from state court of a civil action arising out of the use of a firearm by an officer under 28 U.S.C. § 1442.

#### **SENTENCING INSTITUTE**

The Judicial Conference approved a Sentencing Institute for the judges of the Ninth Circuit to be held in September, 1991, at a site to be determined, subject to the approval of an agenda to be submitted to the Executive Committee.

#### **COMMITTEE ON DEFENDER SERVICES**

##### **APPOINTMENTS AND PAYMENTS**

The Defender Services Committee reported that during the fiscal year 1990, approximately 71,600 persons were represented under the Criminal Justice Act, compared to 69,954 persons in the fiscal year 1989, an increase of 2.4 percent. Of the 71,600 persons represented, approximately 51.1 percent (36,600) were represented by federal public and community defender organizations.

##### **BUDGET AND GRANT REQUESTS - FEDERAL PUBLIC AND COMMUNITY DEFENDER ORGANIZATIONS**

Under its delegated authority from the Judicial Conference (JCUS-MAR 89, p. 16), the Committee approved supplemental funding requests for the Federal Defender Organization for the District of Massachusetts for the fiscal years 1991 and 1992 in the amounts of \$133,400 and \$71,800, respectively,

and for the Federal Public Defender Organization for the Western District of Washington for the fiscal year 1991 in the amount of \$61,000. The Committee also approved funding for a new Federal Public Defender Organization for the Western District of New York for the fiscal years 1991 and 1992 in the amounts of \$510,202 and \$660,630, respectively, and for a new Community Defender Organization for the Eastern District of Tennessee in the fiscal years 1991 and 1992 in the amounts of \$759,611 and \$858,948, respectively.

#### **CRIMINAL JUSTICE ACT COMPENSATION**

The Committee reported that alternative compensation rates of \$75 per hour for in- and out-of-court time have been established and implemented in 16 judicial districts, and that the alternative rates approved by the Conference in September, 1990, for seven additional districts, and for the extension of alternative rates which had previously been established for particular places of holding court to all court locations in those districts, have not yet been implemented, due to the unavailability of funds (JCUS-SEP 90, p. 79). The Committee recommended, and the Judicial Conference approved, the establishment of alternative attorney compensation rates of \$75 per hour for in- and out-of-court time in three additional districts, the District of Massachusetts, the Western District of Tennessee, and the Southern District of Florida, subject to the availability of funds.

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

##### **VENUE IN DIVERSITY JURISDICTION AND FEDERAL QUESTION SUITS**

The Judicial Conference approved a recommendation by the Committee on Federal-State Jurisdiction that legislation be sought to amend 28 U.S.C. § 1391(a) and (b), relating to venue in diversity and federal question cases. An amendment is necessary to correct a drafting error which occurred when the statute was changed pursuant to the Judicial Improvements Act of 1990 (Public Law 101-650) and to align more closely the diversity venue provisions with the venue provisions in federal question cases. The amendment would also correct a typographical error in section 1391(b).

#### **COMMITTEE ON INTERCIRCUIT ASSIGNMENTS**

The Committee on Intercircuit Assignments reported that during the period August 1, 1990, through January 31, 1991, the Committee had recommended 86 intercourt assignments to be undertaken by 64 Article III judges. Of this number, one was a retired Supreme Court justice, 17 were senior circuit judges, six were active circuit judges, 24 were senior district

judges, eight were active district judges, one was a senior judge of the Court of International Trade, and seven were active judges of the Court of International Trade. For the first time, pursuant to a recent amendment to the Uniform Code of Military Justice, the Chief Justice designated an Article III judge to perform judicial duties in the United States Court of Military Appeals.

### **COMMITTEE ON THE INTERNATIONAL APPELLATE JUDGES CONFERENCE OF 1990**

The Committee on the International Appellate Judges Conference of 1990 submitted its final report, and the Judicial Conference discharged the Committee. See also "RESOLUTION", *supra* pp. 8-9.

### **COMMITTEE ON THE JUDICIAL BRANCH**

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

The Judicial Conference agreed to seek legislation to amend the Judicial Survivors' Annuities System (JSAS) to (a) reduce the contribution rate of judicial officers and provide a new opportunity for eligible judicial officers to elect JSAS coverage; (b) provide a partial credit for judicial officers who contributed at the previous, higher rate; (c) allow judicial officers to cease contributions upon the death or divorce of a spouse; and (d) allow bankruptcy judges and magistrate judges who leave office before age 65 to continue JSAS coverage and provide credit for their subsequent contributions.

The Conference also agreed to defer efforts to revise the JSAS annuity computation method to base the annuity on the judicial officers' final salary rather than on the "high three years" of salary.

The Conference approved two proposed amendments to the general provisions of title 5, United States Code, to be included in the package of JSAS revisions forwarded to Congress, with the understanding that the provisions should be deleted and deferred if they jeopardize enactment of the other revisions. These provisions would extend federal health benefits coverage to survivors of judicial officers whether or not the judicial officers had participated in JSAS, and allow bankruptcy and magistrate judges to continue federal life insurance coverage after retirement in a manner similar to Article III judges.

## EVALUATION OF FEDERAL JUDGES

The Conference requested that the Federal Judicial Center write a synopsis of the pilot judicial evaluation project in the Central District of Illinois, for circulation to the courts.

### **COMMITTEE ON JUDICIAL ETHICS**

The Judicial Ethics Committee reported that as of January, 1991, it had received 2,078 financial disclosure reports and certifications for the calendar year 1989, including 1,010 reports and certifications from judicial officers and 1,068 reports and certifications from judicial employees.

### **COMMITTEE ON JUDICIAL RESOURCES**

#### ADDITIONAL COURT REPORTERS

The Judicial Conference approved the establishment of one additional court reporter position for the District of New Jersey (at Camden), and one for the Western District of New York (at Buffalo). The Conference also approved a temporary court reporter position for the Southern District of Texas (at Galveston), with the proviso that the position will be made permanent with the first court reporter vacancy in Houston.

#### FISCAL YEAR 1992 BUDGET REQUEST FOR SUPPORTING PERSONNEL

The Conference authorized one JSP-9 automation support specialist position for the United States Claims Court, to be included in the judiciary's FY 1992 budget.

### **COMMITTEE ON THE ADMINISTRATION OF THE FEDERAL MAGISTRATES SYSTEM**

#### POSITIONS, SALARIES, AND ARRANGEMENTS FOR UNITED STATES MAGISTRATE JUDGES

Observing that the Judicial Conference has broad discretion in determining when surveys of magistrate judge positions should be conducted (see 28 U.S.C. § 633(a)(1)), the Committee on the Administration of the Federal Magistrates System recommended, and the Judicial Conference approved, the following resolution changing the methodology of the survey process of magistrate judge resources:

## Magistrate Judge Survey Methodology

In light of twenty years' experience with the magistrate judge system, the Judicial Conference determines that surveys of magistrate judge positions prior to the expiration of the incumbents' terms are no longer necessary. Absent specific action, the Conference determines that all magistrate judge positions continue to be needed with no change in the salary or arrangements. In accordance with 28 U.S.C. § 633(a)(1), the Conference deems it expedient to direct the Director of the Administrative Office periodically to prepare local surveys reviewing all magistrate judge resources in each district to determine whether there should be changes in the numbers, locations, salaries, or arrangements. Each district will be surveyed no less frequently than every four years, if the district is authorized part-time magistrate judge positions, or every five years, if the district is authorized only full-time magistrate judge positions. Specific Judicial Conference action will be required only in instances where new magistrate judge positions are authorized, a position is terminated, or where a change is required in the salary or arrangements.

### CHANGES IN MAGISTRATE JUDGE POSITIONS

After consideration of the report of the Committee and the recommendations of the Director of the Administrative Office, the district courts, and the judicial councils of the circuits, the Conference approved the following changes in salaries and arrangements for full-time and part-time magistrate judge positions. Unless otherwise indicated, these changes are to be effective when appropriated funds are available.

#### FIRST CIRCUIT

##### **Maine**

Continued the authority of the clerk of court to perform magistrate duties for an additional four-year term at the currently authorized additional compensation of \$2,544 per annum.

##### **Massachusetts**

1. Continued the full-time magistrate judge position at Boston which is due to expire on June 13, 1992, for an additional eight-year term;

2. Continued the full-time magistrate judge position at Springfield for an additional eight-year term; and
3. Discontinued the part-time magistrate judge position at Cape Cod National Seashore upon the expiration of the current term.

#### SECOND CIRCUIT

##### **New York, Northern**

Discontinued the authority of the clerk of court to perform magistrate duties.

##### **New York, Southern**

1. Continued the three full-time magistrate judge positions at New York City which are due to expire on February 29, March 11, and August 2, 1992, for additional eight-year terms; and
2. Continued the part-time magistrate judge position at Newburgh for an additional four-year term and increased the salary of the position from \$9,251 per annum to \$13,878 per annum.

#### THIRD CIRCUIT

##### **Pennsylvania, Eastern**

1. Converted the part-time magistrate judge position at Allentown into a full-time position at Allentown or Philadelphia; and
2. Authorized an additional full-time magistrate judge position to serve the court at Philadelphia.

##### **Pennsylvania, Middle**

1. Converted the part-time magistrate judge position at Scranton to a full-time position; and
2. Discontinued the part-time magistrate judge position at Stroudsburg upon the appointment of the full-time magistrate judge at Scranton.

**Pennsylvania, Western**

Increased the salary of the part-time magistrate judge position at Erie from \$23,129 per annum to \$46,258 per annum.

FOURTH CIRCUIT

**North Carolina, Eastern**

1. Continued the authority of the clerk of court to perform magistrate duties for an additional four-year term; and
2. Increased the aggregate salary which the clerk of court receives for performing clerk and magistrate duties to one grade level above the grade prescribed for the clerk of court. (The previous ceiling was JSP-16.)

**North Carolina, Western**

Continued the full-time magistrate judge position at Asheville for an additional eight-year term.

**South Carolina**

Increased the salary of the part-time magistrate judge position at Florence from \$32,380 per annum to \$46,258 per annum.

**Virginia, Eastern**

Continued the full-time magistrate judge position at Richmond for an additional eight-year term.

**West Virginia, Southern**

1. Continued the full-time magistrate judge position at Huntington for an additional eight-year term; and
2. Converted the part-time magistrate judge position at Beckley (or Bluefield) to a full-time position at Beckley or Bluefield.

## FIFTH CIRCUIT

### **Louisiana, Western**

1. Continued the authority of the clerk of court to perform magistrate duties for an additional four-year term;
2. Increased the salary of the part-time magistrate judge position at Monroe from \$2,544 per annum to \$4,626 per annum; and
3. Converted the part-time magistrate judge position at Lafayette (or Opelousas) to a full-time position at Lafayette or Opelousas.

### **Mississippi, Northern**

1. Continued the authority of the clerk of court to perform magistrate duties for an additional four-year term; and
2. Increased the aggregate salary which the clerk of court receives for performing clerk and magistrate duties to one grade level above the grade prescribed for the clerk of court. (The previous ceiling was JSP-16.)

### **Mississippi, Southern**

1. Continued the full-time magistrate judge position at Biloxi-Gulfport for an additional eight-year term;
2. Continued the full-time magistrate judge position at Jackson for an additional eight-year term; and
3. Continued the full-time magistrate judge position at Biloxi (or Gulfport or Jackson) for an additional eight-year term.

### **Texas, Eastern**

1. Continued the full-time magistrate judge position at Beaumont which is due to expire on March 6, 1992, for an additional eight-year term; and
2. Made no changes in the part-time magistrate judge positions at Sherman and Texarkana.



## SIXTH CIRCUIT

### **Kentucky, Eastern**

1. Converted the part-time magistrate judge position at Covington to a full-time position; and
2. Declined to discontinue the part-time magistrate judge position at London effective upon the appointment of the full-time magistrate judge at Covington.

### **Kentucky, Western**

1. Continued the authority of the deputy clerk of court position at Louisville to perform magistrate duties for an additional four-year term; and
2. Continued the part-time magistrate judge position at Owensboro for an additional four-year term at the currently authorized salary of \$13,878 per annum.

### **Tennessee, Eastern**

Continued the full-time magistrate judge position at Chattanooga for an additional eight-year term.

### **Tennessee, Western**

Denied the request to continue the part-time magistrate judge position at Jackson at the currently authorized salary of \$27,755 per annum until the end of the current term.

## SEVENTH CIRCUIT

### **Illinois, Northern**

1. Continued the full-time magistrate judge position at Chicago which is due to expire on December 13, 1992, for an additional eight-year term;
2. Converted the part-time magistrate judge position at Rockford into a full-time position; and

3. Continued the part-time magistrate judge position at Rockford at the currently authorized salary of \$46,258 per annum for an additional four-year term or until such time as the new full-time magistrate judge is appointed at that location, whichever occurs first.

#### **Wisconsin, Western**

1. Continued the full-time magistrate judge position at Madison for an additional eight-year term;
2. Continued the authority of the clerk of court to perform magistrate duties at no additional compensation for an additional four-year term;
3. Discontinued the part-time magistrate judge position at Ashland, effective July 1, 1991; and
4. Reinstated the part-time magistrate judge position at Eau Claire and continued the position for an additional four-year term at a salary of \$2,544 per annum.

#### EIGHTH CIRCUIT

#### **Arkansas, Western**

Made no change in the status of the part-time magistrate judge positions at Hot Springs, Harrison, and El Dorado.

#### **Iowa, Southern**

Continued the full-time magistrate judge position at Des Moines which is due to expire on February 28, 1992, for an additional eight-year term.

#### **Minnesota**

1. Converted the part-time magistrate judge position at St. Paul to a full-time position; and
2. Continued the full-time magistrate judge position at Duluth for an additional eight-year term.

### **Missouri, Western**

1. Authorized an additional full-time magistrate judge position to serve the court at Kansas City; and
2. Continued the full-time magistrate judge position at Springfield for an additional eight-year term.

### NINTH CIRCUIT

#### **Alaska**

1. Continued the part-time magistrate judge position at Kodiak for an additional four-year term at the currently authorized salary of \$4,626 per annum;
2. Continued the part-time magistrate judge position at Ketchikan for an additional four-year term at the currently authorized salary of \$2,544 per annum; and
3. Discontinued the part-time magistrate judge position at Nome.

#### **Arizona**

1. Continued the full-time magistrate judge position at Phoenix which is due to expire on January 30, 1992, for an additional eight-year term; and
2. Increased the salary of the part-time magistrate judge position at Yuma from \$23,129 per annum to \$27,755 per annum.

#### **California, Eastern**

1. Maintained the salary of the full-time magistrate judge position at Yosemite National Park at its present level of 70 percent of the maximum salary payable to a full-time magistrate judge;
2. Continued the part-time magistrate judge position at Bishop for an additional four-year term and increased the salary from \$7,740 per annum to \$9,251 per annum; and
3. Continued the part-time magistrate judge position at Susanville for an additional four-year term at the currently authorized salary of \$6,938 per annum.

### **California, Southern**

Continued the part-time magistrate judge position at El Centro for an additional four-year term at the currently authorized salary of \$41,632 per annum.

### **Hawaii**

Continued the full-time magistrate judge position at Honolulu which is due to expire on January 8, 1992, for an additional eight-year term.

### **Idaho**

Continued the full-time magistrate judge position at Boise for an additional eight-year term.

### **Montana**

1. Authorized a full-time magistrate judge position to serve the court at Helena or Missoula;
2. Discontinued the part-time magistrate judge positions at Helena, Missoula, Kalispell, Cut Bank and Butte effective upon the appointment of the full-time magistrate judge at Helena or Missoula; and
3. Increased the salary of the part-time magistrate judge position at Wolf Point from \$4,626 per annum to \$37,007 per annum for a two-month period commencing April 1, 1991, with a return to the \$4,626 per annum salary thereafter.

### **Washington, Eastern**

Converted the part-time magistrate judge position at Yakima to a full-time position.

### **Washington, Western**

1. Converted the part-time magistrate judge position at Tacoma (or Mt. Rainier National Park) to a full-time position at Seattle or Tacoma; and

2. Decreased the salary of the part-time magistrate judge position at Olympic National Park from \$37,007 per annum to \$9,251 per annum, effective upon the appointment of the new full-time magistrate judge at Seattle or Tacoma.

### TENTH CIRCUIT

#### **Colorado**

1. Converted the part-time magistrate judge position at Colorado Springs to a full-time position at Colorado Springs or Pueblo or Denver, the location to be determined by the court;
2. Discontinued the part-time magistrate judge position at Rocky Mountain National Park at the expiration of the current term;
3. Discontinued the part-time magistrate judge position at Monte Vista;
4. Discontinued the part-time magistrate judge position at Craig (or Steamboat Springs); and
5. Increased the salary of the part-time magistrate judge position at Durango from \$16,191 per annum to \$46,258 per annum for a four-month period commencing April 1, 1991, with a reduction to a salary of \$23,129 per annum thereafter.

#### **New Mexico**

Continued the part-time magistrate judge position at Clovis for an additional four-year term at the currently authorized salary of \$6,938 per annum.

#### **Oklahoma, Eastern**

1. Continued the part-time magistrate judge position at McAlester for an additional four-year term at the currently authorized salary of \$6,938 per annum; and
2. Discontinued the part-time magistrate judge position at Hugo.

#### **Wyoming**

1. Authorized a full-time magistrate judge position at Cheyenne;

2. Discontinued the authority of the clerk of court to perform magistrate duties effective upon the appointment of the new full-time magistrate judge at Cheyenne;
3. Increased the aggregate salary which the clerk of court receives for performing clerk and magistrate duties to one grade level above the grade prescribed for the clerk of court until such time as the clerk's authority to perform magistrate duties is discontinued by the appointment of the new full-time magistrate judge at Cheyenne (previous ceiling was JSP-16);
4. Continued the part-time magistrate judge position at Jackson for an additional four-year term and increased the salary from \$9,251 per annum to \$11,564 per annum; and
5. Decreased the salary of the part-time magistrate judge position at Lander from \$27,755 per annum to \$4,626 per annum, effective April 1, 1991.

#### ELEVENTH CIRCUIT

##### **Florida, Middle**

Authorized an additional full-time magistrate judge position to serve the court at Orlando.

##### **Florida, Southern**

Changed the location of one of the two full-time magistrate judge positions authorized in March 1990 from Miami, to Miami or West Palm Beach.

##### **Georgia, Northern**

1. Continued the full-time magistrate judge position at Atlanta which is due to expire on September 30, 1992, for an additional eight-year term;
2. Continued the part-time magistrate judge position at Rome for an additional four-year term at the currently authorized salary of \$46,258 per annum; and

- Continued the part-time magistrate judge position at Gainesville for an additional four-year term and increased the salary of the position from \$11,564 per annum to \$13,878 per annum.

#### **Georgia, Southern**

Converted the part-time magistrate judge position at Brunswick (or Waycross) to a full-time position.

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

The Committee to Review Circuit Council Conduct and Disability Orders reported that it has no petitions for review presently pending, none having been filed within the past year.

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

##### **CRIMINAL RULES**

The Committee on Rules of Practice and Procedure submitted to the Conference proposed amendments to Rules 16(a) ("Discovery and Inspection"), 32(c) ("Sentence and Judgment"), 32.1(a) ("Revocation or Modification of Probation or Supervised Release"), 35(b) and (c) ("Correction or Reduction of Sentence"), 46(h) ("Release from Custody"), 54(a) ("Application and Exception"), and 58(b) and (d) ("Procedure for Misdemeanors and Other Petty Offenses") of the Federal Rules of Criminal Procedure. The proposed amendments were accompanied by Committee notes explaining their purpose and intent. The Conference approved the amendments for transmission to the Supreme Court for consideration, with the recommendation that they be approved by the Court and transmitted to Congress pursuant to law.

##### **EVIDENCE RULES**

The Committee submitted to the Conference proposed amendments to Rules 404(b) ("Character Evidence not Admissible to Prove Conduct; Exceptions; Other Crimes") and 1102 ("Amendments") of the Federal Rules of Evidence, accompanied by Committee notes explaining their purpose and intent. The Conference approved their transmission to the Supreme Court for consideration, with the recommendation that they be approved by the Court and transmitted to Congress pursuant to law.

## BANKRUPTCY RULES

The Committee submitted to the Conference proposed amendments to Rules 5011(b) ("Withdrawal and Abstention from Hearing a Proceeding") and 9027(e) ("Removal") of the Federal Rules of Bankruptcy Procedure, accompanied by Committee notes explaining their purpose and intent. The Conference approved their transmission to the Supreme Court for consideration, with the recommendation that they be approved by the Court and transmitted to Congress pursuant to law.

## CIVIL RULES

Upon being advised that the text and Committee note to a proposed revision of Rule 16 that had been approved by the Advisory Committee on Civil Rules were not actually included in the materials approved by the Judicial Conference in September, 1990 (JCUS-SEP 90, p. 102), the Conference agreed to recommend that the Supreme Court disregard at this time the proposed revisions to Civil Rule 16 submitted to the Court after the September 1990 session of the Conference. The Advisory Committee on Civil Rules is now considering other changes to Rule 16, and can conveniently include the proposed 1990 revision in the version the Advisory Committee will be submitting at a later time.

## PROCEDURES OF THE RULES COMMITTEES

The Conference approved an amendment to paragraph 4(d) of the Procedures for the Conduct of Business by the Judicial Conference Committees on Rules of Practice and Procedure to permit the Committees to recommend technical or conforming amendments to the Rules without public notice and comment.

## COMMITTEE ON SPACE AND FACILITIES

### UNITED STATES COURTS DESIGN GUIDE

In 1984 (JCUS-MAR 84, p. 8), the Judicial Conference approved the United States Courts Design Guide. At this session, on recommendation of the Committee on Space and Facilities, the Judicial Conference approved the judicial space standards set forth in a revised Design Guide, with an amendment to provide that any significant deviations from the guidelines must be approved by the judicial council in each circuit, and subject to technical amendment by the Committee on Space and Facilities for grammatical and formatting purposes.



## **AD HOC COMMITTEE ON ASBESTOS LITIGATION**

In September, 1990, the Chief Justice appointed an Ad Hoc Committee on Asbestos Litigation to address the substantial number of asbestos personal injury cases and the complex issues they present. Included on the Ad Hoc Committee were the Chairmen of the Committees on Federal-State Jurisdiction, Court Administration and Case Management, Intercircuit Assignments, and Civil Rules, the Chairman of the Judicial Panel on Multidistrict Litigation, and a member of the Board of the Federal Judicial Center.

After careful consideration, the Committee concluded that the large volume of asbestos cases, both in federal and state courts, and the resulting delays and costs, have resulted in a denial of justice and fundamental unfairness to litigants. The Committee also concluded that no adequate procedures presently exist to enable the justice system to deal with the unique nature of asbestos cases.

Accordingly, the Committee recommended, and the Conference agreed, that Congress consider a national legislative scheme to come to grips with the impending disaster relating to resolution of asbestos personal injury disputes, with the objectives of achieving timely appropriate compensation of present and future asbestos victims and of maximizing the prospects for the economic survival and viability of the defendants. As a back-up position, the Committee recommended, and the Conference agreed, that Congress consider legislation expressly to authorize consolidation and collective trial of asbestos cases in order to expedite disposition of cases in federal courts with heavy asbestos personal injury caseloads. The Conference also voted to request its Standing Committee on Rules of Practice and Procedure to direct the Advisory Committee on Civil Rules to study whether Rule 23, F.R.C.P., should be amended to accommodate the demands of mass tort litigation.

The Conference recognized that Administrative Office support is needed by the federal courts to deal effectively with current and future asbestos claims. The Director of the Administrative Office was directed to monitor asbestos litigation in federal courts; collect materials and information relative to asbestos injuries and litigation, including records of trials with copies of orders, depositions, and documents that would be helpful to judges in asbestos trials; supply information to judges on asbestos litigation issues when requested; and make all reasonable efforts to supply additional funds and assistance to meet unusual needs for clerical and administrative personnel created by proceedings in asbestos cases.

The Conference then discharged the Ad Hoc Committee, with the request that the Executive Committee assign to another Conference committee the

responsibility to oversee the development of the clearinghouse within the Administrative Office to monitor asbestos litigation and legislation and to report to the Conference on developments and proposed remedies.<sup>3</sup>

### **AD HOC COMMITTEE ON CAMERAS IN THE COURTROOM**

In its final report, the Ad Hoc Committee on Cameras in the Courtroom advised the Conference that it had selected for inclusion in the experimental program permitting photographing, recording, and broadcasting of civil proceedings in the federal courts (see JCUS-SEP 90, pp. 103-104), the Courts of Appeals for the Second and Ninth Circuits, the Southern District of Indiana, the District of Massachusetts, the Eastern District of Michigan, the Southern District of New York, the Eastern District of Pennsylvania, and the Western District of Washington.

### **NATIONAL STATE-FEDERAL JUDICIAL COUNCIL**

The Judicial Conference approved recommendations from the National State-Federal Judicial Council that the Council shall (a) be known as the National Judicial Council of State and Federal Courts; (b) serve as a national coordinator to encourage the establishment of local state-federal judicial councils and strengthen existing councils; and (c) engage in educational projects which highlight issues of mutual interest to the state and federal courts. The Chief Justice has appointed to the National Judicial Council Circuit Judges Peter T. Fay and Patrick E. Higginbotham, and District Judges Morris S. Arnold and John F. Grady.

### **RESOLUTION**

The Judicial Conference adopted the following resolution in appreciation of Judge John F. Nangle, former District Judge Representative from the Eighth Circuit, as follows:

The Judicial Conference of the United States, meeting in Washington, D.C. on this 12th day of March, 1991, hereby resolves a special tribute to the:

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<sup>3</sup>The Executive Committee subsequently assigned this responsibility jointly to the Committees on Federal-State Jurisdiction and Court Administration and Case Management, with the expectation that the Chairmen will appoint a joint subcommittee on asbestos.

## HONORABLE JOHN F. NANGLE

United States District Judge for the Eastern District of Missouri, hereby inscribed by the Judicial Conference of the United States, presided over by Chief Justice William H. Rehnquist, for Judge Nangle's eighteen years of service to the judiciary.

A skilled lawyer, Judge Nangle worked as an attorney engaged in trial work and the general practice of law for over twenty-four years. During that time, he served on numerous committees of the local bar association. He also served as city attorney for Brentwood on a part-time basis from 1953 to 1963, and as special legal advisor for the St. Louis County Government from 1963 to 1973, when he was appointed to the federal bench.

In 1985, Judge Nangle was elected as the Eighth Circuit District Judge Representative to the Judicial Conference of the United States. He was reelected in 1986, and served until his resignation in January, 1991.

Judge Nangle also served as a member of the Judicial Conference's Executive Committee from 1987 to 1991. His other Judicial Conference assignments included the Committee on the Operation of the Jury System from 1981 to 1987, and the Committee to Study the Judicial Conference from 1986 to 1987.

In June, 1990, Judge Nangle was appointed as Chairman of the Judicial Panel on Multidistrict Litigation, and in September, 1990, to the Ad Hoc Committee on Asbestos Litigation.

Judge Nangle was also an energetic leader in the Eighth Circuit, where he was Chief Judge of the Eastern District of Missouri from 1983 to 1990. Simultaneous with his service on the Judicial Conference, Judge Nangle served on the Eighth Circuit Judicial Council as an ex officio member. On May 10, 1990, Judge Nangle took senior status.

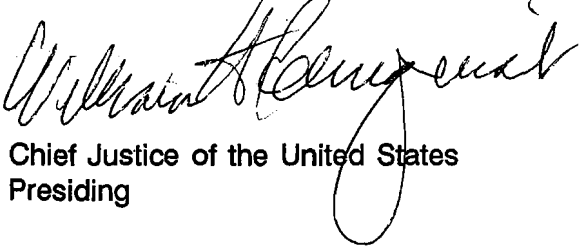
Judge Nangle has distinguished himself in his years with the United States Courts in his contributions to the Eastern District of Missouri, the Eighth Circuit, and the Judicial Conference of the United States. We recognize him today as a leader, a colleague, and a friend.

## **FUNDING**

All actions which require the expenditure of funds were approved by the Conference subject to the availability of funds, and subject to whatever priorities the Conference might establish for the use of available resources.

## **RELEASE OF CONFERENCE ACTION**

The Conference authorized the immediate release of matters considered at this session where necessary for legislative or administrative action.



Chief Justice of the United States  
Presiding

May 9, 1991