

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

March 11, 2014

The Judicial Conference of the United States convened in Washington, D.C., on March 11, 2014, 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 Sandra L. Lynch
Judge Paul J. Barbadoro,
District of New Hampshire

Second Circuit:

Chief Judge Robert A. Katzmann
Chief Judge William M. Skretny,
Western District of New York

Third Circuit:

Chief Judge Theodore A. McKee
Chief Judge Joy Flowers Conti,
Western District of Pennsylvania

Fourth Circuit:

Chief Judge William B. Traxler, Jr.
Chief Judge Deborah K. Chasanow,
District of Maryland

Fifth Circuit:

Chief Judge Carl E. Stewart
Chief Judge Louis Guirola, Jr.,
Southern District of Mississippi

Sixth Circuit:

Chief Judge Alice M. Batchelder
Chief Judge Paul Lewis Maloney,
Western District of Michigan

Seventh Circuit:

Chief Judge Diane P. Wood
Chief Judge Rubén Castillo,
Northern District of Illinois

Eighth Circuit:

Chief Judge William Jay Riley
Judge Rodney W. Sippel,
Eastern District of Missouri

Ninth Circuit:

Chief Judge Alex Kozinski
Judge Robert S. Lasnik,
Western District of Washington

Tenth Circuit:

Chief Judge Mary Beck Briscoe
Judge Dee V. Benson,
District of Utah

Eleventh Circuit:

Chief Judge Ed Carnes
Judge W. Louis Sands,
Middle District of Georgia

District of Columbia Circuit:

Chief Judge Merrick B. Garland
Chief Judge Richard W. Roberts,
District of Columbia

Federal Circuit:

Chief Judge Randall R. Rader

Court of International Trade:

Chief Judge Donald C. Pogue

The following Judicial Conference committee chairs also attended the Conference session: Circuit Judges Julia Smith Gibbons, Thomas M. Hardiman, John M. Rogers, Anthony J. Scirica, D. Brooks Smith, Jeffrey S. Sutton, and Timothy M. Tymkovich; District Judges Nancy F. Atlas, Catherine C. Blake, David G. Campbell, Sidney A. Fitzwater, Irene M. Keeley, Royce C. Lamberth, Joseph H. McKinley, Jr., Lawrence L. Piersol, Joel A. Pisano, Reena Raggi, Danny C. Reeves, Julie A. Robinson, and Richard W. Story; and Bankruptcy Judge Eugene R. Wedoff. Attending as the bankruptcy judge and magistrate judge observers, respectively, were Bankruptcy Judge Brenda T. Rhoades and Magistrate Judge Alan J. Baverman. David Tighe of the Tenth Circuit represented the circuit executives.

Judge John D. Bates, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Jill C. Sayenga, Deputy Director; Robert K. Loesche, General Counsel; Jeffrey A. Hennemuth, Secretariat Officer, and Katherine H. Simon, Attorney Advisor, Judicial Conference Secretariat; Cordia A. Strom, Legislative Affairs Officer; and David A. Sellers, Public Affairs Officer. District Judge Jeremy D. Fogel, Director, and John S. Cooke, Deputy Director, Federal Judicial Center, and District Judge Patti B. Saris, Chairman, and Kenneth P. Cohen, Staff Director, United States Sentencing Commission, were in attendance at the session of the Conference, as was Jeffrey P. Minear, Counselor to the Chief Justice, and Ethan V. Torrey, Supreme Court Legal Counsel.

Attorney General Eric H. Holder, Jr., addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice. Senators Patrick J. Leahy, Jeff Sessions, and Christopher Coons and Representative John S. Conyers, Jr., spoke on matters pending in Congress of interest to the Conference.

REPORTS

Judge Bates reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office (AO). Judge Fogel spoke to the Conference about Federal Judicial Center (FJC) programs, and Judge Saris reported on United States Sentencing Commission activities. Judge Gibbons, Chair of the Committee on the Budget, presented a report on budgetary matters, and Judge Smith, Chair of the Committee on Space and Facilities, presented a report on space reduction efforts.

ELECTION

The Judicial Conference elected Judge Kent A. Jordan, United States Court of Appeals for the Third Circuit, to membership on the Board of the Federal Judicial Center for a term of four years, to succeed Judge Edward C. Prado, United States Court of Appeals for the Fifth Circuit.

EXECUTIVE COMMITTEE

FISCAL YEAR 2014 FINAL FINANCIAL PLANS

At its February 2014 meeting, the Executive Committee approved final financial plans for fiscal year (FY) 2014 for the Salaries and Expenses (S&E), Defender Services, Court Security, and Fees of Jurors and Commissioners accounts, which reflect the enacted appropriations contained in the Consolidated Appropriations Act of 2014, Pub. L. No. 113-76. The emergency sequestration measures previously approved by the Executive Committee are no longer in effect, with two exceptions: law book allotments remain at the FY 2013 funded level, and Second Chance Act allotments to probation and pretrial services offices continue to be reduced to prioritize funding for officer salaries and law enforcement allotments. In addition, funding was sufficient to permit the Executive Committee, acting on behalf of the Judicial Conference, to restore Criminal Justice Act panel attorney hourly rates that were temporarily reduced in September 2013, and to provide a one-percent cost-of-living adjustment to panel attorney rates, consistent with a recent, similar adjustment to federal employee pay. The hourly panel attorney rates were therefore increased to \$126 for non-capital representations and \$180 for capital representations, both effective on March 1, 2014.

ADMINISTRATIVE OFFICE ORGANIZATIONAL CHANGES

The judiciary's administrative policies, regulations, and similar documents (including but not limited to materials in the *Guide to Judiciary Policy*) frequently include specific references to organizational units and employee positions in the Administrative Office. While some of these references occur in documents that are not subject to Judicial Conference approval, or are approved by the Conference only in concept, others bear explicit Conference approval and would therefore require such approval to be updated. To simplify the process of keeping organizational references current, on recommendation of the Executive Committee, the Judicial Conference authorized the Director of the Administrative Office to make technical and conforming revisions, as necessary, to regulations, policy statements, or other documents whose wording has been explicitly approved by the Judicial Conference, to reflect any restructuring of the Administrative Office or renaming of its organizational components.

FEDERAL DEFENDER ORGANIZATION FUNDING ALTERNATIVES

The Executive Committee continued its examination of possible alternatives for allocating funding to federal defender organizations (FDOs) in FY 2015, pending completion of a work measurement study that is expected to produce FDO staffing formulas for use in FY 2016 and beyond. In light of the complexities of the matter and the fact that making any change in the method for allocating funds to FDOs would benefit from the additional information to be collected through an ongoing work measurement study, the Committee decided not to propose any specific changes for FY 2015, but to await completion of the work measurement study. The Committee endorsed the Defender Services Committee's undertaking to scrutinize carefully FDO budgets to ensure appropriate allocation of scarce resources in FY 2015 and encouraged the Defender Services Committee to work proactively with the defender community to address concerns about resource and workload disparities.

MISCELLANEOUS ACTIONS

The Executive Committee —

- Agreed to act on behalf of the Judicial Conference to withdraw certain proposals to amend Bankruptcy Rules 7008, 7012, 7016, 9027, and 9033 that had been approved by the Conference and transmitted to the Supreme Court for consideration under the Rules Enabling Act, and to recommit them to the Committee on Rules of Practice and Procedure for consideration in light of the decision of the Supreme Court in *Executive Benefits Insurance Agency v. Arkison*, 702 F.3d 553 (9th Cir. 2012), cert. granted, 133 S. Ct. 2880 (Mem.) (2013) (No. 12-1200).
- Adjusted the previously approved fiscal year 2014 interim financial plans to account for additional funds provided to the judiciary in the Continuing Appropriations Act, 2014, Pub. L. No. 113-46, which funded the judiciary through January 15, 2014, at the fiscal year 2013 post-sequestration level, with the exception of two funding anomalies (increases)—\$26 million provided in the Defender Services account and \$25 million provided in the Salaries and Expenses account, with authority to transfer the latter sum among the judiciary’s four main accounts.
- Expressed agreement with actions taken by the Director of the Administrative Office to implement judicial salary adjustments in accordance with the decision in *Beer v. United States*, 696 F.3d 1174 (Fed. Cir. 2012) (en banc), cert. denied, 133 S. Ct. 1997 (2013).
- Agreed that the AO Director should inform the Senate Judiciary Committee that concerns had been raised within the judiciary about a proposed amendment in the nature of a substitute to S. 1675, 113th Congress, the “Recidivism Reduction and Public Safety Act of 2014,” and suggested further review and consideration of the matter.
- Agreed to grant exceptions to the requirement that every Judicial Conference committee meeting be held in a “hub” city for two meetings for which specific locations had been previously identified, but declined to consider granting either an exception requested for a third meeting whose location had not been definitely identified or a more general, open-ended exception for similar committee meetings in the future.

COMMITTEE ON AUDITS AND ADMINISTRATIVE OFFICE ACCOUNTABILITY

COMMITTEE ACTIVITIES

The Committee on Audits and Administrative Office Accountability reported that it was briefed on a forthcoming audit of the judiciary's appropriations and discussed a pilot project in which volunteering organizations will undergo risk-based audits rather than the standard audit that has been used for several years in the cyclical court and federal public defender organization audit program. The Committee also discussed enhancements to internal controls and program reviews, and improvements in the solicitation of audits of Chapter 13 trustee operations in the six bankruptcy administrator districts.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

CODE OF CONDUCT APPLICATION TO RETIRED BANKRUPTCY JUDGES

At this session, the Judicial Conference amended the Code of Conduct for United States Judges to provide that a retired bankruptcy judge (or magistrate judge) who provides irrevocable notice to the Administrative Office that he or she will not consent to recall service, no longer has to comply with previously applicable provisions of the Code (*see infra*, "Code of Conduct for United States Judges," pp. 9-10). The Committee on the Administration of the Bankruptcy System recommended that the Judicial Conference adopt complementary amendments to the Conference regulations governing the ad hoc and extended service recall of retired bankruptcy judges, *Guide to Judiciary Policy*, Vol. 3, Chs. 9 and 10, to incorporate this new policy. The Conference agreed, amending the regulations to provide that any bankruptcy judge who notifies the AO that he or she will not consent to recall service is ineligible for recall under the regulations, and thus is not obligated to comply with the provisions of the Code. *See infra*, pp. 22-23, "Code of Conduct Application to Retired Magistrate Judges," for similar amendments to the magistrate judge recall regulations.

BANKRUPTCY JUDGESHIPS

Recognizing that fiscal constraints may hinder Congress from fulfilling all of the judiciary's judgeship needs, in March 2013, the Executive Committee asked the Bankruptcy Committee to recommend criteria to be used in setting priorities among the bankruptcy judgeship requests within the Judicial Conference's recommendations to Congress. As a first step, the Bankruptcy Committee focused on prioritization of recommendations for conversion of temporary judgeships to permanent. It developed a methodology for identifying which of the requests for conversion of a temporary judgeship should be considered an emergency, so that when a legislative opportunity arose, the Committee could provide the Director of the Administrative Office with a prioritized list of temporary judgeships using the most up-to-date data available. Based on that methodology, at its September 2013 session, the Judicial Conference authorized the Director, after consulting with the Bankruptcy Committee, and subject to the approval of the Executive Committee, to seek legislation to convert to permanent status any or all of the temporary bankruptcy judgeships that are included in the 2013 Judicial Conference bankruptcy judgeship recommendations, thus allowing the Director to seek fewer than all the judgeships recommended, and to prioritize based on current information provided by the Committee.

At this session, the Committee recommended that the methodology developed for prioritizing conversion requests also be applied to requests for new judgeships and that a single prioritized list of judgeships be provided to the Director on request, unless the legislative environment suggests that only conversion requests or only new judgeship requests could succeed, in which case an appropriate list of the one type of judgeship request would be prepared. Adopting the Committee's recommendation, the Conference authorized the Director, in consultation with the Bankruptcy Committee, and subject to the approval of the Executive Committee, to seek legislation for any or all of the additional judgeships that are included in the 2013 Judicial Conference bankruptcy judgeship recommendations.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Bankruptcy System reported that it is continuing to review and provide oversight of bankruptcy judgeship resources. In addition, the Committee concurred with the decision of the Committee on Court Administration and Case Management to

recommend an increase in the administrative fee for bankruptcy cases and the adversary filing fee, and it endorsed fee-related proposals regarding redaction of private information from bankruptcy records. It also recommended amendments to Item 11 of the Bankruptcy Court Miscellaneous Fee Schedule to clarify the bankruptcy court's discretion to waive the reopening fee in certain chapter 11 cases. The Committee endorsed, to the extent permitted by existing law, prioritizing targeted and exception audits over random debtor audits in the bankruptcy administrator districts.

COMMITTEE ON THE BUDGET

COMMITTEE ACTIVITIES

The Committee on the Budget reported that it focused much of its attention on the judiciary's fiscal year 2014 enacted appropriations and the upcoming fiscal year 2015 budget cycle. The Committee noted that its congressional outreach efforts over the last year were instrumental in providing the judiciary with a fiscal year 2014 budget that was the best the judiciary could have achieved given the overall fiscal climate. The Committee also discussed the importance of cost containment and that both congressional outreach and the cost-containment effort must be expanded to include chief judges, other judges, and court unit executives.

COMMITTEE ON CODES OF CONDUCT

CODE OF CONDUCT FOR UNITED STATES JUDGES

The Committee on Codes of Conduct reviewed the compliance section of the Code of Conduct for United States Judges, *Guide to Judiciary Policy*, Vol. 2A, Ch. 2, and concluded that the provision that requires retired bankruptcy and magistrate judges who are eligible for recall to comply with certain provisions of the Code (those governing part-time judges), even if they do not intend or agree to be recalled, was too broad. After consulting with the Committees on the Administration of the Bankruptcy and Magistrate Judges Systems, the Committee recommended that the Conference amend that section to provide that retired bankruptcy and magistrate judges who are otherwise eligible for recall, but who notify the Administrative Office that they are unwilling to consent to recall, are not obligated to comply with the provisions of the Code governing part-time judges and that such notification may be

made at any time after retirement, and is irrevocable. The Conference adopted the Committee's recommendation. *See also*, "Code of Conduct Application to Retired Bankruptcy Judges," *supra* p. 7, and "Code of Conduct Application to Retired Magistrate Judges," *infra*, pp. 22-23.

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Judicial Conference in September 2013, it received 41 new written inquiries and issued 41 written advisory responses. During this period, the average response time for requests was 17 days. In addition, the Committee chair responded to 57 informal inquiries, individual Committee members responded to 226 informal inquiries, and Committee counsel responded to 601 informal inquiries, for a total of 884 informal inquiries.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

LIBRARY COST CONTAINMENT

The Committee on Court Administration and Case Management recommended that the Judicial Conference urge each circuit judicial council to consider imposing a cap on chambers' annual renewal costs for legal research resources, taking into consideration circuit spending patterns, variances by judge type, and proximity to other available collections, and to provide that the caps be examined periodically. The Committee noted that five circuits already impose spending caps and have found that they provide a useful tool to control costs. The Conference adopted the Committee's recommendation.

BANKRUPTCY COURT MISCELLANEOUS FEE SCHEDULE

Adversary Filing Fee. Noting that bankruptcy adversary proceedings follow many of the same rules of procedure and evidence as civil actions, the Committee on Court Administration and Case Management, in consultation with the Committee on the Administration of the Bankruptcy System, recommended that the adversary filing fee be increased by \$57 to make it

equivalent to the current civil filing fee. The Conference agreed, raising the adversary filing fee from \$293 to \$350, effective June 1, 2014.

Administrative Fee. The Judicial Conference has established an administrative fee to be charged in all bankruptcy cases (JCUS-SEP 92, p. 64; JCUS-SEP 97, pp. 56-57). That fee has twice been adjusted for inflation, most recently in 2011, raising it from \$39 to \$46 (JCUS-SEP 11, pp. 14-15). At this session, the Court Administration and Case Management Committee, in consultation with the Bankruptcy Committee, recommended that two different fee levels should apply to the various chapters of the Bankruptcy Code to reflect the differing levels of work required for cases filed under those chapters. The administrative fee for filing a petition under chapter 7, 12 or 13, or for filing a motion to divide a joint case filed under those chapters, would be \$75. These petitions represent over 99 percent of all bankruptcy filings. The fee for filing a petition under chapter 9, 11, or 15, or for filing a motion to divide a joint case under chapter 11, would be \$550. These petitions are primarily filed by business establishments and municipalities, or involve overseas debtors with substantial assets and liabilities. The Conference adopted the Committee's recommendation, effective June 1, 2014.

ELECTRONIC PUBLIC ACCESS

Since 1989, the Judicial Conference has authorized the electronic transfer of certain data from bankruptcy court records to the Department of Justice's Executive Office for U.S. Trustees (EOUST) without application of an electronic public access (EPA) fee, but with the understanding that the EOUST could not sell or otherwise distribute the data to other entities without permission from the judiciary (JCUS-MAR 89, p. 20). In 2008, the EOUST received permission from the Judicial Conference to transfer some of the data it received to trustees in bankruptcy cases (JCUS-SEP 08, p. 17). At this session, the Conference considered a request from the EOUST for permission to make publicly available on the internet data pertaining to amounts collected and distributed by Chapter 7 trustees that it receives pursuant to these free transfers. The EOUST seeks this authorization in order to comply with the Obama Administration's Open Government Initiative, which is intended to increase the ability of the public to find, download, and use data sets generated and held by the federal government. On recommendation of the Committee, the Conference agreed to the EOUST's request.

JUROR QUESTIONNAIRE

Question 4 on the juror qualification questionnaire addresses prospective jurors' English language proficiency, both speaking ability (Question 4(a)), and ability to read, write, and understand English (Question 4(b)). In order to use the Jury Management System to identify efficiently which juror qualification questionnaires should be reviewed by judges to evaluate the extent of the juror's English language abilities, the Committee recommended, and the Conference agreed to adopt, an amendment to Question 4 to add a third section as follows:

4(c) Did you provide remarks on the back of this form to explain your answers to part "a" or part "b" of this question?

MODEL GRAND JURY CHARGE

On recommendation of the Committee, the Judicial Conference agreed to amend the judiciary's Model Grand Jury Charge to clarify that grand jurors should vote separately as to each defendant when charges are brought against more than one person. This change was requested by the American Bar Association. Paragraph 23 was amended to read as follows (new language in bold, deleted language struck through):

Paragraph 23. Frequently, charges are made against more than one person. It will be your duty to examine the evidence as it relates to each person, and to make your finding as to each person. In other words, where charges are made against more than one person, you may indict ~~all of the persons or~~ only those persons who you believe properly deserve indictment. **You must remember to consider the charges against each person separately.**

PRO SE LITIGANT ACCESS

The Committee recommended that the Judicial Conference amend its attorney admission fund guidelines (*Guide to Judiciary Policy*, Vol. 13, Ch. 12) to clarify that courts may donate monies from their attorney admission funds to organizations that provide representation to unrepresented litigants in federal courts, supplementing the current guidelines that allow for

reimbursement of an individual attorney's fees or costs associated with representing pro se litigants. The Committee also recommended that the Conference clarify that a court may order a pro bono attorney to repay the attorney admission fund if he or she is awarded costs for fees and expenses in the litigation. The Conference adopted the Committee's recommendations and amended the guidelines as follows (additional language in bold):

§ 1210.30 Courts' Local Attorney Admission Funds

Attorney admission funds must be segregated from all other monies in the custody of the court, and must contain only attorney admission fees, plus any interest income accrued on such fees. **Except as provided in § 1220(f)(1), [t]he court must not place into its attorney admission fund monies from other sources . . .**

§ 1220 Policies for Fund Expenditure

Attorney admission funds must be used only for purposes which benefit the members of the bench and the bar in the administration of justice. Examples of proper common uses of attorney admission funds include, but are not limited to, the following:

- (f)(1) Reimbursement of pro bono counsel for out-of-pocket expenses, payment of compensation to pro bono counsel, and payment of witness fees and other expenses for indigent pro se civil litigants. **In the event of an award of attorney's fees or costs to pro bono counsel in the course of such litigation, the court may order return to the fund of any payments made from the fund to counsel for fees and expenses in an amount equal to the award.**

- (f)(2) **Donations to organizations that provide legal representation, advice, or assistance to unrepresented litigants in federal civil matters, including representation for settlement conferences or other alternative dispute resolution activities, provided that such organizations use the donation for no other purpose.**

RECORDS DISPOSITION SCHEDULES

Bankruptcy Administrator Records. In September 2013, the Judicial Conference approved amending Records Disposition Schedule 2 to add a new schedule for bankruptcy administrator program records, and transmitted the schedule to the National Archives and Records Administration (NARA) for concurrence. During its review, NARA proposed deleting items pertaining to individual cash receipts, disbursement ledgers, and documentation relating to the financial administration of an estate because the information was determined to be covered in other sections of the schedule. On recommendation of the Committee, the Judicial Conference agreed to delete those items.

Human Resources Records. The Committee recommended that the Judicial Conference amend two provisions of the records disposition schedules for human resources records (C.4 and C.1 of Records Disposition Schedules 1 and 2 respectively), to accommodate potential business needs related to auditing and accountability. It also recommended amending another provision to apply only to employee files and not also to applicant files. The Conference approved the Committee's recommendations. Because these changes are consistent with NARA's federal records guidance for such records, NARA concurrence is not needed.

Technical and Conforming Amendments. On recommendation of the Committee, the Conference approved non-substantive editorial changes to Records Disposition Schedules 1 and 2 to clarify and standardize language, and authorized the revised schedules to be transmitted to NARA for concurrence. In order to streamline the process for making such changes in the future, on recommendation of the Committee, the Conference agreed to delegate authority to the Administrative Office to make non-substantive, technical, and conforming revisions to records disposition schedules. Also on the Committee's recommendation, the Conference delegated authority to the AO to sever from proposed schedules Judicial Conference-approved items with which NARA does not concur to allow the remaining Conference-approved items to be implemented. This latter authority will allow the AO to separately address NARA's concerns without delaying concurrence on non-disputed issues.

CM/ECF DATA FEED PILOT PROJECT

The Brady Handgun Violence Protection Act of 1993 requires federal firearms licensees to conduct background checks on all prospective firearms purchasers. Most checks are accomplished through the Federal Bureau of Investigation's National Instant Criminal Background Check System, but others require further investigation. In those cases, district court clerks' offices are often asked for information. To facilitate compliance with such requests, on recommendation of the Committee, the Judicial Conference approved a one-year pilot program whereby the District of Maine, in conjunction with the Department of Justice, will use CM/ECF data to assist the Federal Bureau of Investigation in implementing the Brady Handgun Violence Protection Act. The Conference directed the District of Maine to limit any transfer of CM/ECF data to only those data fields that are necessary to identify persons prohibited from purchasing firearms and to monitor the costs and benefits of the pilot, including any relevant statistical measures, and provide periodic updates to the Administrative Office.

COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported on its continuing efforts to help lead the development of new architecture and requirements for the Next Generation of CM/ECF system and to provide policy guidance on public access to case information. The Committee agreed to develop proposed amendments to the Judicial Conference's privacy policy aimed at protecting cooperation information contained in criminal case filings. In addition, the Committee agreed to develop guidance for filing large-scale requests to redact improperly filed bankruptcy documents containing personal identifiers and to update the *Civil Litigation Management Manual* in light of pending civil rules amendments and the results of the case processing study undertaken by the Committee and the Federal Judicial Center.

COMMITTEE ON CRIMINAL LAW

COMMITTEE ACTIVITIES

The Committee on Criminal Law reported that it discussed various efforts underway in the executive and legislative branches that are designed to eliminate overcrowding within the federal prison population, improve federal reentry efforts, and conserve resources for the most important federal criminal justice issues. The Committee reviewed several bills pending in the 113th Congress that address these issues, including S. 619, the “Justice Safety Valve Act of 2013”; S. 1410, the “Smarter Sentencing Act of 2013”; S. 1675, the “Recidivism Reduction and Public Safety Act of 2013”; and S. 1783, the “Federal Prison Reform Act of 2013.” Judge Robert Holmes Bell, immediate past-chair of the Committee, submitted written testimony in connection with the Senate Judiciary Committee’s September 18, 2013, hearing entitled “Reevaluating the Effectiveness of Federal Mandatory Minimum Sentences,” expressing the Conference’s longstanding opposition to mandatory minimums. The Committee also discussed the Department of Justice’s “Smart on Crime” initiative, which would, among other things, change how the Department charges offenses carrying mandatory minimum penalties in certain cases, and its procedures for compassionately releasing certain inmates.

COMMITTEE ON DEFENDER SERVICES

COMMITTEE ACTIVITIES

The Committee on Defender Services reported that it has adopted, and developed a plan to publicize, cost-containment initiatives related to investigators, experts, and other service providers in federal defender and Criminal Justice Act (CJA) panel attorney “mega cases.” The Committee also reported that, under delegated authority from the Judicial Conference (JCUS-MAR 89, pp. 16-17), it approved FY 2014 budgets and grants for federal defender organizations. The Committee heard a presentation by the AO’s Chief Technology Officer, who led a team that assessed two alternative electronic CJA voucher processing systems, and offered its input on what functions and capabilities it deemed essential for the selected system.

COMMITTEE ON FEDERAL-STATE JURISDICTION

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported that it reviewed immigration reform legislation introduced in the House of Representatives, focusing its attention on the points where administrative decisions likely would come to the federal courts for judicial review. The Committee was also briefed on proposals that would create expedited procedures for certain “small” copyright and patent infringement cases, as well as legislation that seeks to address abuses in patent litigation. Finally, the Committee reviewed the status of regulations to implement chapter 154 of title 28, United States Code. Chapter 154 provides special procedures for federal habeas corpus review of state capital cases if the Attorney General of the United States has certified the state as having established a mechanism for providing competent counsel in state post-conviction proceedings brought by indigent prisoners.

COMMITTEE ON FINANCIAL DISCLOSURE

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported on the successful implementation of new policies aimed at securing filer compliance with report filing requirements and late fee assessments. In addition, in response to a judge’s request, the Committee rescinded its previous advice requiring filers to disclose assets subject to a power of attorney and directed staff to revise relevant materials to clarify that assets subject to a power of attorney need not be reported, whether or not a power of attorney has been exercised. The Committee also reported that as of December 20, 2013, it had received 4,558 financial disclosure reports for calendar year 2012, including 1,297 reports from Supreme Court justices, Article III judges, and judicial officers of special courts; 354 reports from bankruptcy judges; 555 reports from magistrate judges; and 1,908 reports from judiciary employees.

COMMITTEE ON INFORMATION TECHNOLOGY

COMMITTEE ACTIVITIES

The Committee on Information Technology reported that it endorsed proposed modifications to the information technology (IT) infrastructure formula, which determines the annual allotments that courts receive for IT equipment purchases. The Committee discussed ongoing and potential new initiatives to improve the IT capabilities of the judiciary and realize significant cost savings and avoidances, including strengthening the judiciary's communications network and implementing cloud computing. The Committee discussed several other key matters, including the judiciary's IT security posture; the selection of a national system for processing Criminal Justice Act vouchers; the implementation of Rest Assured, a court-developed system that automates the criminal debt and restitution processes; and the Administrative Office's court exchange program, which is estimated to have realized cost avoidances of approximately \$500,000 in fiscal year 2013 by using court staff rather than hiring contractors to support IT projects.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that 114 intercircuit assignments were undertaken by 85 Article III judges from July 1, 2013, to December 31, 2013. 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.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported on its involvement in rule of law and judicial reform throughout the world. Additionally, it received reports from the Department of State, the Department of Justice, the Department of Commerce, the U.S. Agency for International Development, the U.S. Patent and Trademark Office, the legislative branch's

Open World Program, the World Justice Forum and the World Justice Project, the U.S. Court of Appeals for the Federal Circuit, the Federal Judicial Center, and U.S. court administrators on their international rule of law activities. The Committee was also informed of the briefings for delegations of foreign jurists and judicial personnel provided at the Administrative Office.

COMMITTEE ON THE JUDICIAL BRANCH

JUDGES' TRAVEL

On recommendation of the Committee on the Judicial Branch, the Judicial Conference approved the following amendments to sections 220.10.20 and 220.30.10 of the Travel Regulations for United States Justices and Judges, *Guide to Judiciary Policy*, Vol. 19, Ch. 2, to clarify the guidance for judges regarding reimbursable travel to attend meetings of the Judicial Conference or its committees (new language in bold, deleted language struck through):

§ 220.10.20 Authorized Judicial Meetings

A judge needs no advance authorization to travel to attend authorized judicial meetings of:

- the Judicial Conference,
- a Judicial Conference committee,
- a circuit judicial council,
- a circuit council committee,
- a circuit judicial conference,
- a court of appeals or its committees,
- a district court or its committees,
- a bankruptcy appellate panel,
- or a bankruptcy court or its committees,

if the judge is commissioned to that court or is a member of the conference, council or committee conducting the meeting: **or the judge is the chair of a Judicial Conference committee or the designated magistrate judge or bankruptcy judge observer traveling to attend a meeting of the Judicial Conference.**

§ 220.30.10 Reimbursable Travel

[. . .]

(c) Appearance Before the Judicial Conference and its Committees

Except as provided in Section 220.10.20, a judge may be reimbursed for travel expenses to ~~testify before~~ **participate in an authorized meeting of** the Judicial Conference ~~and its or a Conference~~ committees only where he or she is invited to appear by the Chief Justice or ~~appropriate~~ **the** chair of ~~such the~~ committee **conducting the meeting**.

COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that, as part of its congressional outreach program, it met with several members of the House and Senate Judiciary Committees. It emphasized the importance of communication between the two branches of government and encouraged informal meetings and exchanges of knowledge between judges and members of Congress. In addition, the Committee discussed civic education activities in the courts and its interest in continuing to explore resources for civic education.

COMMITTEE ON JUDICIAL CONDUCT AND DISABILITY

COMMITTEE ACTIVITIES

The Committee on Judicial Conduct and Disability reported that it issued two memoranda of decision regarding petitions for review of circuit judicial council orders on complaints under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364 (Act). The Committee discussed complaint-related matters in which guidance had been sought and reviewed orders entered by chief judges and circuit judicial councils in 2013 on complaints under the Act. The Committee also discussed possible changes to the Judicial Conference's Rules for Judicial-Conduct and Judicial-Disability Proceedings (2008).

COMMITTEE ON JUDICIAL RESOURCES

COURT LAW CLERKS

In March 2011, the Judicial Conference authorized a three-year test program to evaluate whether providing additional law clerks in courts with extremely heavy caseloads would expedite case resolution (JCUS-MAR 11, p. 23). The Conference established a new court law clerk position in the Judiciary Salary Plan (JSP) to serve as part of court rather than chambers staff so that the occupants of the position could assist the entire court with its workload. Two districts were selected to participate in the study based on criteria established to determine need. At this session, on recommendation of the Judicial Resources Committee, the Conference agreed to extend the test program for three years and include more courts in order to gather additional data. Specifically, the Conference authorized centralized funding for an additional three-year test period for 1 court law clerk in the Western District of New York, 10 court law clerks in the Eastern District of California, 3.5 court law clerks in the Middle District of Florida, 2 court law clerks each in the Northern District of Alabama and the Eastern District of New York, and 1 court law clerk each in the District of Delaware and the Middle District of Tennessee (for a total of 20.5 court law clerks). As before, a court law clerk appointment may not exceed JSP grade level 13, step 1 and is temporary, not to exceed three years in duration.

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that it asked the AO and the FJC to assess the size of the volunteer population in courts and federal defender organizations and the functions that volunteer workers perform, and asked the AO to submit a comprehensive set of policy recommendations regarding their use for Committee consideration at its June 2014 meeting. The Committee also requested that the AO develop a staffing formula for court reporters for consideration at the Committee's June 2016 meeting. In response to a proposal by the Committee on the Budget to revise the salary funding formula for probation and pretrial services offices, the Committee declined to recommend that the Judicial Conference approve limiting JSP funding to one chief probation officer or chief pretrial services officer and one deputy chief probation officer or deputy chief pretrial services officer for districts with separate probation and pretrial services offices.

COMMITTEE ON JUDICIAL SECURITY

COMMITTEE ACTIVITIES

The Committee on Judicial Security reported on the status of fiscal year 2013 and 2014 appropriations for the court security account, and on the fiscal year 2015 budget request. It also reported on its continuing discussions on cost-containment and budget-reduction options, but expressed concern that further cuts to the Court Security account could affect judicial safety and security. The Committee approved changes to the process for selecting projects for the Capital Security Program to require formal, written circuit judicial council approval of potential projects at two critical stages in the process and discussed measures to enhance the judiciary's emergency preparedness program.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

CHANGES IN MAGISTRATE JUDGE POSITIONS

After considering the report of the Committee on the Administration of the Magistrate Judges System and the recommendation of the Administrative Office, and with the concurrence of the affected district court and circuit judicial council, the Judicial Conference agreed to discontinue the part-time magistrate judge position at Wolf Point in the District of Montana.

CODE OF CONDUCT APPLICATION TO RETIRED MAGISTRATE JUDGES

At this session (*see supra*, "Code of Conduct for United States Judges," pp. 9-10), the Judicial Conference amended the Code of Conduct for United States Judges compliance section to provide that a retired magistrate judge (or bankruptcy judge) who provides irrevocable notice to the Administrative Office that he or she will not consent to recall service, no longer has to comply with previously applicable provisions of the Code. On recommendation of the Magistrate Judges Committee, the Judicial Conference also adopted complementary amendments to its regulations governing the ad hoc and extended service recall of retired magistrate judges, *Guide to*

Judiciary Policy, Vol. 3, Chs. 11 and 12, to incorporate this new policy. The regulations will now provide that any magistrate judge who notifies the Administrative Office that he or she will not consent to recall service is ineligible for recall under the regulations, and thus is not obligated to comply with the provisions of the Code. *See supra*, p. 7, “Code of Conduct Application to Retired Bankruptcy Judges,” for similar amendments to the bankruptcy judge recall regulations.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Magistrate Judges System reported that after full consideration of district-wide survey reports prepared by the Administrative Office, the Committee determined not to recommend any changes in the number of authorized magistrate judge positions in six district courts. Pursuant to Judicial Conference policy regarding the review of magistrate judge position vacancies (JCUS-SEP 04, p. 26), for the period between its June 2013 and December 2013 meetings, the Committee approved, through its chair, the filling of 12 full-time magistrate judge position vacancies in 11 district courts. At its December 2013 meeting, the full Committee considered and approved one request to fill a full-time magistrate judge position vacancy. The Committee also considered and approved requests for the recall or extension of the recall of 14 retired magistrate judges. In doing so, the Committee noted that several of the requests provided for reduced staff as a result of the new recall regulations approved by the Judicial Conference in September 2012 (JCUS-SEP 12, p. 28).

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

FEDERAL RULES OF BANKRUPTCY PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Bankruptcy Rule 1007 (Lists, Schedules, Statements, and Other Documents; Time Limits), together with a Committee Note explaining their purpose and intent. The Conference approved the amendments and authorized their transmittal to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

FEDERAL RULES OF CRIMINAL PROCEDURE

In September 2013, the Judicial Conference approved proposed amendments to Criminal Rule 12 (Pleadings and Pretrial Motions) and transmitted them to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law (JCUS-SEP 13, p. 31). In response to queries from the Court regarding those amendments, the Committee on Rules of Practice and Procedure recommended a modification to the language approved in September 2013, as well as to the Committee Note. The Conference approved the new proposed amendments to Criminal Rule 12, which supersede the earlier transmittal, and agreed to transmit them to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure reported that it approved for publication proposed amendments to two of the Federal Rules of Civil Procedure. A proposed amendment to Civil Rule 6(d) would remove service by electronic means under Rule 5(b)(2)(E) from the modes of service that allow three added days to respond after being served. A proposed amendment to Rule 82, which addresses venue for admiralty and maritime claims, arises from legislation that added a new § 1390 to the venue statutes in Title 28 and repealed former § 1392 (local actions). The reference to § 1392 must therefore be deleted. The proposed amendment adds a reference to the new § 1390 in order to carry forward the purpose of integrating Rule 9(h) with the venue statutes through Rule 82.

COMMITTEE ON SPACE AND FACILITIES

COMMITTEE ACTIVITIES

The Committee on Space and Facilities reported that it discussed the implementation of national space reduction policies endorsed by the Judicial Conference in September 2013 and set deadlines for circuit judicial councils to approve their baseline of space holdings and space and rent management plans. Each circuit's plan should set forth an overall strategy for achieving the

circuit's space reduction target by the close of FY 2018. The Committee was informed that incentives for space release adopted by the Conference in September 2012 (JCUS-SEP 12, p. 32) had resulted in \$1.7 million being allotted to 31 courts in return for the release of 66,341 square feet of space as of September 30, 2013, and that more space releases are pending in FY 2014. Finally, the Committee met with the General Service Administration's (GSA) Public Buildings Service Commissioner, and conveyed to her the serious budgetary impact a new GSA appraisal methodology would have on the judiciary.

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