

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

September 17, 1996

The Judicial Conference of the United States convened in Washington, D.C., on September 17, 1996, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Juan R. Torruella
Chief Judge Joseph L. Tauro,
District of Massachusetts

Second Circuit:

Chief Judge Jon O. Newman
Chief Judge Peter C. Dorsey,
District of Connecticut

Third Circuit:

Chief Judge Dolores K. Sloviter
Chief Judge Edward N. Cahn,
Eastern District of Pennsylvania

Fourth Circuit:

Chief Judge J. Harvie Wilkinson, III
Judge W. Earl Britt,
Eastern District of North Carolina

Fifth Circuit:

Chief Judge Henry A. Politz
Chief Judge William H. Barbour,
Southern District of Mississippi

Sixth Circuit:

Chief Judge Gilbert S. Merritt
Judge S. Arthur Spiegel,
Southern District of Ohio

Seventh Circuit:

Judge Joel M. Flaum¹
Chief Judge Michael M. Mihm,
Central District of Illinois

Eighth Circuit:

Chief Judge Richard S. Arnold
Judge Donald E. O'Brien,
Northern District of Iowa

Ninth Circuit:

Chief Judge Procter Hug, Jr.
Chief Judge Wm. Matthew Byrne, Jr.,
Central District of California

Tenth Circuit:

Chief Judge Stephanie K. Seymour
Judge Clarence A. Brimmer,
District of Wyoming

Eleventh Circuit:

Chief Judge Gerald B. Tjoflat
Judge Wm. Terrell Hodges,
Middle District of Florida

¹Designated by the Chief Justice to attend in lieu of Chief Judge Richard A. Posner.

District of Columbia Circuit:

Chief Judge Harry T. Edwards
Chief Judge John Garrett Penn,
District of Columbia

Federal Circuit:

Chief Judge Glenn L. Archer, Jr.

Court of International Trade:

Chief Judge Dominick L. DiCarlo

Circuit Judge Patrick E. Higginbotham, and District Judges J. Owen Forrester, Julia Smith Gibbons, and Alicemarie H. Stotler attended the Conference session. Circuit Executives Vincent Flanagan, Steven Flanders, Samuel W. Phillips, Gregory A. Nussel, James A. Higgins, Collins T. Fitzpatrick, June L. Boadwine, Gregory B. Walters, Robert L. Hoecker, Norman E. Zoller, and Linda Ferren were also present.

Senators Orrin G. Hatch and Howell Heflin and Representatives Henry J. Hyde, Carlos Moorhead, and Patricia Schroeder spoke on matters pending in Congress of interest to the Conference. Attorney General Janet Reno and Acting Solicitor General Walter Dellinger addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice.

Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Clarence A. Lee, Jr., Associate Director for Management and Operations; William R. Burchill, Jr., Associate Director and General Counsel; Karen K. Siegel, Assistant Director, Judicial Conference Executive Secretariat; Michael W. Blommer, Assistant Director, Legislative Affairs; David Sellers, Acting Assistant Director, Public Affairs; and Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat. Judge Rya W. Zobel and Russell R. Wheeler, Director and Deputy Director of the Federal Judicial Center, also attended the session of the Conference, as did James Duff, Administrative Assistant to the Chief Justice, and Judicial Fellows Sirkka A. Kaufman, Harry L. Pohlman, Mark Syska, and Elizabeth Woodcock.

REPORTS

Mr. Mecham reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office. Judge Zobel spoke to the Conference about Federal Judicial Center programs, and Judge Richard Conaboy, Chairman of the United States Sentencing Commission, reported on Sentencing Commission activities.

EXECUTIVE COMMITTEE

ARTICLE III JUDGESHIPS

In March 1996, the Judicial Conference agreed to seek the extension or conversion of eleven temporary judgeships (JCUS-MAR 96, p. 24). Although the request to Congress for these temporary judgeships was initially submitted separately, it was subsequently combined with the Judicial Conference's request for new judgeships. Neither request was granted in the 104th Congress. In an effort to maximize the chances for success in obtaining needed resources from Congress, the Executive Committee, after consulting with the Judicial Resources Committee, recommended that the Judicial Conference pursue legislation to extend or convert the eleven existing temporary judgeships separately from any new judgeship requests. The Judicial Conference approved the recommendation.

RESOLUTIONS

The Executive Committee approved, on behalf of the Judicial Conference, the following resolution honoring Chief Justice William H. Rehnquist's tenth anniversary as presiding officer:

On the occasion of his Tenth Anniversary as Chief Justice of the United States and as Presiding Officer of this body, the Judicial Conference of the United States pays tribute to the Honorable

WILLIAM H. REHNQUIST

for his many notable accomplishments in judicial administration.

The distinguished leadership of the Chief Justice has served to reshape and strengthen the operation of the Judicial Conference and its committees in meeting current and anticipated challenges. Significant

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among the many achievements under his leadership is the study of the operation of the Judicial Conference and its committees shortly after his appointment as Chief Justice in 1986. The results of the year-long study produced structural and procedural revisions enabling the Conference to operate more openly and efficiently. The authority of the Executive Committee was strengthened, and for the first time, the Executive Committee chair was permitted to preside over the Judicial Conference in the absence of the Chief Justice. Conference and committee procedures were made familiar to all as agendas, calendars, and notifications of actions taken were widely distributed. The institution of term limits on committee service allowed greater participation in committee activities, and -- through the conscious efforts of the Chief Justice in making his appointments -- resulted in committee composition and leadership that is representative of the diverse make-up of the entire federal judiciary. In addition, Chief Justice Rehnquist has been inclusive in maintaining an open door to the leaders of the three national organizations of judicial officers and broadening participation by bankruptcy and magistrate judges on Judicial Conference committees.

Judges throughout the country greatly appreciate the willingness of Chief Justice Rehnquist to become personally involved in major issues affecting the Third Branch. For example, he took the leadership role in 1989 on the issue of judicial pay and was instrumental in the resolution of the judiciary's appropriations crisis in fiscal year 1996.

The members of the Judicial Conference express their warmest and heartfelt congratulations and sincere appreciation to Chief Justice Rehnquist for his strong, inspired leadership over the past ten years. We look forward to our continued association and anticipate additional achievements in the administration of justice under his tenure.

* * * * *

On recommendation of the Executive Committee, the Judicial Conference adopted the following resolution in recognition of the substantial contributions made by the Conference Committee chairs who completed their terms of service on October 1, 1996:

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

HONORABLE GILBERT S. MERRITT
Executive Committee

HONORABLE H. TED MILBURN
Committee on the Administrative Office

HONORABLE PAUL A. MAGNUSON
Committee on the Administration of the Bankruptcy System

HONORABLE MARYANNE TRUMP BARRY
Committee on Criminal Law

HONORABLE PAUL MANNES
Advisory Committee on Bankruptcy Rules

HONORABLE PATRICK E. HIGGINBOTHAM
Advisory Committee on Civil Rules

HONORABLE RALPH K. WINTER
Advisory Committee on Evidence Rules

HONORABLE ROBERT E. COWEN
Committee on Security, Space and Facilities

Appointed as committee chairmen by Chief Justice Rehnquist, these outstanding jurists have played a vital role in the administration of the federal court system. These judges served with distinction as leaders of their Judicial Conference committees while, at the same time, continuing to perform in their regular capacities as judges in their own courts. They have set a standard of skilled leadership and earned our deep respect and sincere gratitude for their innumerable contributions. We acknowledge with appreciation their commitment and dedicated service to the Judicial Conference and to the entire federal judiciary.

PROPOSED COMMISSION TO STUDY THE STRUCTURE AND ALIGNMENT OF THE COURTS OF APPEALS

Proposed legislation (S. 956, 104th Congress) would have established a commission to study "the structure and alignment of the federal courts of appeals with particular reference to the Ninth Circuit." The Commission was also to have made recommendations to the President and the Congress for changes in circuit boundaries. On recommendation of the Executive Committee, the Judicial Conference agreed by mail ballot concluded on May 6, 1996, to take no position on the legislation.

PUBLIC BUILDINGS REFORM ACT OF 1996

In March 1996, the Judicial Conference approved a recommendation of the Security, Space and Facilities Committee to take no position on S. 1005, the Public Buildings Reform Act of 1996 (JCUS-MAR 96, p. 35). The Security, Space and Facilities Committee was delegated the authority to work with the Director of the Administrative Office and the Executive Committee to see that the judiciary's concerns were addressed if further congressional action occurred. After the bill passed the Senate without opportunity for input from the judicial branch, the Security, Space and Facilities Committee recommended that the Judicial Conference—

- a. Seek to have the bill amended so that the judiciary can continue to establish its own design guides and housing standards;
- b. Advise Congress that because of the increases in caseload and the role of the judicial branch in the administration of justice, it is unlikely that the judicial branch will be able to contribute significantly to an overall government-wide space reduction effort; and
- c. Seek clarification so that the Supreme Court and the Thurgood Marshall Federal Judiciary Building occupied by the judicial branch on Capitol Hill in Washington, D.C. are excluded from the legislation.

The Executive Committee concurred in the recommendation and determined to conduct a mail ballot of the Judicial Conference, with the approval of the Chief Justice. In a ballot concluded on July 2, 1996, the Conference approved the Security, Space and Facilities Committee's recommendation.

EXPERT WITNESS PANELS

There are currently tens of thousands of breast implant liability cases pending in the federal courts. Two judges, before whom significant numbers of breast implant cases are pending, requested contract funds to create panels of independent expert witnesses to provide neutral expert testimony on the numerous scientific issues presented in these cases. The judges expressed hope that the conclusions and testimony of these experts would be used by judges in other breast implant litigation, which could avoid significant discovery expenses and lead to quicker settlements. After obtaining comments from the chairs of the Budget, Rules of Practice and Procedure, and Court Administration and Case Management Committees and the chair of the Multidistrict Litigation Panel, the Director of the Administrative Office, in consultation with the chair of the Executive Committee and with permission from the Chief Justice, polled the Judicial Conference as to whether one or both requests, treated as pilot programs, should be funded by the judiciary. In a mail ballot concluded on August 2, 1996, the Conference approved funding for one of the judges to establish an expert witness panel.

UNIVERSAL PRETRIAL DRUG TESTING

At its March 1996 session, the Judicial Conference referred a proposal by the Attorney General of the United States regarding universal pretrial drug testing to the Committee on Criminal Law for consideration and report to the Executive Committee. The Executive Committee was authorized by the Conference to act on the matter on the Conference's behalf (JCUS-MAR 96, p. 17). After considering the position of the Criminal Law Committee, which neither opposed nor endorsed judicial participation in the drug testing initiative, the Executive Committee unanimously agreed to participate in the initiative and to authorize the Administrative Office to enter into a memorandum of understanding (MOU) with the Department of Justice for a pretrial drug testing program, so long as the Department of Justice funds the program and participation by individual districts is voluntary. The Executive Committee subsequently approved an MOU which had been negotiated with the Department of Justice.

FISCAL YEAR 1997 FINANCIAL PLANS

On September 17, 1996, following the Judicial Conference session, the Executive Committee approved proposed fiscal year 1997 financial plans for the Salaries and Expenses, Defender Services, Fees of Jurors and Commissioners, and Court Security appropriations accounts, assuming enactment of an appropriations bill at

a level between the House and Senate allowances. The plans also include additional funding available from new fee collections and carryover. The Executive Committee agreed that the plan would be an interim one until a full-year appropriation were enacted² and, should there be a continuing resolution, determined that initial allotments would be made to court units of 25 percent of the Salaries and Expenses financial plan amounts and an initial allocation would be made to federal defender organizations of 25 percent of the Defender Services financial plan amounts. In the event the judiciary failed to receive new appropriations at the start of fiscal year 1997, the Committee agreed to authorize the continuation of judicial branch operations from all available sources of fees and "no-year" appropriations, under such guidance and direction as the Director of the Administrative Office shall deem appropriate.

MISCELLANEOUS ACTIONS

The Executive Committee:

- Approved a Judicial Resources Committee recommendation to authorize an extension of voluntary early retirement authority in fiscal year 1996 beyond reductions in staff resulting from organizational restructuring or budget limitations;
- On recommendation of the Judicial Resources Committee, revised the compensatory time policy for court employees with respect to travel on official business outside of normal working hours, giving local court units more flexibility;
- Approved a strategic business plan presented by the Administrative Office Committee entitled *The Administration of Justice: A Strategic Business Plan for the Federal Judiciary* produced by the Administrative Office as required by Congress;
- Agreed to ask the Judicial Resources Committee to undertake a serious examination of an idea regarding the allocation of judgeships, whereby the Judicial Conference would be authorized to place judgeships in districts where they were most needed;

²On September 30, 1996, a fiscal year 1997 judiciary appropriations bill was enacted which was slightly higher than the midpoint amount utilized in the approved financial plans. The additional funds are placed in reserve to be reviewed by the Executive Committee at a later time.

- Revised the fiscal year 1996 national spending plans to include (a) \$1.75 million to equip courthouses with satellite downlink equipment for receiving educational and administrative video broadcasts; and (b) \$16,094,000 transferred from the Crime Trust Fund to the Defender Services account to cover an increase in projected caseloads and costs for panel attorneys of federal capital prosecutions. In addition, the Committee approved additional fiscal year 1997 funds (\$138,000) for completion of ongoing gender/race bias studies, provided funds are available and the studies are completed by the end of fiscal year 1997;
- Approved an exception to the relocation policy for a judge who had acted in reasonable reliance upon a belief that his reimbursement had already been approved;
- Agreed to inform bankruptcy judges in the districts requesting additional bankruptcy judgeships that Senator Charles E. Grassley was seeking travel information on judges in those districts;
- Determined to (a) communicate with the Chair of the Judicial Branch Committee regarding the issue of receipt by an Article III judge of credit toward retirement for previous service as a magistrate or bankruptcy judge; (b) ask the Judicial Branch Committee to reexamine all arrangements for travel of senior judges; and (c) request that the Judicial Resources Committee consider possible methods of giving judicial secretaries bonuses or awards and reexamine the issue of a pay raise for secretaries of chief district judges who serve as administrative assistants.

COMMITTEE ON THE ADMINISTRATIVE OFFICE

SAVINGS AND LOAN REPORT

Under 28 U.S.C. § 604(a)(24), the Director of the Administrative Office is required to report to Congress annually the impact of the savings and loan crisis on the federal courts. Because of the small proportion of major savings and loan cases now in the federal courts and because the data reported is available from other sources, the Judicial Conference approved a recommendation of the Committee on the Administrative Office that it seek an appropriate legislative vehicle to revise the statute to eliminate the savings and loan reporting requirement from the duties of the Director of the Administrative Office.

COMMITTEE ON AUTOMATION AND TECHNOLOGY

INFORMATION SYSTEMS ARCHITECTURE

The Committee on Automation and Technology has approved core requirements of an Information Systems Architecture (ISA) designed to achieve connectivity and integration among automated applications that must exchange and share information and to accommodate existing and future court applications and technologies in a modular, adaptable, and cost-effective manner. On recommendation of the Committee (modified at the Conference session), the Judicial Conference adopted a policy that all projects initiated by the Administrative Office for national implementation or projects that are intended for multi-circuit use must conform with the ISA core requirements; adhere to the automation management process; fully integrate with other projects and products; and utilize existing communications and processing infrastructures of the ISA. This policy does not apply to applications or other automation projects developed for local use and/or projects or applications acquired with local funds. However, where such projects or applications (a) involve the sharing or exchange of data between courts within a circuit, or (b) involve data that by statute or policy of the Judicial Conference must be provided to the Administrative Office, integration and connectivity among all intended users must be achieved. In addition, the Conference acknowledged that the "Scope" of the ISA would be amended to conform with this policy, and that the following two additions would be made to the processing infrastructure: "Windows NT and NetWare" added to the Application Server(s) Operating System, and "Windows NT" added to the Desktop Operating Environment.

LIBRARY PROGRAM

The wide public dissemination of slip opinions electronically on court-maintained electronic bulletin boards and Internet sites has brought increased attention to the need for consistency in distributing both the original slip opinions and subsequent changes. On recommendation of the Automation and Technology Committee, the Judicial Conference agreed to request each court of appeals to review its existing slip opinion dissemination procedures to ensure that (a) the electronic version of an opinion released on the court-maintained electronic bulletin board or Internet web site matches the text of the printed version of the opinion, and (b) all substantive changes to opinions are made available on the court's electronic public access service.

In August 1995, the judiciary awarded a computer-assisted legal research contract to the West Publishing Company for Westlaw services in the legal research, people and public records, and newspapers and journals categories. Lexis-Nexis was awarded a contract solely for the newspapers and journals category of service. After reviewing cost and usage data of the Nexis service, and in view of the availability of similar, but less expensive, services on Westlaw, the Automation and Technology Committee determined that access to Nexis should be limited to circuit library staff. The Judicial Conference slightly modified and approved the Committee's recommendation to limit access to Nexis services to library staff at circuit headquarters and satellite library locations beginning in fiscal year 1997.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

BANKRUPTCY JUDGESHIP SURVEYS

The Bankruptcy Committee alternately conducts two types of national judgeship surveys to assist the Judicial Conference in fulfilling its statutory responsibilities of advising Congress on the number and allocation of bankruptcy judgeships: in odd-numbered years all districts are surveyed to evaluate requests for additional judgeships and in even-numbered years they are surveyed to determine if any authorized positions might be eliminated. In order to permit the judiciary to work with legislators over a full two-year congressional term, the Judicial Conference approved a Committee recommendation to change the schedule for completing the biennial surveys for evaluating additional bankruptcy judgeship requests from September to March of odd-numbered years. See also, *infra*, "Judgeship Surveys," p. 60.

BANKRUPTCY JUDGESHIPS

In early 1996, the Bankruptcy Committee conducted its continuing need survey, assessing the judicial workload for the bankruptcy judges in every district and performing on-site surveys in five districts where elimination of a bankruptcy judgeship would result in fewer than 1,000 case-weighted filings per judge for the remaining judges. Based on the results of this survey, the Committee recommended, and the Judicial Conference agreed, that the Conference take the following actions:

- a. Recommend to Congress that no bankruptcy judgeship position be statutorily eliminated;

- b. Advise the appropriate circuit judicial councils to consider not filling vacancies that currently exist or may occur by reason of resignation, retirement, removal, or death in the following districts, unless there is a demonstrated need to do so, as more specifically provided in each judgeship survey report: the Northern District of Ohio, the Southern District of Ohio, the Northern District of Iowa, the Southern District of Iowa, and the District of Colorado; and
- c. Recommend to the Eighth Circuit Judicial Council that, if a vacancy occurs in the State of Iowa for any of the four enumerated reasons and that vacancy is not filled, it authorize the three remaining judges in Iowa to administer cases within both districts.

The Bankruptcy Committee also recommended a minor change to the judiciary's present bankruptcy judicial resource management system, which, in the view of the Committee, already works very well. The Judicial Conference approved the recommendation, authorizing the use of a system through which the chair of the Bankruptcy Committee and the Director of the Administrative Office are to be notified by each circuit before the process is initiated to fill a bankruptcy judgeship vacancy so that relevant, up-to-date data can be provided to the circuit to assist with its decision on whether to delay filling the vacancy.

BANKRUPTCY JUDGE RECALL REGULATIONS

On recommendation of the Bankruptcy Committee, the Judicial Conference approved amendments to the *Regulations Governing the Ad Hoc Recall of Retired Bankruptcy Judges* and the *Regulations Governing the Extended Recall Service of Retired Bankruptcy Judges* to eliminate the need for funding approval from the Administrative Office to seek a recall. This action is consistent with other recent budget decentralization decisions. Specifically, the amendments will—

- a. Eliminate section 6 of the *ad hoc* recall regulations and section 9 of the extended service recall regulations, both of which require that a circuit council obtain funding approval from the Administrative Office before it may recall a retired bankruptcy judge;
- b. Strike from section 10 of the *ad hoc* recall regulations the words "and the Director of the Administrative Office," thereby eliminating the requirement that the Administrative Office approve the employment of a secretary and/or a law clerk by a recalled judge; and

- c. Strike from section 14 of the extended service recall regulations the words "and the Director," thereby eliminating the requirement that the Director of the Administrative Office approve the provision of office and courtroom facilities for a bankruptcy judge who is recalled for extended service. See also, *infra*, "Magistrate Judge Recall Regulations," pp. 64-65.

COMMITTEE ON THE BUDGET

FISCAL YEAR 1998 BUDGET REQUEST

In recognition of congressional funding constraints, the Budget Committee recommended a fiscal year 1998 budget request which is lower than the funding level proposed by the program committees. The Judicial Conference approved the alternative budget request for fiscal year 1998, subject to amendments necessary as a result of new legislation, actions of the Judicial Conference, or other reasons the Director of the Administrative Office considers necessary and appropriate.

COMMITTEE ON CODES OF CONDUCT

CODE OF CONDUCT FOR UNITED STATES JUDGES

On recommendation of the Committee on Codes of Conduct, the Judicial Conference approved the following technical revision to canon 3C(3)(a) of the Code of Conduct for United States Judges, to clarify which relatives are within the third degree of relationship, and deleted the existing 3C(3)(a) commentary (new language is in italics):

- (3) For purposes of this section:
 - (a) the degree of relationship is calculated according to the civil law system; *the following relatives are within the third degree of relationship: parent, child, grandparent, grandchild, great grandparent, great grandchild, sister, brother, aunt, uncle, niece and nephew; the listed relatives include whole and half blood relatives and most step relatives[.]*

The Conference also approved a Committee recommendation to revise canon 5C(4) of the Code of Conduct for United States Judges, which addresses judges' acceptance of gifts. The technical revision deletes the existing 5C(4) language, which

is duplicative of section 5 of the Judicial Conference Ethics Reform Act gift regulations and substitutes the following:

(4) A judge should not solicit or accept anything of value from anyone seeking official action from or doing business with the court or other entity served by the judge, or from anyone whose interests may be substantially affected by the performance or nonperformance of official duties; except that a judge may accept a gift as permitted by the Judicial Conference gift regulations. A judge should endeavor to prevent a member of a judge's family residing in the household from soliciting or accepting a gift except to the extent that a judge would be permitted to do so by the Judicial Conference gift regulations.

COMMITTEE ACTIVITIES

Since its last report to the Conference in March 1996, the Committee on Codes of Conduct received 38 new written inquiries and issued 38 written advisory responses. The average response time for inquiries was 19 days. The Chairman received and responded to 43 telephonic inquiries. In addition, individual Committee members responded to 51 inquiries from their colleagues.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

STUDY OF ADMINISTRATIVE SUPPORT STRUCTURES

At the direction of the Court Administration and Case Management Committee, a one-year study of the federal courts' administrative support structures, including personnel administration, training, financial management, budget management, automation management, contracts and procurement, property management, and space and facilities management, was conducted by the National Academy of Public Administration (NAPA). On recommendation of the Committee, which believes the report offers information helpful to courts in considering ways to improve the delivery of administrative services, the Judicial Conference referred the report to the Judicial Resources, Criminal Law, Automation and Technology, and Bankruptcy Committees and to the Economy Subcommittee for consideration and such action within their respective jurisdictions as they might consider appropriate. The Conference further agreed to encourage all courts to examine their administrative services delivery systems, consider the applicability of alternative administrative

models discussed in the report, and, where appropriate, adopt more efficient structures for the provision of administrative services.

CAMERAS IN THE COURTROOM

The Judicial Conference approved a Court Administration and Case Management Committee recommendation that it adopt conforming revisions to the "Cameras in the Courtroom" policy and commentary to be printed in Volume I, Chapter III, Part E of the *Guide to Judiciary Policies and Procedures*. These revisions reflect Judicial Conference actions taken in September 1994 (JCUS-SEP 94, pp. 46-47) and March 1996 (JCUS-MAR 96, p. 17).

MISCELLANEOUS FEE SCHEDULES

After undertaking a review of the miscellaneous fees set by the Judicial Conference pursuant to 28 U.S.C. §§ 1913, 1914, 1926, and 1930, the Court Administration and Case Management Committee recommended that the Judicial Conference raise certain miscellaneous fees to account for inflation and rising court costs. The Judicial Conference approved the recommendation to raise miscellaneous fees as set forth below, provided that legislation is enacted to permit the judiciary to retain the resulting increase in fees:

<u>Fee</u>	<u>Current Amount</u>	<u>Raised Amount</u>
Power of Attorney	\$ 20	\$ 30
Filing and Indexing Misc. Papers	\$ 20	\$ 30
Misdemeanor Appeal	\$ 25	\$ 35
Registration of Foreign Judgment	\$ 20	\$ 30
Tape Duplication	\$ 15/tape	\$ 20/tape
Microfilm/Microfiche	\$ 3/sheet	\$ 4/sheet
Mailing Labels	\$ 5/page	\$ 7/page
Record Search	\$ 15	\$ 20
Certification	\$ 5	\$ 7
Returned Checks	\$ 25/check	\$ 35/check
Reproduction of Record	\$ 25	\$ 55
Ct. of Fed. Claims Filing Fee	\$120	\$150
Ct. of Fed. Claims List of Orders/Ops	\$ 10	\$ 15

MISCELLANEOUS FEE - CUBAN LIBERTY AND DEMOCRATIC SOLIDARITY ACT

The Cuban Liberty and Democratic Solidarity Act of 1996 (Public Law No. 104-114) authorizes United States citizens claiming ownership of property confiscated by the Cuban government on or after January 1, 1959, to sue any "person" who "traffics"³ in that property. The Act requires the Judicial Conference to establish a fee for filing these actions "at a level sufficient to recover the costs to the court of actions brought under this section." The Judicial Conference approved a Court Administration and Case Management Committee recommendation that, pursuant to the revenue-neutral mandate imposed by Congress, a miscellaneous fee of \$4,180 be established for cases filed under this Act.

BANKRUPTCY MISCELLANEOUS FEE SCHEDULE

Item 11 of the miscellaneous fee schedule for bankruptcy courts promulgated pursuant to 28 U.S.C. § 1930(b) governs fees for transcription of a record of a bankruptcy proceeding. The Judicial Conference, on recommendation of the Court Administration and Case Management Committee, approved an amendment to this item as follows to reflect the elimination of the referees' salary and expense fund (language to be omitted is lined-through):

(11) for transcribing a record of any proceeding by a regularly employed member of the bankruptcy court staff who is not entitled by statute to retain the transcript fees for his or her own account, a charge shall be made at the same rate and conditions established by the Judicial Conference for transcripts prepared and sold to parties by official court reporters. The party requesting the transcript shall pay the charge to the clerk of the bankruptcy court for deposit to the credit of the referees' salary and expense fund if the proceeding is related to a case commenced prior to October 1, 1979, and to the credit of the Treasury if the proceeding is related to a case commenced on or after October 1, 1979. If the trustee in bankruptcy or the debtor in possession requests a transcript in the performance of his official duties, the charge shall be paid from the estate to the extent there is an estate realized.

³Persons who "traffic" include those who knowingly purchase, sell, transfer, use, or benefit from confiscated property without the authorization of any U.S. national who holds claim to property.

PLACES OF HOLDING COURT

The Judicial Conference approved a Court Administration and Case Management Committee recommendation to support proposed legislation amending 28 U.S.C. § 125 to provide that places of holding court in the Northern Division of the District of Utah include Ogden and Salt Lake City and that places of holding court in the Central Division of the District of Utah include Salt Lake City, Provo, and St. George. This action, requested by the court and approved by the circuit judicial council, is taken in reliance on the court's representation that it is budget-neutral.

JUROR QUALIFICATION QUESTIONNAIRE

The Judicial Conference approved a Court Administration and Case Management Committee recommendation to change Question 10 of the juror qualification form by substituting "Native American" for "American Indian." This change should assist the courts in gathering correct information regarding the percentage of Native Americans in their master jury wheels.

COMMITTEE ON CRIMINAL LAW

COMMITTEE ACTIVITIES

The Committee on Criminal Law reported that it has been assisting the Committee on Court Administration and Case Management with the development of criteria for acquiring and releasing space for probation and pretrial services offices. The Committee also reported that it had received preliminary results of a survey of district judges and chief probation officers concerning the sentencing guidelines. The survey findings, when evaluation is completed, will provide a major source of current information regarding the operation of the sentencing guidelines.

COMMITTEE ON DEFENDER SERVICES

DEATH PENALTY REPRESENTATION

As increasing numbers of defendants are charged with federal offenses that may be punishable by death, courts have requested guidance with respect to the appointment and compensation of counsel in cases in which the defendant faces the

risk of a death sentence at the beginning of the case but subsequent developments eliminate that possibility. In order to encourage flexibility in balancing the considerations relevant to appointment and compensation of counsel in such cases, the Committee on Defender Services recommended, and the Judicial Conference approved, the following text as new subparagraph 6.01 B(2) of the *Guidelines for the Administration of the Criminal Justice Act* (redesignating the existing subparagraph B as B(1)):

B(2) If, following the appointment of counsel in a case in which a defendant was charged with an offense that may be punishable by death, it is determined that the death penalty will not be sought, the court may consider the question of the number of counsel needed and the rate of compensation needed for the duration of the proceeding.

After considering whether the number of counsel initially appointed is necessary to ensure effective representation or to avoid disruption of the proceeding, the court may continue such appointments or make an appropriate reduction.

After considering the need to compensate appointed counsel fairly, taking into account the commitment of time and resources appointed counsel has made and will continue to make, the court may continue to pay the rate previously approved or prospectively reduce such rate.

DEFENDER ORGANIZATION FUNDING REQUESTS

Under its delegated authority from the Judicial Conference (JCUS-MAR 89, pp. 16-17), the Defender Services Committee approved additional funding for fiscal year 1996 for Federal Public Defender organizations in the amount of \$567,400 and for a Community Defender organization in the amount of \$66,800.

COMMITTEE ON FEDERAL-STATE JURISDICTION

AMERICAN SAMOA

Citing problems of white-collar crime in the United States territory of American Samoa, the Department of Justice, along with the Department of the Interior, is seeking legislation to establish federal judicial jurisdiction in this unincorporated

territory, which is located 2,300 miles southwest of Hawaii. On recommendation of the Committee on Federal-State Jurisdiction, the Judicial Conference took the position that if Congress determines to establish federal judicial jurisdiction in the territory of American Samoa and to commit sufficient resources to create such jurisdiction, then the Conference endorses the creation of an Article I district court in American Samoa. To establish such court, the Conference encourages the utilization of existing judicial and administrative resources to the fullest extent possible. In addition, the Conference suggests that any legislation providing such jurisdiction allow sufficient time following enactment for the judicial branch to implement the Act's requirements before cases may be brought.

COMMITTEE ON FINANCIAL DISCLOSURE

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported that as of July 15, 1996, the Committee had received 2,839 financial disclosure reports and certifications for the calendar year 1995, including 1,178 reports and certifications from justices and Article III judges, 324 from bankruptcy judges, 450 from magistrate judges, and 887 from judicial employees.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that from January 1, 1996, to June 30, 1996, a total of 83 intercircuit assignments, undertaken by 67 Article III judges, were processed and recommended by the Committee and approved by the Chief Justice. In addition, the Committee aided courts requesting assistance in identifying judges willing to take assignments.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported that the papers presented at the 1995 Conference of the Supreme Courts of the Americas will be

published in the August edition of the *Saint Louis University Law Review* in Spanish and English. The Committee further reported on a number of international rule of law programs held in 1996, including those involving Egypt, China, Russia, and Latin American countries.

COMMITTEE ON THE JUDICIAL BRANCH

TRANSPORTATION FOR DISABLED JUDGES

Current judiciary policy outlined in the *Guide to Judiciary Policies and Procedures*, Volume III, Chapter XV (Judges' Travel Regulations) does not provide guidance on the question of home-to-work transportation for judicial officers who might be disabled. On recommendation of the Committee on the Judicial Branch, the Judicial Conference approved an amendment to the "Travel Regulations for United States Justices and Judges," published in the *Guide*, to authorize a circuit chief judge to provide home-to-work transportation for a disabled judge where the circuit chief judge determines that "compelling operational considerations make such transportation essential to the conduct of official business."

COMMITTEE ON JUDICIAL RESOURCES

ADDITIONAL JUDGESHIPS - DISTRICT COURTS

On recommendation of the Committee on Judicial Resources, which reviewed requests and justifications for additional district court judgeships utilizing a weighted caseload formula and considering any special factors, the Judicial Conference approved transmittal to Congress of a request for an additional 21 permanent and 12 temporary district judgeships. This request, which includes most of the judgeships which had been approved by the Conference in 1994 (JCUS-SEP 94, pp. 53-54), is in lieu of the Judicial Conference's 1994 recommendations, but supplements the recommendation for conversion or extension of eleven temporary judgeships approved by the Conference in March 1996 (JCUS-MAR 96, p. 24; see also, *supra*, "Article III Judgeships," p. 42). Judgeships are recommended in the following locations:

Permanent Judgeships

New York, Eastern (3)
North Carolina, Western (2)
Arizona (2)
California, Eastern (1)
California, Southern (2)
Nevada (2)
Oregon (1)
Colorado (1)
New Mexico (1)
Alabama, Middle (1)
Florida, Middle (3)
Florida, Southern (2)

Temporary Judgeships

New York, Northern (1)
New York, Western (1)
South Carolina (1)
Louisiana, Middle (1)
Kentucky, Eastern (1)
Tennessee, Eastern (1)
Indiana, Southern (1)
California, Eastern (1)
Washington, Western (1)
Colorado (1)
New Mexico (1)
Florida, Middle (1)

JUDGESHIP SURVEYS

Under the current schedule for the biennial survey of judgeship needs, final recommendations are developed by the Judicial Conference in September of even-numbered years, and recommendations for additional judgeships are provided to the Congress at the end of the second session of Congress or held until the first session of the new Congress, when the caseload data supporting the recommendations are over a year old. So that the process would better correspond to the congressional calendar, the Judicial Conference approved a Judicial Resources Committee recommendation to change the schedule for completion of the biennial survey of judgeship needs from September of even-numbered years to March of odd-numbered years. See also, *supra*, "Bankruptcy Judgeship Surveys," p. 50.

JUDGESHIP NEEDS - COURTS OF APPEALS

On recommendation of the Judicial Resources Committee, which had consulted with the chief circuit judges, the Judicial Conference approved a judgeship survey process for the courts of appeals, as follows:

- a. Courts will be asked to submit requests for additional judgeships to the Subcommittee on Judicial Statistics, provided that at least a majority of the active members of the court have approved submission of the request; no recommendations will be made without a request from a majority of the members of the court.

- b. Each court requesting additional judgeships will be asked to provide a complete justification for the request including the potential impact on its own court and the district courts within the circuit of not getting the additional judgeships. In any instance where a court's request cannot be supported through the standard noted below, the court will be requested to provide supporting justification as to why the standard should not apply to its request.
- c. The Subcommittee will also consider various factors in evaluating judgeship requests, including a formula based on a standard of 500 filings (with removal of reinstated cases) per panel and with pro se appeals weighted as one-third of a case. The formula will serve as one factor in the assessment of judgeship needs in the courts of appeals; it will not be applied inflexibly. Some other factors which may be considered are the geography of a circuit, the median time from filing to disposition for appeals, and recent legislative changes.
- d. Initially, the D.C. Circuit Court of Appeals and the Federal Circuit Court of Appeals will be excluded from this process because of their unique caseloads.

CHAMBERS STAFFING

Current Judicial Conference policy authorizes a court to retain chambers staff for up to a total of 210 days (seven months) after a judge's death or an otherwise unanticipated vacancy (JCUS-MAR 88, pp. 32-33; JCUS-MAR 89, pp. 23-24). To retain staff after the first 30 days, the affected court is required to get approval of the Administrative Office. Retention of staff beyond 210 days is funded from allocations made to the circuits for temporary emergency law clerks and secretaries. Recognizing that the need to retain chambers staff is determined primarily by the court's circumstances at the time the unexpected vacancy occurs, the Judicial Conference approved a Judicial Resources Committee recommendation to revise the policies for retention of chambers staff upon the death of a judge or other unanticipated vacancy in a judgeship to eliminate the role of the Administrative Office, as follows:

- a. Authority to retain staff for up to 90 days will be given to courts for incumbents of positions on chambers staff in instances of an unanticipated vacancy of a judgeship. One additional period of up to 120 days beyond the original 90-day period will be allowed upon certification by the chief judge of the affected court to the circuit judicial council that additional staff resources are necessary.

- b. Additional staffing needs beyond the 120-day extension will be funded from allocations to the circuits for temporary law clerks and secretaries, using established procedures.

SALARY MATCHING POLICY

On recommendation of the Judicial Resources Committee, the Judicial Conference agreed to revise the salary matching/advanced in-step appointment policy in Subchapter 1338.2, Chapter X, Volume I-C of the *Guide to Judiciary Policies and Procedures*. The revision will permit quarters allowance and subsistence allowance to be considered as part of base pay for all prospective candidates for employment with the court (chambers and non-chambers positions) whose immediate previous employment was with a branch of the uniformed services of the United States and who are not eligible for military retirement.

BANKRUPTCY APPELLATE PANEL LAW CLERKS

At its September 1981 session, the Judicial Conference adopted a policy that allowed bankruptcy judges serving on bankruptcy appellate panels (BAPs) who participate in 50 or more appeals per year to employ a second law clerk (JCUS-SEP 81, p. 71). Until recently, only the Ninth Circuit had established a BAP. In fiscal year 1996, after the enactment of the Bankruptcy Reform Act of 1994 (Public Law No. 103-394), five circuits -- the First, Second, Sixth, Eighth, and Tenth -- have decided to establish BAPs. Concerned with projected future budgetary constraints and uncertain about the validity of the threshold of 50 appeals, the Judicial Resources Committee recommended that the Judicial Conference rescind its 1981 decision to authorize a second law clerk for any bankruptcy judge serving on a BAP who participates in 50 or more appeals per year. The Conference approved the recommendation. This decision does not apply to the Ninth Circuit, which has an established caseload and will maintain its current staffing level.

EMPLOYEE RECOGNITION PROGRAM

The Judicial Conference approved a Judicial Resources Committee recommendation to revise Subchapter 1451.2, Chapter X, Volume I-C, of the *Guide to Judiciary Policies and Procedures* that deals with the Employee Recognition Program. The revision allows for an effective cash and honorary awards program in a decentralized environment, permits more flexibility in the use of these awards, and

provides continued guidance to court unit managers on how to reward effectively employees who enhance the mission of the judiciary.

CIRCUIT EXECUTIVES

On recommendation of the Judicial Resources Committee, the Judicial Conference approved requests for new positions for fiscal year 1998 for the circuit executives' offices, as follows: one permanent position in the Second Circuit, three permanent positions in the Fourth Circuit, two permanent positions in the Tenth Circuit, and one new three-year temporary position in the D.C. Circuit. These positions are within the overall approved staffing ceiling of 217 total positions for all circuit executives' offices.

COURT INTERPRETERS

Based on established criteria, the Judicial Resources Committee recommended, and the Judicial Conference approved, one court interpreter position for the Eastern District of New York for fiscal year 1998.

SETTLEMENT CONFERENCE ATTORNEYS

The Judicial Conference has approved a staffing methodology for the appellate court settlement conference (or preargument) attorney offices (JCUS-MAR 95, p. 22) and a cap on the growth of the conference program over a five-year period (JCUS-SEP 94, pp. 56-57), with requests for positions in excess of the cap to be referred to the Judicial Conference. On recommendation of the Judicial Resources Committee, the Conference approved one support staff position (which was in excess of the cap) for the Eleventh Circuit's settlement conference attorney office for fiscal year 1997. Funding is to be provided at the appropriate Cost Control Monitoring System national average salary level.

CONGRESSIONAL ACCOUNTABILITY ACT

The Congressional Accountability Act of 1995 (CAA) (Public Law No. 104-1) requires the judiciary to submit to Congress by December 31, 1996, a report on the application of 11 federal employment and workplace laws to the judicial branch. The Judicial Conference, on recommendation of the Judicial Resources Committee, approved a draft report for submission to Congress by the Chief Justice in fulfillment

of the charge contained in the CAA. In addition, the Conference delegated to the Director of the Administrative Office, in consultation with the Judicial Resources Committee, the authority to make such changes to the report as may be necessary in order to ensure that it adequately reflects relevant events that may occur during the interval between Judicial Conference action on the report and the submission of the report to Congress. The Conference also agreed that the report would remain confidential until its submission to Congress.

EARLY RETIREMENT AUTHORITY

In fiscal year 1996, early retirement authority, granted by the Office of Personnel Management (OPM) and approved by the Judicial Conference, proved to be a useful management tool for many court units. In anticipation of OPM's approval of early retirement authority for the judiciary for fiscal year 1997, the Judicial Conference, on recommendation of the Judicial Resources Committee, authorized all court units to offer early retirement in fiscal year 1997 to eligible employees in order to facilitate reorganization as a result of budget restrictions or workload changes or for other good management reasons.

VETERANS' PREFERENCE

The Veterans' Employment Opportunities Act, H.R. 3586 (104th Congress), would extend veterans' preference coverage to many judiciary appointments. For a number of reasons, including the administrative cost and difficulty of applying competitive service appointment procedures to the judicial branch, the Judicial Conference approved a Judicial Resources Committee recommendation that it support the concept of promoting employment opportunities for veterans within the judicial branch, all other qualifications being equal, but strongly oppose preference laws such as those proposed in H.R. 3586.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

MAGISTRATE JUDGE RECALL REGULATIONS

The Judicial Conference approved a recommendation of the Magistrate Judges Committee to amend the *Regulations of the Judicial Conference Establishing Standards and Procedures for the Recall of United States Magistrate Judges* and the *Regulations of the Judicial Conference of the United States Governing the Extended*

Service Recall of Retired United States Magistrate Judges. The amendments would eliminate the requirement for Administrative Office approval of funding prior to (a) implementation of the recall of a retired magistrate judge and (b) circuit judicial council authorization of a secretary and/or law clerk for a recalled judge. See also, *supra*, "Bankruptcy Judge Recall Regulations," pp. 51-52.

CHANGES IN MAGISTRATE JUDGE POSITIONS

After consideration of the report of the Committee on the Administration of the Magistrate Judges System and the recommendations of the Director of the Administrative Office, the district courts, and the judicial councils of the circuits, the Judicial Conference approved the following changes in salaries and arrangements for full-time and part-time magistrate judge positions. Changes with a budgetary impact are to be effective when appropriated funds are available.

SECOND CIRCUIT

Southern District of New York

1. Authorized an additional full-time magistrate judge position at White Plains; and
2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

THIRD CIRCUIT

Eastern District of Pennsylvania

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

FOURTH CIRCUIT

District of Maryland

1. Increased the salary of the part-time magistrate judge position at Hagerstown from Level 6 (\$10,320 per annum) to Level 4 (\$30,960 per annum);
2. Increased the salary of the part-time magistrate judge position at Salisbury from Level 7 (\$5,160 per annum) to Level 6 (\$10,320 per annum); and

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

Eastern District of North Carolina

Increased the salary of the part-time magistrate judge position at Greenville from Level 4 (\$30,960 per annum) to Level 2 (\$51,600 per annum).

FIFTH CIRCUIT

Middle District of Louisiana

1. Authorized an additional full-time magistrate judge position at Baton Rouge; and
2. Made no change in the location or arrangements of the other magistrate judge positions in the district.

Western District of Texas

Authorized an additional part-time magistrate judge position at Del Rio at Salary Level 2 (\$51,600 per annum), effective October 1, 1996, or as soon as funds are available.

EIGHTH CIRCUIT

Western District of Arkansas

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

Southern District of Iowa

Authorized a part-time magistrate judge position at Davenport at Salary Level 2 (\$51,600 per annum), effective October 1, 1996, or as soon as funds are available, and discontinued the part-time magistrate judge position at Burlington (or Davenport) upon the appointment of the new magistrate judge.

District of South Dakota

Increased the salary of the part-time magistrate judge position at Pierre from Level 3 (\$41,280 per annum) to Level 2 (\$51,600 per annum).

NINTH CIRCUIT

Eastern District of California

1. Authorized an additional full-time magistrate judge position at Sacramento; and
2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

Central District of California

1. Authorized one additional full-time magistrate judge position at Los Angeles;
2. Authorized one additional full-time magistrate judge position at Los Angeles or Santa Ana;
3. Authorized one additional full-time magistrate judge position at Los Angeles or Riverside;
4. Discontinued the part-time magistrate judge position at San Bernardino upon the expiration of the current incumbent's term on June 24, 1997;
5. Increased the salary of the part-time magistrate judge position at Barstow (or Victorville) from \$11,968 per annum to Level 5 (\$20,640 per annum);
6. Increased the salary of the part-time magistrate judge position at Santa Barbara (or Ventura) from Level 5 (\$20,640 per annum) to Level 4 (\$30,960 per annum); and
7. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

District of Idaho

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

TENTH CIRCUIT

Eastern District of Oklahoma

Increased the salary of the part-time magistrate judge position at McAlester from Level 6 (\$10,320 per annum) to Level 4 (\$30,960 per annum).

Western District of Oklahoma

1. Discontinued the part-time magistrate judge position at Enid; and
2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

ELEVENTH CIRCUIT

Northern District of Florida

Retained the part-time magistrate judge position at Panama City at the current Salary Level 5 (\$20,640 per annum).

ACCELERATED FUNDING

The accelerated funding program provides prompt magistrate judge assistance to judicial districts seriously affected by drug filings or the Civil Justice Reform Act (see JCUS-SEP 91, p. 67; JCUS-MAR 92, p. 79). On recommendation of the Magistrate Judges Committee, the Judicial Conference designated the magistrate judge positions at White Plains, New York; Baton Rouge, Louisiana; Sacramento, California; Los Angeles, California; Los Angeles or Santa Ana, California; and Los Angeles or Riverside, California, for accelerated funding in fiscal year 1997.

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

COMMITTEE ACTIVITIES

The Committee to Review Circuit Council Conduct and Disability Orders reported that it has completed its task of amending the Illustrative Rules Governing

Complaints of Judicial Misconduct and Disability in light of recommendations addressed to the judicial branch by the National Commission on Judicial Discipline and Removal. The new version of the Rules will be published and distributed to the courts, accompanied by other materials that may be useful to judges and court staff in implementing the complaint procedure established by 28 U.S.C. § 372(c).

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 Rules 1010 (Service of Involuntary Petition and Summons; Petition Commencing Ancillary Case), 1019 (Conversion of Chapter 11 Reorganization Case, Chapter 12 Family Farmer's Debt Adjustment Case, or Chapter 13 Individual's Debt Adjustment Case to Chapter 7 Liquidation Case), 2002 (Notices to Creditors, Equity Security Holders, United States, and United States Trustee), 2007.1 (Appointment of Trustee or Examiner in a Chapter 11 Reorganization Case), 3014 (Election Under §1111(b) by Secured Creditor in Chapter 9 Municipality or Chapter 11 Reorganization Case), 3017 (Court Consideration of Disclosure Statement in Chapter 9 Municipality and Chapter 11 Reorganization Cases), 3018 (Acceptance or Rejection of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case), 3021 (Distribution Under Plan), 8001 (Manner of Taking Appeal; Voluntary Dismissal), 8002 (Time for Filing Notice of Appeal), 9011 (Signing of Papers; Representations to the Court; Sanctions; Verification and Copies of Papers), and 9035 (Applicability of Rules in Judicial Districts in Alabama and North Carolina), and proposed new Rules 1020 (Election to be Considered a Small Business in a Chapter 11 Reorganization Case), 3017.1 (Court Consideration of Disclosure Statement in a Small Business Case), 8020 (Damages and Costs for Frivolous Appeal), and 9015 (Jury Trials). The proposed amendments and new rules were accompanied by Committee notes explaining their purpose and intent. The Conference approved the amendments and the new rules for transmission to the Supreme Court for consideration, with the recommendation that they be approved by the Court and transmitted to Congress in accordance with the law.

FEDERAL RULES OF CIVIL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference a proposed amendment to Civil Rule 9 (Pleading Special Matters) together

with Committee notes explaining its purpose and intent. The Conference approved the amendment, authorizing its transmittal to the Supreme Court for consideration with the recommendation that it be adopted by the Court and transmitted to Congress in accordance with the law.

The Judicial Conference disapproved a proposed amendment to Civil Rule 48 (Number of Jurors - Participation in Verdict) which would have required the initial empaneling of a jury of twelve persons in all civil cases, in the absence of stipulation by counsel to a lesser number.

FEDERAL RULES OF CRIMINAL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Criminal Rule 16 (Discovery and Inspection). Committee notes explaining their purpose and intent were transmitted with the proposal. The Conference approved the amendments and authorized their transmittal to the Supreme Court for its consideration with the recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

FEDERAL RULES OF EVIDENCE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Evidence Rules 407 (Subsequent Remedial Measures), 801 (Definitions), 803(24) (Other Hearsay Exceptions; Availability of Declarant Immaterial), 804(b)(5) (Other Hearsay Exceptions; Declarant Unavailable), 806 (Attacking and Supporting Credibility of Declarant), and proposed new Rules 804(b)(6) (Hearsay Exceptions; Declarant Unavailable) and 807 (Residual Exception), together with Committee notes explaining their purpose and intent. The Conference approved these amendments and the new rules and authorized their transmittal to the Supreme Court for its consideration with the recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

COMMITTEE ON SECURITY, SPACE AND FACILITIES

INCENTIVE PROGRAM FOR THE RELEASE OF SPACE

In March 1996, the Judicial Conference approved a space rental cost containment plan which provides that funds be given to courts that make specific

management decisions to reduce their rent liability (JCUS-MAR 96, p. 35) and includes development of an incentive program for courts or court units accruing savings to the judiciary by releasing space. The Committee on Security, Space and Facilities proposed an interim incentive program which would be subject to further refinement, and it recommended guidelines to implement the program. The Judicial Conference adopted the proposed interim space rental incentive program, which includes a methodology for determining the savings in rental costs, and the implementing guidelines.

UNITED STATES COURTS DESIGN GUIDE

On recommendation of the Committee on Security, Space and Facilities, the Judicial Conference approved an amendment to the *United States Courts Design Guide* to clarify that a "circulation factor," i.e., a factor reflecting the space needed to move from room to room, is not to be used to expand the maximum courtroom or chambers size. The amendment would add the following sentence to the second full paragraph at page 1-5 after the words "often referred to as usable space":

The circulation factor is not to be applied to the interior of a courtroom, and is not meant to be applied to any other space, such as within the chambers suite, except as necessary hallway or circulation space created to provide access from one room or space to another.

The Judicial Conference also approved a recommendation by the Committee that certain technical, security-related revisions to Chapters 2, 3, 4, 12, 14, and 15 of the *Design Guide* be made.

MEMORIAL RESOLUTION

The Judicial Conference approved the following resolution noting the death of the Honorable Helen Wilson Nies of the United States Court of Appeals for the Federal Circuit, a member of the Judicial Conference of the United States from 1990 to 1994.

The Judicial Conference of the United States notes with sadness the death of the Honorable Helen Wilson Nies, on August 7, 1996, in Henlopen Acres, Delaware.

Judge Nies served with distinction as a Judge of the United States Court of Customs and Patent Appeals beginning in June 1980, and assumed the position of Circuit Judge of the Court of Appeals for the Federal Circuit when it was created in 1982. She served as the Court's second Chief Judge from June 1990 to March 1994, and took senior status on November 1, 1995. She is remembered by her colleagues as an industrious judge and a caring friend who promoted collegiality in the legal profession.

Judge Nies's rewarding career included both private practice and federal service in Washington, D.C. She was known for her loyal, faithful and unselfish efforts to improve the administration of justice and for a lifetime of overall leadership in the field of intellectual property law.

Judge Nies also served on the Committee on the Bicentennial of the Constitution where she made important contributions toward the promotion of ceremonial and educational activities within the Judicial Branch to commemorate the Bicentennial of the Constitution.

The members of the Judicial Conference convey their deepest sympathies to Judge Nies's family and request that this Resolution be sent to her widower, John D. Nies, as a sign of their affection and respect.

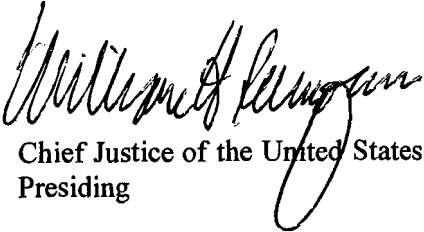
FUNDING

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

September 17, 1996

RELEASE OF CONFERENCE ACTION

Except as otherwise specified, the Conference authorized the immediate release of matters considered by this session where necessary for legislative or administrative action.



Chief Justice of the United States
Presiding