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

## **Committee to Review Circuit Council Conduct and Disability Orders**

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### **Processing of Petitions for Review**

The *Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Circuit Council Orders under the Judicial Conduct and Disability Act (Rules for the Processing of Petitions for Review)* govern the handling by the Committee to Review Circuit Council Conduct and Disability Orders of petitions for Judicial Conference review filed pursuant to 28 U.S.C. § 372(c)(10). These rules do not impose any time limit upon the filing of a petition for review with the Conference. Because of the potential problems created by the absence of a clear time limit for filing a petition for review, the Committee recommended, and the Judicial Conference approved, an amendment to Rule 6 of the *Rules for the Processing of Petitions for Review* to establish a 60-day time limit for the filing of a petition for Conference review of final action of a circuit council, with an additional 30 days for the filing of cross-petitions.

As a result of the above amendment, two conforming changes to the Illustrative Rules Governing Complaints of Judicial Misconduct and Disability are necessary. On recommendation of the Committee, the Judicial Conference approved (a) the deletion of Illustrative Rule 17(d) (Special rule for decisions of judicial council) and the renumbering of the other subsections of Rule 17; and (b) the deletion of the last sentence of Illustrative Rule 18(e) (Judge under investigation) to conform to the amended Judicial Conference Rule 6.

## **Committee on Rules of Practice and Procedure**

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### **Federal Rules of Civil Procedure**

The Committee on Rules of Practice and Procedures submitted to the Judicial Conference proposed amendments to Federal Rule of Civil Procedure 73 (Magistrate Judges; Trial by Consent and Appeal Options) and proposed amendments abrogating Rules 74 (Method of Appeal From Magistrate Judge to District Judge Under Title 28, U.S.C. § 636(c) and Rule 73(d)), 75 (Proceedings on Appeal From Magistrate Judge to District Judge Under Rule 73(d)), and 76

The accelerated funding program was established to provide prompt magistrate judge assistance to judicial districts seriously affected by drug filings or impacted by the Civil Justice Reform Act. On recommendation of the Magistrate Judges Committee, the Judicial Conference designated the new magistrate judge positions at Texarkana, Texas; San Diego, California; and Atlanta, Georgia, for accelerated funding in fiscal year 1998.

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

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### **JUDICIAL REFORM ACT OF 1997**

The Committee to Review Circuit Council Conduct and Disability Orders reported that it has been following closely the progress of two legislative proposals in the 105<sup>th</sup> Congress that would amend the Judicial Conduct and Disability Act, 28 U.S.C. § 372(c). H.R. 702 and section 4 of the original version of the Judicial Reform Act of 1997 (H.R. 1252) would provide that any complaint of judicial misconduct or disability filed under the Act shall be referred to another circuit for complaint proceedings. On recommendation of the Committee, the Judicial Conference, in a mail ballot, expressed opposition to the provision (see *infra*, "Mail Ballots," pp. 84-85). The Committee will continue to monitor these legislative proposals.

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

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### **FEDERAL RULES OF APPELLATE PROCEDURE**

The Advisory Committee on Appellate Rules completed a style revision project to clarify and simplify the language of the appellate rules. The Committee on Rules of Practice and Procedure concurred with the advisory committee's recommendations and submitted revisions of all 48 Rules of Appellate Procedure and a revision of Form 4, together with Committee Notes explaining their purpose and intent. The Judicial Conference approved the proposed amendments to Appellate Rules 1 to 48 and to Form 4 and agreed to transmit them 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.

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### **FEDERAL RULES OF BANKRUPTCY PROCEDURE**

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed revisions to Official Bankruptcy Forms 1 (Voluntary Petition), 3 (Application and Order to Pay Filing Fee in Installments), 6 (Schedule F), 8 (Chapter 7 Individual Debtor's Statement of Intention), 9A-9I (Notice of Commencement of Case Under the Bankruptcy Code, Meeting of Creditors and Fixing of Dates), 10 (Proof of

magistrate judge positions in the district.

Western District of Washington

1. Discontinued the part-time magistrate judge position at Olympic National Park;
2. Increased the salary of the part-time magistrate judge position at Vancouver from Level 6 (\$10,557 per annum) to Level 5 (\$21,115 per annum); and
3. Made no change in the number, locations, salaries or arrangements of the other magistrate judge positions in the district.

## **TENTH CIRCUIT**

District of Wyoming

1. Increased the salary of the part-time magistrate judge position at Casper from Level 8 (\$3,167 per annum) to Level 7 (\$5,279 per annum); and
2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

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

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### **COMMITTEE ACTIVITIES**

The Committee reported on pending legislation, H.R. 1252 (105th Congress), which would amend the Judicial Conduct and Disability Act of 1980, 28 U.S.C. § 372(c), to provide that any complaint of judicial misconduct or disability filed under the Act that is not dismissed at the outset by the chief judge of the circuit in which the complained-against judge serves shall be transferred to another circuit for further complaint proceedings. The provision has been amended since the Judicial Conference opposed it in April 1997 (JCUS-SEP 97, pp. 81-82). The Committee advised that no new Judicial Conference action was necessary, but that it would continue to monitor the legislation.

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

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Beach, Florida; and Columbus, Georgia, for accelerated funding in fiscal year 1999.

## **Committee to Review Circuit Council Conduct and Disability Orders**

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### **Committee Activities**

In May 1997, the Judicial Conference determined to oppose legislation introduced in the 105<sup>th</sup> Congress to amend the Judicial Conduct and Disability Act of 1980 (28 U.S. C. § 372(c)) regarding the transfer to another circuit of complaints of judicial misconduct (JCUS-SEP 97, pp. 81-82). The Committee to Review Circuit Council Conduct and Disability Orders reported that there had been no action on this proposal in the Senate, and that the Committee would continue to monitor any legislative developments in this area. The Committee further reported that it determined to add commentary to the Illustrative Rules Governing Complaints of Judicial Misconduct and Disability to provide guidance in dealing with the problem of mass filings of identical section 372(c) complaints by different individuals against the same judge or judges.

## **Committee on Rules of Practice and Procedure**

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### **Federal Rules of Bankruptcy Procedure**

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Bankruptcy Rules 1017 (Dismissal or Conversion of Case; Suspension), 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), 2003 (Meeting of Creditors or Equity Security Holders), 3020 (Deposit; Confirmation of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case), 3021 (Distribution under Plan), 4001 (Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements), 4004 (Grant or Denial of Discharge), 4007 (Determination of Dischargeability of a Debt), 6004 (Use, Sale, or Lease of Property), 6006 (Assumption, Rejection and Assignment of Executory Contracts and Unexpired Leases), 7001 (Scope of Rules of Part VII), 7004 (Process; Service of Summons, Complaint), 7062 (Stay of Proceedings to Enforce a Judgment), 9006 (Time), and 9014 (Contested Matters). The proposed amendments were accompanied by Committee Notes explaining their purpose and intent. The Judicial 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.

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

## **Committee to Review Circuit Council Conduct and Disability Orders**

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### **Committee Activities**

The Committee to Review Circuit Council Conduct and Disability Orders reported that the 105<sup>th</sup> Congress adjourned without enactment of any proposal to amend the Judicial Conduct and Disability Act, 28 U.S.C. § 372(c). A measure passed in the House of Representatives in April 1998 would have amended the Act to provide that any complaint of judicial misconduct or disability filed under the Act that was not dismissed at the outset by the chief judge of the circuit in which the complained-against judge serves would be transferred to another circuit for further complaint proceedings. In April 1997, the Judicial Conference approved a resolution expressing opposition to a similar version of this legislation (JCUS-SEP 97, pp. 81-82). The Committee will continue to monitor legislative developments in this area in the 106<sup>th</sup> Congress.

## **Committee on Rules of Practice and Procedure**

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### **Federal Rules of Criminal Procedure**

Forfeiture Procedures. A proposed new Criminal Rule 32.2 would establish a comprehensive set of forfeiture procedures, consolidating several procedural rules (Rules 7, 31, 32, and 38) currently governing the forfeiture of assets in a criminal case. Under the proposed amendments, the nexus between the property to be forfeited and the offense committed by the defendant would be established during the first stage of the proceedings as part of the sentencing. In the second stage, procedures governing ancillary proceedings are prescribed to determine the claims of any third party asserting an interest in the property. After considering public comments, and making revisions in light of those comments, the Advisory Committee on Criminal Rules recommended, and the Standing Rules Committee concurred, that the Judicial Conference

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**ACCELERATED FUNDING**

On recommendation of the Committee, the Judicial Conference agreed to designate the new magistrate judge positions at Greenville, Spartanburg, or Anderson, South Carolina; El Paso and Del Rio, Texas; Little Rock, Arkansas; Davenport, Iowa; Sioux Falls, South Dakota; and Yuma, Arizona, for accelerated funding in fiscal year 2000.

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

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**COMMITTEE ACTIVITIES**

The Committee reported on the status of litigation arising from an order issued by the Judicial Council of the Fifth Circuit and affirmed by the Committee, imposing sanctions against a district judge.

**COMMITTEE ON RULES OF PRACTICE AND PROCEDURE**

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**FEDERAL RULES OF CIVIL PROCEDURE**

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Civil Rules 4 (Summons), 5 (Serving and Filing Pleadings and Other Papers), 12 (Defenses and Objections—When and How Presented—By Pleading or Motion—Motion for Judgment on the Pleadings), 14 (Third-Party Practice), 26(d) (Timing and Sequence of Discovery), 26(f) (Conference of Parties; Planning for Discovery), and 37 (Failure to Make Disclosure or Cooperate in Discovery: Sanctions), along with amendments to the Supplemental Admiralty Rules B (In Personam Actions: Attachment and Garnishment), C (In Rem Actions: Special Provisions), and E (Actions in Rem and Quasi in Rem: General Provisions). The Judicial Conference approved these amendments and the accompanying Committee Notes for transmittal to the Supreme Court.

*Judicial Conference of the United States*

1. Increased the salary of the part-time magistrate judge position at Saint George from Level 4 (\$32,749 per annum) to Level 2 (\$54,582 per annum); and
2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

**ELEVENTH CIRCUIT**

Middle District of Alabama

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

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

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**COMMITTEE ACTIVITIES**

The Committee to Review Circuit Council Conduct and Disability Orders reported on the status of litigation arising from an order issued by the Judicial Council of the Fifth Circuit and affirmed by the Committee, imposing sanctions against a district judge.

**COMMITTEE ON RULES OF PRACTICE AND PROCEDURE**

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**COMMITTEE ACTIVITIES**

The Committee on Rules of Practice and Procedure reported that it reviewed the status of a number of proposed rules changes and approved proposed amendments to the Appellate and Criminal Rules for publication and comment. The Committee also considered issues relating to rules governing attorney conduct and rules requiring non-governmental corporate parties to disclose financial interests, and embarked on a second comprehensive national local rules project.

effective functioning of magistrate judges. The Committee communicated these positions to the Committees on Security and Facilities and Court Administration and Case Management.

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

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### **COMMITTEE ACTIVITIES**

The Committee to Review Circuit Council Conduct and Disability Orders reported that it has published, and will distribute to the courts, a pamphlet containing the current version of the Illustrative Rules Governing Complaints of Judicial Misconduct and Disability and related 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**

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### **FEDERAL RULES OF BANKRUPTCY PROCEDURE**

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed revisions to Bankruptcy Rules 1007 (Lists, Schedules, and Statements; Time Limits), 2002 (Notices to Creditors, Equity Security Holders, United States, and United States Trustee), 3016 (Filing of Plan and Disclosure Statement in Chapter 9 Municipality and Chapter 11 Reorganization Cases), 3017 (Court Consideration of Disclosure Statement in Chapter 9 Municipality and Chapter 11 Reorganization Cases), 3020 (Deposit; Confirmation of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case), 9006 (Time), 9020 (Contempt Proceedings), and 9022 (Notice of Judgment or Order). The proposed amendments were accompanied by Committee Notes explaining their purpose and intent. 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. In addition, the Committee submitted and the Conference approved proposed revisions to Official Form 7 (Statement of Financial Affairs).

March 14, 2001

established by the Judicial Conference, as it has to date, and that it will continue to monitor the growth of the magistrate judges system carefully. The Committee forwarded background materials and a statement of the issues on this topic to the Executive Committee (*see supra*, “Miscellaneous Actions,” p. 5).

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

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### **COMMITTEE ACTIVITIES**

The Committee to Review Circuit Council Conduct and Disability Orders reported that it has distributed to the courts a pamphlet containing the current version of the Illustrative Rules Governing Complaints of Judicial Misconduct and Disability and related 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**

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### **COMMITTEE ACTIVITIES**

The Committee on Rules of Practice and Procedure reported that it approved for immediate publication proposed amendments to Rule C of the Supplemental Rules for Certain Admiralty and Maritime Claims to conform with recent legislation. The Committee's Subcommittee on Technology is working with the Committee on Court Administration and Case Management studying privacy issues that arise from electronic case filing and developing guidance for courts to implement an electronic case filing system. The Advisory Committees on Appellate, Bankruptcy, Civil, and Criminal Rules are reviewing comments from the public submitted on amendments proposed to their respective sets of rules, including most significantly a proposed comprehensive style revision of the Federal Rules of Criminal Procedure.

The Committee determined not to seek a change to the regulations to address the issue, but instead to add language to the selection and appointment pamphlet that each panel member must disclose to all other panel members any personal or professional relationships with any applicants for the position. The Committee also declined to adopt a judge's suggestion that the regulations be modified to allow career law clerks with at least five years of clerkship experience to have that clerkship time considered in computing the five-year active practice of law requirement.

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

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### **COMMITTEE ACTIVITIES**

The Committee to Review Circuit Council Conduct and Disability Orders reported that it met in August 2001 to consider a petition for review of an order entered by the Judicial Council of the District of Columbia Circuit in proceedings conducted under the Judicial Conduct and Disability Act, 28 U.S.C. § 372(c). The petition, filed in April 2001, was taken under advisement.

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

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### **FEDERAL RULES OF APPELLATE PROCEDURE**

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Appellate Rules 1 (Scope of Rules; Title), 4 (Appeal as of Right -- When Taken), 5 (Appeal by Permission), 21 (Writs of Mandamus and Prohibition, and Other Extraordinary Writs), 24 (Proceeding in Forma Pauperis), 25 (Filing and Service), 26 (Computing and Extending Time), 26.1 (Corporate Disclosure Statement), 27 (Motions), 28 (Briefs), 31 (Serving and Filing Briefs), 32 (Form of Briefs, Appendices, and Other Papers), 36 (Entry of Judgment; Notice), 41 (Mandate: Contents; Issuance and Effective Date; Stay), 44 (Case Involving a Constitutional Question When the United States Is Not a Party) and 45 (Clerk's Duties), and new Form 6 (Certificate of Compliance With Rule 32(a)), together with Committee notes explaining their purpose and intent. The Judicial Conference approved the amendments and new form and authorized their transmittal to the

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## **COMMITTEE ACTIVITIES**

The Committee reported that it discussed the allocation of pro se law clerk positions and voted unanimously to advise the Judicial Resources Committee that it favors changing the current allocation procedure to enable courts to offer at least a two-year commitment when hiring pro se law clerks (*see supra*, “Pro Se Law Clerks,” p. 22). Also, the Committee identified the following as the four most important long-range planning issues for the magistrate judges system: 1) appropriate limits on magistrate judge numbers and authority; 2) roles of magistrate judges in court governance; 3) appropriate chambers staffing for magistrate judges; and 4) contributions of magistrate judges to the quality of justice and the evaluation of full, fair, and effective utilization of magistrate judges.

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

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### **COMMITTEE ACTIVITIES**

The Committee to Review Circuit Council Conduct and Disability Orders reported that it has undertaken a review and analysis of H.R. 3892 (107<sup>th</sup> Congress), legislation to amend the Judicial Conduct and Disability Act, 28 U.S.C. § 372(c), that was introduced on March 7, 2002.

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

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### **FEDERAL RULES OF CRIMINAL PROCEDURE**

In September/October 2001, the Judicial Conference approved amendments to the Federal Rules of Criminal Procedure, including comprehensive style revisions, and forwarded them to the Supreme Court for approval (JCUS-SEP/OCT 01, p. 70). Subsequent to the Conference’s approval, but prior to Supreme Court action on the proposal, Congress passed the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT ACT), Public Law No. 107-56, which amended Criminal Rules 6 and 41.

courts to continue efforts to achieve diversity in all aspects of the magistrate judge selection process. The Committee also discussed the issue of magistrate judge involvement in court governance. The Committee agreed to write to the chief judges of those circuits without a magistrate judge on the circuit council to encourage them to consider including magistrate judges on their respective circuit councils.

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

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### **INFORMATION ON COMPLAINT PROCEDURES**

In recognition of the increasing importance of on-line availability of information for the transaction of legal business, and at the suggestion of two members of Congress, the Committee to Review Circuit Council Conduct and Disability Orders recommended that the Judicial Conference:

- a. Urge every federal court to include a prominent link on its website to its circuit's forms for filing complaints of judicial misconduct or disability and its circuit's rules governing the complaint procedure; and
- b. Encourage chief judges and judicial councils to submit non-routine public orders disposing of complaints of judicial misconduct or disability for publication by on-line and print services.

The Conference adopted the Committee's recommendations.

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### **COMMITTEE ACTIVITIES**

The Committee to Review Circuit Council Conduct and Disability Orders continued to monitor the status of H.R. 3892 (107<sup>th</sup> Congress), legislation to amend (in several minor respects) the Judicial Conduct and Disability Act, 28 U.S.C. § 372(c), that was introduced on March 7, 2002.

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

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### **COMMITTEE ACTIVITIES**

The Committee to Review Circuit Council Conduct and Disability Orders reported that it is monitoring the status of *Spargo v. New York State Commission on Judicial Conduct*, 244 F.Supp. 2d 72 (N.D.N.Y. 2003). That ruling strikes down, as an impermissible prior restraint under the First Amendment, discipline of a New York state judge based on his alleged violation of provisions of the New York Code of Judicial Conduct restricting New York state judges' political activities (apart from their own campaigns for judicial office). The court also found that generally-worded provisions of the New York Code (such as the provision that a judge should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary) were too vague to support discipline for activity otherwise protected by the First Amendment.

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

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### **COMMITTEE ACTIVITIES**

The Committee on Rules of Practice and Procedure approved for publication proposed amendments to Rule 4008 of the Federal Rules of Bankruptcy Procedure, which would establish a deadline for filing a reaffirmation agreement. The Committee also approved for publication proposed amendments to Rules B and C of the Supplemental Rules for Certain Admiralty and Maritime Claims. These proposed amendments are modest and technical in nature. The Advisory Committees on Bankruptcy, Criminal, and Evidence Rules are reviewing comments from the public submitted on amendments proposed in August 2002 to their respective sets of rules. The Committee also received the report of its Local Rules Project and referred it to the committees' reporters for their review.

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## **ACCELERATED FUNDING**

On recommendation of the Committee, the Judicial Conference agreed to designate for accelerated funding in fiscal year 2004 the new full-time magistrate judge positions at Brooklyn, New York; Central Islip, New York; Chattanooga, Tennessee; and Baltimore or Greenbelt, Maryland.

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## **COMMITTEE ACTIVITIES**

The Committee on the Administration of the Magistrate Judges System reported that it decided to defer, but not withdraw, its position that service as an arbitrator or mediator by retired magistrate judges and bankruptcy judges should not be considered the practice of law under the Regulations of the Director Implementing the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act. The Committee also discussed possible additional criteria for the creation of new full-time magistrate judge positions and decided that the current Judicial Conference criteria are comprehensive and that the Committee's detailed review of each request ensures that only justified requests are approved. Further, the Committee considered an item on law clerk assistance for Social Security appeals that was also considered by the Court Administration and Case Management and Judicial Resources Committees, and requested that detailed materials be prepared on this subject for these committees' December 2003 meetings.

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

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### **COMMITTEE ACTIVITIES**

The Committee to Review Circuit Council Conduct and Disability Orders reported that, in the absence of any petition before it for review of judicial council action under the Judicial Conduct and Disability Act, it has continued to monitor congressional activity in the area of judicial conduct and disability.

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## **COMMITTEE ACTIVITIES**

The Committee on the Administration of the Magistrate Judges System reported that it opposes elimination of the statutory authority of magistrate judges to vote on the selection of chief pretrial services officers, disagreeing with the Criminal Law Committee's recommendation to the Judicial Resources Committee that legislation be sought to amend 18 U.S.C. § 3152(c) to make the selection process for chief pretrial services officers the same as the selection process for chief probation officers under 18 U.S.C. § 3602(c). The Judicial Resources Committee will consider both committees' views at its June 2004 meeting. The Magistrate Judges Committee also agreed to include in all future survey reports that analyze requests for new magistrate judge positions information on the space implications of any new positions, and, if available, the related costs of such requests.

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

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### **COMMITTEE ACTIVITIES**

The Committee to Review Circuit Council Conduct and Disability Orders reported that, in the absence of any petition before it for review of judicial council action under the Judicial Conduct and Disability Act, it has continued to monitor congressional activity in the area of judicial conduct and disability.

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

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### **COMMITTEE ACTIVITIES**

The Committee on Rules of Practice and Procedure reported that it approved for publication proposed amendments to Rules 5005 (Filing and Transmittal of Papers) and 9036 (Notice by Electronic Transmission) of the Federal Rules of Bankruptcy Procedure. The Committee also approved for later publication proposed style amendments to Civil Rules 16-37 and 45. Publication of these rules as well as proposed style amendments to Civil Rules

2. Discontinued the part-time magistrate judge positions at Monticello and Vernal upon the appointment of the new full-time magistrate judge at Salt Lake City; and
3. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

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### **ACCELERATED FUNDING**

On recommendation of the Committee, the Judicial Conference agreed to designate the new full-time magistrate judge position at Las Cruces, New Mexico, for accelerated funding in fiscal year 2005.

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### **COMMITTEE ACTIVITIES**

The Committee on the Administration of the Magistrate Judges System reported that it voted unanimously to recommend to the Judicial Branch Committee that it recommend that the Judicial Conference support pending legislation to extend the “FEGLI fix” to magistrate judges and bankruptcy judges. The Magistrate Judges Committee also considered updated diversity statistics from *The Judiciary Fair Employment Practices Annual Report* published for the period October 1, 2002 to September 30, 2003, and noted that magistrate judges were a more diverse population in 2003 than in 2002.

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

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### **COMMITTEE ACTIVITIES**

The Committee to Review Circuit Council Conduct and Disability Orders approved a study to examine the operation of the existing procedures under the Judicial Conduct and Disability Act (28 U.S.C. § 351 *et seq.*), proposed by the Judicial Conduct and Disability Act Study Committee appointed by Chief Justice Rehnquist and chaired by Justice Stephen Breyer. The Committee communicated its approval to Justice Breyer by letter dated August 16, 2004. Pursuant to Rule 16(h) of the Illustrative Rules Governing Complaints of Judicial Misconduct and Disability (which has been adopted by most of the circuits), the Committee’s approval permits the circuit councils to authorize access to confidential materials for purposes of this research project.

[The Report of the Proceedings of the  
Judicial Conference of the United States  
of **March 15, 2005**,  
contained no entry from the  
Committee to Review Circuit Council Conduct and Disability Orders.  
<http://www.uscourts.gov/judconfindex.html>]

California from Level 5 (\$25,512 per annum) to Level 2 (\$63,786 per annum), and made no changes in the number, locations, salaries, or arrangements of the full-time and part-time magistrate judge positions in the following districts: the District of New Jersey, the Middle District of North Carolina, the Southern District of West Virginia, the Southern District of Ohio, the Western District of Tennessee, and the Western District of Missouri. The Judicial Conference also made no change in the location, salary, or arrangements of the part-time magistrate judge position at Salisbury in the District of Maryland.

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### **COMMITTEE ACTIVITIES**

The Committee on the Administration of the Magistrate Judges System reported that as part of its cost-containment efforts it would continue its practice of not considering any requests for additional full-time magistrate judge positions at its December meetings. Pursuant to the September 2004 Judicial Conference policy regarding the review of magistrate judge position vacancies (JCUS-SEP 04, p. 26), the Committee considered requests from three courts to fill vacancies in magistrate judge positions and determined that the three vacancies should be filled. Currently, three magistrate judge positions are being held vacant. As part of its ongoing oversight and review of the magistrate judge recall program, the Committee reviewed a cost-benefit study of the program prepared by staff. It determined that the program to recall retired magistrate judges to active service continues to be effective in providing needed assistance to courts at a lower cost than authorizing additional permanent positions and should be continued.

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

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### **COMMITTEE ACTIVITIES**

The Committee to Review Circuit Council Conduct and Disability Orders reported that it continues to carry out its responsibilities with regard to considering petitions for review of final actions by circuit judicial councils on complaints of misconduct or disability of federal judges.

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## **FIVE-YEAR SELF-EVALUATION AND JURISDICTIONAL REVIEW**

Every five years, each committee of the Judicial Conference must recommend to the Executive Committee, with a justification, whether it should be maintained or abolished (JCUS-SEP 87, p. 60). Pursuant to this mandate, each committee completed and submitted to the Executive Committee for consideration at the latter's February 2007 meeting a self-evaluation questionnaire, which expressed the committee's views about its continuation, mission, functions, and structure. The Executive Committee made no changes to the committee structure itself, but tentatively agreed to make revisions to the jurisdictional statements of the following committees (largely based on suggestions of the committees themselves): Committee on Codes of Conduct, Committee on Defender Services, Committee on Judicial Security, Committee to Review Circuit Council Conduct and Disability Orders, and Committee on Space and Facilities. The changes were either technical or clarifying or made explicit a responsibility for subject areas that the committee already handled. In addition, at the request of the Committee to Review Circuit Council Conduct and Disability Orders, the Executive Committee agreed to change the name of that committee and determined that it be called the "Committee on Judicial Conduct and Disability." Chairs were provided an additional opportunity for comment, and revisions were made final in March 2007.

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## **CONFERENCE-APPROVED LEGISLATIVE PROPOSALS**

Every two years, at the beginning of a new Congress, each Conference committee considers Conference-endorsed legislative proposals within its jurisdiction that have not yet been enacted to determine whether the judiciary should pursue those proposals in the new Congress. At its February 2007 meeting, the Executive Committee reviewed the determinations of other committees as to which legislative proposals should be pursued in the 110<sup>th</sup> Congress. In addition, the Committee reviewed the one proposal within its own jurisdiction—establishment of a Judicial Conference Foundation to receive and expend private contributions in support of official programs (JCUS-MAR 95, p. 6)—and determined not to pursue the proposal in the present Congress.

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## COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that it has devoted its priority attention to securing an immediate and substantial increase in judicial salaries, consistent with the Chief Justice's *2006 Year-End Report on the Federal Judiciary* (*see also supra*, "Judicial Compensation," p. 4). In other efforts to promote judicial independence, the Committee continues to take affirmative steps to enhance interbranch communications, as well as to maintain communications with the bar and the media. It also continues to give substantial attention to judicial benefits matters.

## COMMITTEE ON JUDICIAL CONDUCT AND DISABILITY<sup>1</sup>

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### JUDICIAL CONDUCT AND DISABILITY ACT STUDY COMMITTEE REPORT

In 2004, Chief Justice William H. Rehnquist appointed a committee, chaired by Associate Justice Stephen G. Breyer, to study the implementation of the Judicial Conduct and Disability Act of 1980. The Judicial Conduct and Disability Act Study Committee (the Breyer Committee) issued its report in September 2006, and the Executive Committee subsequently asked the Committee on Judicial Conduct and Disability to review and make recommendations to the Conference on any actions that should be taken concerning the report (*see supra*, "Miscellaneous Actions," pp. 6-7).

Conference Authority to Review Committee Decisions. The Breyer Committee recommended that the Conference consider clarifying the scope of the Conference's authority to review Judicial Conduct and Disability Committee decisions. Noting that its own authority is entirely derivative of the Conference's authority and that, therefore, any Committee decision is reviewable by the Conference, the Judicial Conduct and Disability Committee recommended that the Conference direct it to prepare for Conference consideration a rule, pursuant to 28 U.S.C. §§ 331 and 358(a), that clarifies the authority of the Judicial Conference to review on its own initiative any Judicial Conduct and Disability Committee decision, including orders

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<sup>1</sup>Prior to March 12, 2007, this Committee was known as the Committee to Review Circuit Council Conduct and Disability Orders (*see supra*, "Five-Year Self-Evaluation and Jurisdictional Review," p. 5).

granting or denying petitions for review in misconduct proceedings. The rule would also make clear that no complainant or judge who is the subject of a complaint would have any right to invoke such review. The Conference adopted the Committee's recommendation.

Other Breyer Committee Recommendations. In order to achieve the goals set forth by the Breyer Committee and fulfill its own mission, the Judicial Conduct and Disability Committee recommended that the Conference authorize and direct the Committee to develop, and present to the Conference for approval, comprehensive guidelines, and, as necessary, additional rules pursuant to 28 U.S.C. §§ 331 and 358(a), to implement the Judicial Conduct and Disability Act in a consistent manner throughout the federal court system. The Committee indicated that chief judges, circuit judicial councils, and circuit staff should be provided specific binding guidance on an array of difficult, substantive, procedural, and administrative issues identified in the Breyer Committee report. In addition, clerks' offices and circuit judicial councils should be required to transmit specified material to the Committee so that it has a sufficient basis for monitoring implementation. The Conference adopted the Committee's recommendation.

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## **JURISDICTION TO CONSIDER PETITIONS FOR REVIEW**

In its April 28, 2006 opinion, *In re Opinion of Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders*, 449 F.3d 106 (U.S. Jud. Conf. 2006), the Judicial Conduct and Disability Committee expressed the view that it does not have jurisdiction to review a circuit judicial council's affirmance of a chief judge's dismissal of a conduct and disability complaint where a special investigating committee under 28 U.S.C. § 353 had not been appointed. Believing, upon reconsideration, that such authority does exist, the Committee recommended that the Judicial Conference direct it to prepare for Conference consideration a rule, pursuant to 28 U.S.C. §§ 331 and 358(a), that explicitly authorizes the Committee on Judicial Conduct and Disability to examine whether a misconduct complaint requires the appointment of a special committee, upon dismissal of the complaint by the chief judge under 28 U.S.C. § 352(b), or upon the denial of a petition for review of the complaint by the circuit judicial council under 28 U.S.C. § 352(c). The Conference adopted the Committee's recommendation.

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## COMMITTEE ACTIVITIES

The Committee on Judicial Conduct and Disability reported that it continues to carry out its responsibilities with regard to considering petitions for review of final actions by circuit judicial councils on complaints of misconduct or disability of federal judges.

## COMMITTEE ON JUDICIAL RESOURCES

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### ARTICLE III JUDGESHIP NEEDS

Additional Judgeships. The Committee on Judicial Resources considered requests and justifications for additional judgeships in the courts of appeals and the district courts as part of its 2007 biennial judgeship survey process. Based on its review, and after considering the views of the courts and the circuit councils, the Committee recommended that the Judicial Conference authorize transmittal to Congress of a request for the addition of 13 permanent and 2 temporary judgeships in the courts of appeals, and for the addition of 38 permanent and 14 temporary judgeships, the conversion to permanent status of 5 existing temporary judgeships, and the extension of 1 existing temporary judgeship for an additional 5 years in the district courts. The Conference adopted the Committee's recommendations, agreeing to transmit the following request to Congress in lieu of any previously submitted Article III judgeship requests ("P" denotes permanent; "T" denotes temporary; "T/P" denotes conversion of temporary to permanent; "T/E" denotes extension of temporary):

#### COURTS OF APPEALS

First Circuit	1P
Second Circuit	2P
Third Circuit	2P
Sixth Circuit	1P
Eighth Circuit	2P
Ninth Circuit	5P, 2T

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## **MENTAL HEALTH PROFESSIONALS**

In its September 2006 report, the Judicial Conduct and Disability Act Study Committee (Breyer Committee), established by Chief Justice William H. Rehnquist to study the implementation of the Judicial Conduct and Disability Act of 1980, recommended the establishment of a program to make mental health professionals available to assist with problems of judicial conduct or disability. The Judicial Conference, on recommendation of the Committee on the Judicial Branch, responded by asking the Director of the Administrative Office to work cooperatively with circuit judicial councils to make such professional assistance available (1) to chief judges nationally, regionally, locally or using already existing state or federal programs, when these chief judges confront problematic behavior among colleagues, and (2) to judges who may become disabled or have other problems affecting their work.

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## **COMMITTEE ACTIVITIES**

The Committee on the Judicial Branch reported that it continues to pursue vigorously meaningful salary relief for judges. In recent months, the Committee has sought to inform the political branches, legal associations, and other diverse outside organizations on the impact the declining value of judges' pay is having on judicial independence, as well as on the morale and retention of judicial officers. The Committee resolved to continue working closely with the First Amendment Center on planning and conducting regional programs for judges and journalists. In addition, the Committee continues to monitor the implementation of the Judicial Conference policy on privately funded seminars.

## **COMMITTEE ON JUDICIAL CONDUCT AND DISABILITY**

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### **JUDICIAL CONDUCT AND DISABILITY ACT STUDY**

Following the issuance of the Breyer Committee's report discussed above, the Executive Committee asked the Judicial Conduct and Disability Committee to review and make recommendations to the Conference regarding implementation of the recommendations in that report (JCUS-MAR 07, p. 7). At this session, the Judicial Conduct and Disability Committee recommended that the Judicial Conference direct the circuit judicial councils to take

whatever action is necessary and appropriate, and to order the courts within their circuits as needed, to implement the following Breyer Committee recommendations:

- a. Recommendation 5: The judicial councils should ask courts in the circuits to encourage the creation of committees of local lawyers whose senior members can serve as intermediaries between individual lawyers and the formal complaint process.
- b. Recommendation 6: Judicial councils should require all courts covered by the Act to provide information about filing a complaint on the homepage of the court website and take other steps to publicize the Act.
- c. Recommendation 7: Circuit councils, through their circuit executives or the clerks of court, should take steps to ensure the submission of timely and accurate information about complaint filings and terminations.

The Conference adopted the Committee's recommendation.

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## **COMMITTEE ACTIVITIES**

The Committee on Judicial Conduct and Disability reported that it has two petitions for review under advisement concerning circuit council conduct and disability proceedings. In addition, the Committee released for public comment a draft set of Rules Governing Judicial Conduct and Disability Proceedings.

## **COMMITTEE ON JUDICIAL RESOURCES**

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### **SAVED GRADE AND SAVED PAY PLAN**

The Saved Grade and Saved Pay Plan was designed to offer salary and grade protection to employees who are downgraded through no fault of their own. In 2004, the plan was eliminated, prospectively, in the course of formulating a short- and long-term cost-containment strategy for the judiciary and the fiscal year 2006 budget request (JCUS-SEP 04, pp. 6-7, 10). At this session, the Conference adopted a recommendation of the Committee on