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**Washington, D.C. 20002**

# **Deskbook for Chief Judges of U.S. District Courts**

**Second Edition**

**Federal Judicial Center  
1993**

This manual was produced in furtherance of the Center's statutory mission to conduct and stimulate development in matters of judicial administration. Publication signifies that the statements, conclusions, and points of view contained herein are regarded as responsible and valuable. It should be noted, however, that on matters of policy the Center speaks only through its Board.

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## Foreword

This deskbook is a reference manual for chief district judges. It summarizes numerous statutes and provides a compilation of Judicial Conference of the United States and Administrative Office of the U.S. Courts policies affecting chief district judges, as well as a description of relevant materials and assistance provided by the Federal Judicial Center. Recommendations presented in this deskbook that are not specifically attributed to any particular organization are those of the authors, not the Center.

The Center published the first edition of this deskbook in 1984 in a loose-leaf format designed to accommodate replacement pages provided by the Center and any other supplementary material that individual courts wanted to insert. A survey of chief judges in early 1990 revealed that most did not find the loose-leaf format particularly helpful. That finding, and the significant additional cost of providing that format, explains the decision to change to a softbound format. Russell Wheeler wrote the first edition and the only set of replacement pages, distributed in 1985. Bruce Clarke, Cynthia Harrison, Alan Hirsch, Diane Sheehy, and Russell Wheeler all contributed to this substantially revised second edition. The Center is also grateful to the staff of the Administrative Office of the U.S. Courts who read and commented on the text.

## Abbreviations Used for Standard Sources

Guide—*Guide to Judiciary Policies and Procedures*. Multivolume set provided to all judges and maintained by the Printing, Mail, and Records Management Branch of the Administrative Office of the U.S. Courts.

JCUS Report—*Report of the Proceedings of the Judicial Conference of the United States*. Provided annually to all judges and bound with the *Annual Report of the Director of the Administrative Office of the U.S. Courts*.

Note: For simplicity, most citations are given in the text. Statutory citations are to the U.S. Code only. Public laws are cited to the Statutes at Large.

# I. The Office of Chief Judge of the U.S. District Court: History and Current Status

## A. Evolution of the Office

The office of chief judge of the U.S. district court is relatively new.<sup>1</sup> The position was unnecessary until well into the twentieth century because most district courts consisted of a single judge. In 1903, Congress authorized an additional judge in a few districts, the first time in nearly a century that any districts attained a second judge. Over the next two decades Congress periodically added judgeships to overburdened districts. In 1922, it passed the first omnibus judgeship bill, creating additional judgeships in several districts.<sup>2</sup> Nevertheless, a 1948 statute creating the title of *chief district judge* for multi-judge courts was inapplicable in almost half the district courts in the country: 38 of the 87 districts still consisted of only one judge.<sup>3</sup> Only 17 districts had three or more judgeships.

Furthermore, even the multi-judge districts might have had a limited need for a chief district judge because circuit judges traditionally exercised primary administrative authority over trial courts. This practice was codified in 1939 by the creation of judicial councils of the circuits (53 Stat. 1224). At the time, these councils consisted exclusively of circuit judges, and, according to one observer,

represented a minimal adaptation in the existing [court of appeals], and manifested the influence of contemporary practices and proposals. In their appellate capacity, judges of the

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1. The term *office* is used informally here to denote the distinctive responsibilities of chief district judges without implying that they hold a commission separate from the "office of the U.S. district judge."

2. See Erwin C. Surrency, *Federal District Court Judges and the History of Their Courts*, 40 F.R.D. 139, 151 (1966).

3. The number of single-judge districts was, in effect, even larger because the 38 single-judge districts did not include single-judge districts in several states that also formed a combined district (e.g., the combined district of Eastern, Western, and Northern Oklahoma) whose judges occasionally served in one of the other single-judge districts. 28 U.S.C. § 133, revised by Pub. L. No. 773, 62 Stat. 895 (1948).

circuit courts of appeals had always exercised their power of reviewing the substantive judicial decisions of the district judges. They had also reviewed their behavior as administrators and as individuals.<sup>4</sup>

The 1939 statute directed circuit judges to gather at least twice a year in an administrative capacity "[t]o the end that the work of the district courts shall be effectively and expeditiously transacted" (53 Stat. 1224). A 1940 Judicial Conference resolution required that whenever the director of the Administrative Office of the U.S. Courts learned that the work in a multi-judge district was "not being carried out because of lack of cooperation and coordination between the judges, he should report the matter to the Senior Circuit Judge so that he or the Circuit Council may take the matter up and remedy the condition" (JCUS Report, 1940, at 11). There was no reference to any responsibility on the part of the district judges.

Gradual changes began occurring around mid-century. In 1948, as part of the judicial recodification, Congress replaced the term *senior district judge* with *chief judge*. The term *senior district judge* had denoted the judge on a multi-judge court who was senior in service and who had performed whatever administrative tasks were done at the district level (62 Stat. 897). Congress changed the nomenclature, according to the drafters, "in view of the great increase of administrative duties of such judges."<sup>5</sup> The Judicial Conference's Committee on Codification and Revision of the Judicial Code characterized the new title of *chief judge* as one of "many important improvements in the

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4. Peter Fish, *The Politics of Federal Judicial Administration* 153 (1973). For examples of methods circuit judges used prior to 1939 to prod district judges to dispose of cases more quickly, see Chandler, *Some Major Advances in the Federal Judicial System, 1922-47*, 31 F.R.D. 307, 348-52 (1963).

5. House Comm. on the Judiciary, Revision of Title 28, United States Code (report to accompany H.R. 3214, Apr. 25, 1947), app. Revisor's Notes A31. The title of *chief judge* for each court of appeals was adopted in the same legislation. For information on the evolution of the office, see Russell R. Wheeler, *Origins of the Elements of Federal Court Governance* 11-12 (Federal Judicial Center 1992).

federal judicial machinery and procedure."<sup>6</sup> The committee observed that the chief judge was responsible for assigning business to the judges insofar as the court's rules did not otherwise prescribe that assignment, and judges could appeal to the circuit judicial council when they could not agree among themselves on applicability of the rules.<sup>7</sup>

The size of the district courts and thus the tasks of managing them have increased steadily since then. As a result of increased judgeships mandated by the Federal Judgeship Act of 1990 (104 Stat. 5098), there are no single-judge districts, and today it is not uncommon for a district to have 10 or more judgeships. This growth, coupled with district judges' membership on the Judicial Conference and circuit judicial councils, has transformed the office of chief district judge.<sup>8</sup>

## **B. Qualifications and Term of Office**

In 1982, Congress amended 28 U.S.C. § 136 to set forth new criteria for determining who will serve as the chief district judge (96 Stat. 52). The statute now provides that the office is filled by the judge in regular active service who, at the time of the vacancy, (1) is senior in commission, (2) is under the age of 65, (3) has served at least a year as district judge, and (4) has not previously served as chief judge. If there are no judges who are age 65 or younger, the youngest judge who has served a year or more acts as chief judge; if none of the judges has served a year or more, the judge senior in commission who has not previously served as chief judge acts as chief judge. For judges commissioned on the same day, seniority in age determines precedence. The chief judge's term is limited to seven years (with the exception of those serving as chief judge on October 1, 1982, the effective date of the statute), except when there is a delay until another

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6. Committee on Codification and Revision of the Judicial Code, Judicial Conference of the United States, Final Report (July 20, 1948), at 2 (on file with the Administrative Office of the U.S. Courts).

7. *Id.*, attached Schedule at 2.

8. Congress has barely altered the office's structure. It has passed laws governing the eligibility of chief judges (discussed *infra* in section B) but has left the details of administration to the judiciary.

judge becomes eligible. No judge may serve as chief judge beyond the age of 70, unless no other judge is eligible to become or act as chief judge.

These provisions were designed to reduce the disparity in chief judges' tenures in both district and circuit courts.<sup>9</sup> The Senate Judiciary Committee's report on the 1982 bill noted that terms of recent chief judges had ranged from less than one to more than 20 years and bemoaned "the anomalous situation that one Federal court had a chief judge who served for seventeen years, while another Federal court had three chief judges within two years."<sup>10</sup>

The provisions did little to quell concerns that seniority may be an unwise method for choosing chief judges. To most observers, however, any non-seniority system would have greater drawbacks. The Commission on Revision of the Federal Court Appellate System argued in its preliminary 1975 report that "selection by seniority takes no account of the relative administrative skills of the active judges of the court, nor indeed of their interest in administration."<sup>11</sup> The commission initially proposed that the Chief Justice of the United States select chief circuit judges with the consent of the associate justices, and that chief circuit judges select chief district judges with the consent of the older members of the circuit court. This proposal attracted such criticism that the commission, in its final report, concluded that "the alternatives to seniority would create more problems than they would solve" and recommended a much more modest change, very similar to that enacted seven years later.<sup>12</sup> There con-

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9. Obviously, to the degree that a chief district judge does not serve the full term for which he or she is eligible, the goal of reducing tenure disparity may not be achieved.

10. Senate Comm. on the Judiciary, Report on Federal Courts Improvement Act of 1981, S. Rep. No. 275, 97th Cong., 1st Sess. 25 (1981) (to accompany S. 1700).

11. Commission on Revision of the Federal Court Appellate System, Structure and Internal Procedures: Recommendations for Change, A Preliminary Report 108 (April 1975).

12. Commission on Revision of the Federal Court Appellate System, Structure and Internal Procedures: Recommendations for Change 68 (June 1975).

tinues to be lively interest in and differences of opinion on the best way to select chief judges.

### **C. Declining the Office, Resignation, and Incapacity**

Acceptance of the office of chief judge is not mandatory. Eligible judges who are uninterested in the office or who regard themselves as not suited for administrative duties might consider, in consultation with colleagues, whether the next judge in the eligibility sequence would perform better. The courts' administration is not enhanced if judges accept offices for which they have little interest or aptitude.

Chief judges who no longer want to serve as chief judges but want to retain their status as active judges may certify that fact to the Chief Justice (28 U.S.C. § 136(d)). The position of chief judge then devolves pursuant to the statutory criteria summarized *supra* in section B. The statute also provides that "[i]f a chief judge is temporarily unable to perform his duties as such, they shall be performed by the district judge in active service, present in the district and able and qualified to act, who is next in precedence" (28 U.S.C. § 136(e)). This language, carried over from an earlier version of this section before the 1982 amendment, is generally interpreted as referring not to the judge next eligible to serve as chief judge under the statutory criteria, but to the active judge next in precedence on the court.

The statute does not specify the steps other judges should take if they believe a chief judge is temporarily unable to perform the duties of a chief judge. Of course, members of the court may invoke a statutory certification procedure whenever they believe a judge is unable to perform judicial duties because of "permanent mental or physical disability" (28 U.S.C. § 372(b)).

### **D. Authority and Responsibilities**

#### **1. Formal and Informal Sources of Authority**

Although chief district judges perform various management and administrative tasks, they have little official authority.<sup>13</sup> There is no

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13. The Appendix lists the chief judge's statutory assignments as well as major duties specified by the Judicial Conference.

formal pronouncement by Congress or the Judicial Conference that the chief district judge is accountable for the court's administrative tasks. Few responsibilities are expressly imposed upon the chief district judge; often, Congress or the Judicial Conference has assigned them to the district court (or its active judges) or to a court officer appointed by, or with the approval of, the entire court. Nevertheless, the predominant view is that the chief district judge is ultimately responsible for seeing that the court is administered effectively and efficiently (and in compliance with statutes, Judicial Conference and circuit judicial council policies, and Conference-approved Administrative Office regulations).

There are, of course, legitimate alternatives. Some courts, for example, emphasize the collective administrative responsibility of all the judges and downplay any special executive role for the chief judge. As one student of district courts notes, "certainly there are no specific statutory limitations, except in the instances of assignment of certain duties to the chief judge, on what role the full court may play in that internal operation."<sup>14</sup>

The conventional view that the chief district judge has special responsibilities for the court's governance rests on three premises:

- Someone must be accountable for the administration of any complex organization.
- In a court, such responsibility must rest with the judges.
- Reliance on a group of judges to exercise management responsibility is impractical.

Even if judges as a group take considerable management responsibility—collectively or through an executive committee—someone must coordinate their doing so. One judge is better able than a group to integrate the court's activities. Much information, such as what the magistrate judges or probation and pretrial services officers do,

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14. Alice Batchelder, *The Internal Governancy of the United States District Courts: Leaving Well Enough Alone* 21 (1989) (unpublished LL.M. thesis, University of Virginia). Judge Batchelder wrote her thesis while a judge on the U.S. District Court for the Northern District of Ohio. She now serves on the U.S. Court of Appeals for the Sixth Circuit.



does not reach judges in the regular course of their judicial duties. One person, working alone or through committees, must ultimately ensure that the court keeps the big picture in sight.

The chief district judge's administrative role, although largely informal and unofficial, is by tradition strong. Beyond the few statutory and administrative directives, the chief district judge's authority derives from two sources. The first is the pervasive expectation on the part of judges and others that the chief judge will be the court's administrative leader. As the Committee on the Federal Courts of the Association of the Bar of the City of New York observed in 1978:

[T]he position of chief judge at both the appeals and district court levels carries with it a tradition of authority and respect which permits substantial influence in establishing court rules, policies, and procedures. . . . Our study convinces us that the prestige of the chief judge is such that he will often be able to be the decisive factor in determining whether a new policy will or will not be adopted—even considered—by his court.<sup>15</sup>

The other source of a chief district judge's power is the personal skills brought to the office or acquired on the job. A 1977 Federal Judicial Center study of well managed district courts attributed sound judicial administration largely to a court's chief district judge. It found that effective chief district judges possessed (1) "exceptional personal skills," (2) "a talent for compromise," (3) "an interest in, and talent for, procedural issues," and (4) "an exceptional capacity for hard work, to a degree unusual even among federal judges."<sup>16</sup>

Despite the paucity of specific authority and the fact that the office is achieved solely through age and tenure, chief district judges have—and are perceived as having—a sizable reservoir of authority. Effective exercise of this authority requires recognizing and capitalizing on the prestige of the position. This applies to dealings within

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15. Committee on the Federal Courts, *Selecting Chief Judges for the United States District Courts and Courts of Appeals*, 33 Rec. A.B. City N.Y. 127, 132 (1978).

16. Steven Flanders, *Case Management and Court Management in United States District Courts* 78 (Federal Judicial Center 1977).

the courthouse and, perhaps even more, to dealings with external agencies. General Services Administration personnel or officers of the local bar, for example, typically treat a chief district judge's request with greater deference than that of another member of the court.

## **2. Responsibilities**

Chief district judges' official and unofficial responsibilities, described throughout this deskbook, can be summarized as follows:

### **a. Administrative oversight**

The orderly conduct of a district court's business involves numerous administrative tasks, such as obtaining necessary space and facilities for court personnel, securing equipment, hiring and managing personnel, filing statistical reports with the circuit judicial council and the Administrative Office, overseeing budgets, and maintaining courthouse security. The work of the clerk of court, the probation and pretrial services officers, court reporters, and other court personnel must proceed apace. Procedures for coordinating expeditious disposition of cases must be monitored, and it may be necessary to have visiting judges provide temporary assistance.

The chief judge must attend to some of these tasks personally; other tasks can be delegated to other judges or to supporting personnel. Ultimate responsibility for the successful completion of tasks, however, cannot be delegated. Even when tasks are assigned by statute or rule directly to the clerk, the probation officer, or other personnel, the chief judge retains responsibility for their successful execution.

### **b. Plans and reports**

Statutes and Judicial Conference policy call for district courts—only rarely for chief district judges, specifically—to file numerous reports and plans with the circuit judicial council or other bodies. District courts are required to have in place a plan for random jury selection and plans to implement the 1964 Criminal Justice Act, the 1974 Speedy Trial Act, and the 1990 Civil Justice Reform Act. In a few instances, the chief district judge is specifically charged with reviewing the plan.

**c. Requests and appeals to the circuit judicial council**

Circuit judicial councils may be called upon to grant specific requests and procedural exemptions to district courts. Councils may also have to resolve differences between district judges that they cannot resolve themselves, such as disagreements over where judges should reside. It is often best if the chief district judge presents the issue to the circuit judicial council.

**d. Sensitive issues of judicial performance**

The chief district judge may be the initial or only person consulted when a member of the court is charged with judicial unfitness relating to temperament, senility, substance abuse, or prejudicial or otherwise improper conduct. Although there are circuit-level mechanisms in place for receiving and handling such complaints, not all complaints need reach that level; chief district judges may resolve some informally, perhaps working with the chief circuit judge.

**e. Liaison with outside groups**

The federal district court is of interest to numerous legal, civic, and governmental groups. Bar associations may want to work with the court on joint programs; civic groups may want to promote education about the judicial process; federal and state agencies may want to use the court's facilities; the press may want to cover the court; and teachers may want to bring students to the court. The chief district judge is ultimately responsible for the court's relationship with the public.

**f. Strategic leadership**

The chief district judge is in a good position to help the district court assess its administrative posture and determine the directions the court should take—whether to adhere to, modify, or replace court policies; whether to establish new relations with groups outside the court; and whether to propose modifications to existing facilities or seek new facilities.

## **E. The Office of Chief District Judge**

### **1. Continuity**

Although change and innovation are sometimes needed, some continuity in the office of chief district judge is critical. Continuity is provided by the court's support staff, committee structures, and established procedures, and can be augmented by such measures as a filing system for important documents and an orientation process for the new chief district judge.

### **2. Orientation**

New chief district judges—and those soon to become chief district judges—should proceed through a specific orientation process. Some elements of that process, including distribution of this deskbook, are in place on a national basis. New chief district judges attend an orientation program at the Administrative Office (and are invited to have the clerk of court or circuit executive also attend), where they receive a manual to guide them through the program and serve as a reference tool in chambers. They are also welcome to visit the Federal Judicial Center to become familiar with its personnel and operations. The Center's annual conference for chief district judges includes a discrete orientation session for new chief district judges and chief district judges-to-be.<sup>17</sup>

Local orientation procedures are critical as well. A chief district judge's orientation must come largely from the departing chief district judge and other personnel, especially the clerk of court. It is important for the new chief district judge to meet with the clerk of court, the chief probation and pretrial services officers, and key staff to become well acquainted with all office procedures and practices. Getting to know the court's magistrate judges and bankruptcy judges is also valuable.

To ease the incoming chief district judge's transition, the outgoing chief may ask the Administrative Office, the Federal Judicial Center,

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17. For information on the annual conference, contact the Center's Judicial Education Division.

the chief circuit judge, and the circuit executive to mail to the incoming chief duplicates of all materials sent to the outgoing chief during the remainder of his or her tenure. This duplicate mailing, which might commence six months prior to the date of the transition, is especially helpful when the two judges have different official stations. The incumbent can also share all internal correspondence that the incoming chief district judge would not otherwise receive. The outgoing chief district judge can describe to the incoming chief judge how the material is currently handled and share local lore or other relevant information.

### **3. Special Staff Assistance**

#### **a. Court officers**

The officers of the district court—typically the district court executive, where appointed, the clerk of court, the chief probation officer, and the chief pretrial services officer, where appointed—serve as the administrative staff to the district court. They have special reporting responsibility to the chief district judge.

#### **b. Additional staff**

In courts with five or more judgeships, chief district judges are authorized to employ an additional secretary or law clerk,<sup>18</sup> subject to the Judiciary Salary Plan (JCUS Report, Sept. 1979, at 76). The Judicial Conference rejected a proposal for creation of the position of “administrative aide” to chief district judges, pointing out that many of the duties suggested for the position were within the court clerk’s job description (JCUS Report, Mar. 1984, at 11). Some chief district judges have unofficially given the title *administrative assistant* to secretaries who perform administrative tasks. A chief district judge should carefully consider local circumstances before assigning such a title.

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18. District judges may employ a secretary, a law clerk, and one additional employee as a law clerk, assistant secretary, or court crier (JCUS Report, Sept. 1981, at 68–69).

## **II. National Agencies of Federal Judicial Administration**

The chief district judge works within a network of offices and agencies responsible for the management and administration of the federal judicial system.<sup>19</sup> Congress has vested superintending authority in two bodies: the Judicial Conference of the United States and circuit judicial councils.

The Judicial Conference exercises considerable authority, largely derived from its relationship to the Administrative Office of the U.S. Courts. The Administrative Office's many administrative tasks are performed under the Conference's direction. The circuit judicial councils, however, are the only agencies of federal judicial administration that have statutory authority to issue orders for the improvement of the administration of justice. The authority of the Conference and that of the councils are discussed in some detail *infra* in section B.

The Conference and the councils, and individual courts, are served by two national support agencies: the Administrative Office and the Federal Judicial Center. The Administrative Office is primarily responsible for administrative and coordination services; the Center is responsible for research and continuing education. There are also other bodies with more specific focuses, such as the U.S. Sentencing Commission.

This chapter describes federal judicial administrative offices and agencies on the national level; Chapter 3 describes those on the regional level. These agencies are also referred to in subsequent chapters discussing chief district judges' administrative responsibilities.

### **A. Chief Justice of the United States**

The Chief Justice is at the apex of the pyramid of federal judicial administration, and, unlike in some state systems, other members of

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19. For a closer look at the evolution of federal court governance, see Russell R. Wheeler, *Origins of the Elements of Federal Court Governance* (Federal Judicial Center 1992).

the Supreme Court are largely free of any administrative responsibilities for the system. Statutes confer various responsibilities on the Chief Justice. Ex officio duties include chairing the Judicial Conference, an administrative role not shared by the associate Supreme Court justices. In recognition of the Chief Justice's special administrative responsibilities, Congress created the position of administrative assistant to the Chief Justice in 1972 (28 U.S.C. § 677). The administrative assistant serves the Chief Justice in internal Supreme Court administrative matters as well as in matters related to the entire federal judiciary.<sup>20</sup>

The Chief Justice's administrative contributions, like those of chief district judges, derive from statutory assignments, the inherent authority of the office, and the incumbent's personal disposition. Starting with Chief Justice Taft's tenure, the office has been used to direct the attention of federal judges, Congress, the bar, and the public to systemic problems in the administration of justice and to mobilize resources to deal with those problems. The Chief Justice's activities take many forms, including direct communication with chief district judges.

## **B. Judicial Conference of the United States**

Congress created the Conference of Senior Circuit Judges in 1922 (42 Stat. 838) at a time when many states were creating "judicial councils" to coordinate internal judicial improvements. In 1948, Congress changed the name of the conference to the Judicial Conference of the United States (62 Stat. 902) and in 1957, nearly doubled its membership by including district court judges (71 Stat. 476).

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20. If an active federal judge becomes director of the Administrative Office, director of the Federal Judicial Center, or administrative assistant to the Chief Justice, the President is authorized to appoint an additional judge to the court on which that judge serves. If the former judge returns to active service, the next judicial vacancy goes unfilled (28 U.S.C. § 133(b)(1), (2)).

## **1. Membership**

Fifteen of the Judicial Conference's 27 members serve *ex officio*: the Chief Justice as chairman, the chief judges of the 12 regional U.S. courts of appeals, the chief judge of the Court of Appeals for the Federal Circuit, and the chief judge of the Court of International Trade. The other 12 members are district judges from the regional circuits, elected to three-year terms by the district and circuit judges at the circuit judicial conference. Many of the district judges elected to the Conference were chief judges at the time of their service.

The director of the Administrative Office serves as secretary to the Judicial Conference. In 1987, the director created the Office of the Judicial Conference Secretariat, which assists the director by coordinating administrative support to the Conference and its Executive Committee, and overseeing Administrative Office staff support for all other Conference committees and activities.

## **2. Duties and Responsibilities**

The Judicial Conference's responsibilities are conferred by statute.<sup>21</sup> In some areas, the Conference has specific authority to implement its policies; in others, Congress has delegated authority to the director of the Administrative Office under Conference supervision. In still other areas, the Conference merely recommends or requests action by judges or other court personnel. Unlike circuit judicial councils, the Conference does not have general authority to make orders for the "effective and expeditious administration of justice" (*see infra* Chapter 3, section A).

The Judicial Conference's functions fall into three categories: federal court management, maintenance of federal rules of practice and procedure, and legislative advice and liaison.

### **a. Federal court management**

The Judicial Conference determines the federal courts' national administrative policies, recommends management improvements to

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21. 28 U.S.C. § 331 sets out the basic responsibilities. Numerous other statutory provisions detail more specific duties.



the courts, and makes specific decisions about the courts' staffing and budgeting. These responsibilities involve several tasks.

i. *Determining and implementing administrative policies.* The Judicial Conference's most visible and pervasive responsibility is management and oversight of the judicial system's budget, personnel policies, statistical reporting, and logistical support.<sup>22</sup> This responsibility comes from legislative directives, not a general statutory charge. The most important directives issue not to the Conference but to its administrative agent, the Administrative Office. The Administrative Office executes national administrative policies of the federal judiciary. The agency's core duties and its relationship to the Judicial Conference are described in 28 U.S.C. §§ 604 and 605: "The [Administrative Office] Director shall be the administrative officer of the courts, and under the supervision and direction of the Judicial Conference of the United States, shall. . . ." Sections 604 and 605 then enumerate a wide range of tasks, including preparing the federal judicial budget for submission to the Conference and then Congress; establishing general standards for classification and compensation of all third branch personnel except judges and certain excepted employees; disbursing and auditing funds appropriated for the courts' operations; providing court accommodations; and gathering and publishing statistics on the courts' work.<sup>23</sup>

ii. *Formulating management recommendations.* Not all Judicial Conference actions create binding directives. The Conference is also authorized to "submit suggestions and recommendations to the various courts to promote uniformity of management procedures and the expeditious conduct of court business" (28 U.S.C. § 331). Thus, for example, in 1982, after Congress and others expressed concern about the management of official federal court reporters, the Conference "recommended that the [circuit] judicial council require

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22. Each of these areas is treated in subsequent chapters.

23. Other statutory assignments also specify this agent-principal relationship. For example, 28 U.S.C. § 456(a) mandates that the director prescribe ("with the approval of the Judicial Conference") regulations governing reimbursement for judges in travel status.

each district court . . . to develop a court reporter management plan" (JCUS Report, Mar. 1982, at 8).

*iii. Making intercircuit and intracircuit assignments.* When the Judicial Conference was created in 1922, its major statutory task was to identify which courts needed temporary judicial assistance to relieve backlogs or handle troublesome cases. That responsibility is now embodied in the mandate "to make a comprehensive survey of the condition of business in the courts of the United States and prepare plans for assignment of judges to or from circuits or districts where necessary" (28 U.S.C. § 331). Implementing statutes authorize the Chief Justice to assign active circuit judges to serve temporarily on other circuit courts (28 U.S.C. § 291(a)), to assign active district judges to serve temporarily on a district or circuit court of another circuit (28 U.S.C. § 292(d)), and to maintain a "roster of senior judges" able and willing to sit temporarily on courts outside their own circuit and to assign such judges to do so (28 U.S.C. § 294(d)) (see *infra* Chapter 7, section C). The chief judge of a circuit may designate district judges within the circuit to serve temporarily on the court of appeals or in other district courts within the circuit (28 U.S.C. § 292(a), (b)), and may designate circuit judges to serve temporarily on a district court within the circuit (28 U.S.C. § 291(c)). The Conference, however, does not regularly make systemic "plans" for intercircuit assignments as described in the statute.

*iv. Determining need for judgeship positions.* The Judicial Conference develops biennial recommendations for legislation to create additional circuit and district judgeships, and by statute is to submit recommendations to Congress "from time to time . . . regarding the number of bankruptcy judges needed and the districts in which such judges are needed" (28 U.S.C. § 152(b)(2)). The Conference also determines the actual number, location, and salaries of full-time and part-time magistrate judges, based on Administrative Office surveys and recommendations from the circuit judicial councils and district courts (28 U.S.C. §§ 633(c), 634(b), (c)) (see *infra* Chapter 5, section A).

*v. Exercising judicial ethics and discipline.* The Judicial Conference is a source of advice and authority in matters pertaining to judicial

conduct and financial reporting, including codes of conduct, financial disclosure reports, and judicial discipline.

- *Codes of conduct.* The Judicial Conference has adopted, and periodically revises, a Code of Conduct for United States Judges, and similar codes for certain supporting personnel. Only chief circuit and chief district judges and the Conference's Committee on Financial Disclosure (formerly the Judicial Ethics Committee) may seek advice from the Conference's Committee on the Codes of Conduct on whether some contemplated action, such as receiving outside income or using chambers and staff for certain activities, contravenes any rules or regulations. The Ethics Reform Act of 1989 (103 Stat. 1716) authorizes the Conference to issue regulations concerning gifts, outside earned income, honoraria, and outside employment. The Committee on the Codes of Conduct also renders advice on the Act and these regulations.
- *Financial disclosure reports.* The Judicial Conference has established the Committee on Financial Disclosure to implement the ethics in government statute, which deals primarily with financial disclosure reports (5 U.S.C. app. 6, §§ 101–112). The committee receives and reviews financial disclosure reports submitted by judges and other judicial branch personnel.<sup>24</sup>
- *Judicial discipline.* The Judicial Conference may grant petitions to review how a circuit judicial council disposed of judicial misconduct or disability allegations pursuant to 28 U.S.C. § 372(c). As authorized by statute, the Conference created a Committee to Review Circuit Council Conduct and Disability Orders (JCUS Report, Sept. 1982, at 120), and in 1987, the Conference adopted rules for processing certificates from circuit judicial councils that assert impeachable conduct by a judge (JCUS Report, Sept. 1987, at 97–99).

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24. Specifically, judicial employees who are paid at a rate of basic pay equal to or greater than the minimum rate of basic pay for grade GS-16 of the General Schedule.

**b. Maintenance of federal rules of practice and procedure**

Congress, in language adapted from state statutes, charged the Judicial Conference with the duty to “carry on a continuous study of the operation and effect of the general rules of practice and procedure” prescribed for use in the federal courts (28 U.S.C. § 331). The development of a systematic, internal judicial rule-making process began in 1934, when Congress authorized the Supreme Court to promulgate rules of law and equity for the federal district courts (48 Stat. 1064).<sup>25</sup> In 1958, Congress directed the Conference to propose rules for the Court’s promulgation and Congress’s consideration (72 Stat. 356).

Pursuant to 28 U.S.C. §§ 2071–2074 (generally referred to as the Rules Enabling Act), the Judicial Conference’s Committee on Rules of Practice and Procedure (Standing Committee) oversees the preparation of new and amended rules of evidence and rules of criminal, civil, appellate, and bankruptcy procedure. The Administrative Office receives amendments that judges, lawyers, and others submit to the secretary of the Committee on Rules of Practice and Procedure, and forwards them to an appropriate Advisory Committee on Rules of Practice and Procedure.<sup>26</sup> The Advisory Committee sends the proposal it recommends to the Standing Committee for approval so that it can be circulated to the public, including notice in the *Federal Register*, for public hearings and comment.<sup>27</sup> Before the proposed rules changes are submitted to the Supreme Court, the Standing Committee sends them to the Judicial Conference for review and approval.<sup>28</sup> After the Court receives the changes, it may submit them to

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25. Supreme Court committees had worked on prior rules revisions.

26. There has been no advisory committee on the rules of evidence, although the Federal Rules of Evidence were promulgated in 1975.

27. The same notice and comment requirements apply to proposed local rules, although a court may prescribe rules without public notice and opportunity for comment if “there is an immediate need” for the rule (28 U.S.C. § 2071(e)).

28. The Standing Committee has documented its procedures and those of its Advisory Committees in *Procedures for the Conduct of Business by the Judicial Conference Committees on Rules of Practice and Procedure*, a publication available from the committee secretary at the Administrative Office.

Congress (not later than May 1 for any given year). Amendments take effect after the following December 1 "unless otherwise provided by law."<sup>29</sup>

The Rules Enabling Act also authorizes local rules of court (28 U.S.C. § 2071(a)). As amended by the 1988 Judicial Improvements and Access to Justice Act (102 Stat. 4642), 28 U.S.C. § 331 requires the Judicial Conference to review rules of courts, other than the Supreme Court or the district courts, for consistency with federal law and permits the Conference to modify or abrogate inconsistent rules. District courts were omitted because review of their rules is left to the circuit judicial councils, which may abrogate or modify them (28 U.S.C. § 332(d)(4)).

#### **c. Legislative advice and liaison**

The Judicial Conference advises Congress of the official judicial view of proposed legislation that would affect the administration of justice, including legislation dealing with the organization and procedures of the judiciary. The Conference comments on bills Congress refers to it and suggests other legislative changes on its own initiative. The Office of Legislative and Public Affairs of the Administrative Office serves as a liaison between the Conference and Congress.

The Judicial Conference distinguishes legislative policy matters from matters of judicial administration and has traditionally maintained that the judiciary should take a position on the latter but not on the former. The Conference will abstain from comment on legislative proposals insofar as they relate to matters of policy, even when Congress requests its views. However, it frequently comments on how such proposals would affect the federal judicial workload.

The Judicial Conference's comments on legislative proposals are included in the Chief Justice's annual report to Congress of the Conference's "proceedings . . . and its recommendations for legislation" (28 U.S.C. § 331). The nature of the legislative process makes it

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29. 28 U.S.C. § 2074(a). Rules of bankruptcy procedure take effect 90 days after submission, unless Congress legislates otherwise (28 U.S.C. § 2075). Rules of evidence do not take effect "unless approved by Act of Congress" (28 U.S.C. § 2074(b)).

unrealistic for Congress to rely much on this brief report, however. Thus, Conference committee members, working through the Administrative Office's Office of Legislative and Public Affairs, frequently correspond with and testify before congressional committees; Administrative Office officials occasionally testify as well.

### **3. Operations and Procedures**

#### **a. Frequency, location, and attendance of meetings**

By statute, the Judicial Conference must meet at least once a year. Since 1961 it has met in the spring and fall, almost always at the Supreme Court building in Washington, D.C., typically for one or two days. In addition, the Chief Justice may call special sessions of the Conference (28 U.S.C. § 331), such as a telephone conference call in June 1986 to consider a certification of impeachment of a federal judge. Furthermore, the Executive Committee, the senior executive arm of the Judicial Conference, may implement Conference policies between regular sessions and act on behalf of the Conference with respect to any matter requiring emergency action (JCUS Report, Sept. 1987, at 57).

Each Conference member must attend every meeting unless excused by the Chief Justice, who is then to summon a replacement (28 U.S.C. § 331). The chief circuit judge typically nominates a replacement, but the Chief Justice retains discretion to summon whomever he wishes. Conference meetings are open only to members, committee chairpersons, key staff, and invited guests.

#### **b. Bringing matters before the Conference**

The Judicial Conference does most of its work through committees. Courts and judges who want to have matters considered by the Conference may transmit their requests, in writing, to the director of the Administrative Office (Attention: Office of the Judicial Conference Secretariat) (JCUS Report, Mar. 1988, at 7). The director assigns matters to the appropriate committee and notifies the requesting court or judge of the committee assignment (JCUS Report, Mar. 1988, at 7). If matters could be considered by more than one committee, the Executive Committee makes the committee assign-

ment (JCUS Report, Sept. 1987, at 57). When the Administrative Office recommends that a committee reject a request submitted by a judge or court, the Administrative Office must notify the judge or court promptly. Similarly, when a committee votes to reject a request, the chairperson must promptly notify the requester, unless there are compelling reasons for not doing so (JCUS Report, Mar. 1988, at 6).

**c. Conference business**

At Judicial Conference meetings, the director of the Administrative Office presents reports on case filing and disposition statistics and activities of the Administrative Office. The director of the Federal Judicial Center reports on Center activities. Justice Department officials and members of Congress may also address the Conference. Conference meetings are structured primarily around committee reports and recommendations, which come before the Conference on either its "consent" or "discussion" agenda.

**d. Reports of Conference actions**

At the conclusion of each Judicial Conference session, a staff member summarizes Conference actions for the press. (Press coverage is usually not extensive.) The director of the Administrative Office distributes a summary promptly to all judges and others. Summary accounts of each Conference session are printed in pamphlet form (*Report of the Proceedings of the Judicial Conference of the United States*). The reports of both sessions of the year are then reprinted along with the *Annual Report of the Director of the Administrative Office of the U.S. Courts*, which includes detailed descriptive statistics on the federal court workload. Conference reports are also available through the judiciary's private files on Westlaw.

**4. Committees**

In September 1987, following a comprehensive study, the Judicial Conference revamped its committee structure<sup>30</sup> (JCUS Report, Sept.

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30. The Guide contains a complete listing of all Conference committees' missions and memberships (Judges' Manual, ch. 1, exhibit B). The list is also available from the Administrative Office.

1987, at 57–60), making its Executive Committee the senior executive arm of the Conference, “capable of implementing its policies between sessions” (*id.* at 57). The Executive Committee is responsible for reviewing committee reports and recommendations and structuring a Conference agenda, publishing operating procedures for assembling Conference and committee agendas, reviewing the jurisdiction of each Conference committee and resolving intercommittee jurisdictional disputes, making recommendations about the judiciary’s needs, and dealing with matters requiring emergency action.

The Chief Justice has sole authority to make Judicial Conference committee appointments; the director of the Administrative Office and the Office of the Judicial Conference Secretariat provide assistance. All active and senior federal judges are eligible for membership on any Conference committee except the Executive Committee, which is restricted to Judicial Conference members.<sup>31</sup> In addition, committees may recommend to the Chief Justice the addition of magistrate judges, bankruptcy judges, or others to Conference committees. Most of the major committees are structured to include a representative from each circuit. The committees receive staff support from the Administrative Office, and research and other assistance from the Federal Judicial Center.

Appointment to a Conference committee is usually for a three-year term, with an opportunity for one additional three-year term at the Chief Justice’s discretion. Terms are staggered so that approximately one-third of each committee’s membership turns over each year. Those who want to serve on a committee or recommend others for assignments should write to the director of the Administrative Office (Attention: Office of the Judicial Conference Secretariat). The Administrative Office maintains a permanent file for reference during the annual appointment process. In 1992, more than 200 circuit, district, bankruptcy, and magistrate judges served on Conference committees. State judges, private and government lawyers, and law professors also serve on committees.

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31. The Executive Committee is to consist of a chairperson and six judges, three district and three circuit. The size of the other committees is left open.



The committees' reports are developed through subcommittee and committee meetings. Committees typically meet in the winter, prior to the Conference's spring meeting, and again in the summer, prior to the fall meeting. A committee and its supporting Administrative Office staff can usually prepare an item for submission to the Conference during the six-month period between meetings, but some items require more extensive research, preparation, and coordination.

### **C. Administrative Office of the U.S. Courts**

Prior to 1939, the Department of Justice was responsible for the federal judiciary's budget, administrative services, and personnel system, and for review and audit of federal court administration. In 1939, Congress shifted these responsibilities to the newly created Administrative Office of the U.S. Courts, to operate under the direction of the Judicial Conference.

#### **1. Organization**

The director and deputy director of the Administrative Office are appointed by the Chief Justice after consultation with the Judicial Conference (28 U.S.C. § 601). The executive staff implements the Administrative Office's programs and services. The executive staff includes the director, deputy director, associate director, general counsel, legislative and public affairs officer, chief of the Office of the Judicial Conference Secretariat, and the Administrative Office's assistant directors. The Administrative Office has eight offices:

- *The Office of General Counsel* provides legal counsel and services relating to court operations to the Administrative Office director and staff, the Judicial Conference, judges, and other court officials.
- *The Office of Legislative and Public Affairs* serves as the Judicial Conference's liaison to Congress, state judicial organizations, the media, and the public.
- *The Office of Administration and Human Resources* manages the judiciary's equal employment opportunity program, person-

nel, space, procurement, contracts and services, and administrative evaluation.

- *The Office of Automation and Technology* manages the information resources management program for the judiciary and oversees delivery to the courts of operational computer systems, office automation equipment, telecommunications systems, and facsimile equipment and telephones.
- *The Office of Finance, Budget, and Program Analysis* handles budget, accounting, audit, judicial impact analysis, statistics, and financial program support and evaluation.
- *The Office of Judges Programs* serves Article III judges, magistrate judges, and bankruptcy judges, and provides services to the courts related to federal rules and long-range planning.
- *The Office of Court Programs* handles court security, court administration, defender services, and probation and pretrial services.
- *The Office of the Judicial Conference Secretariat* oversees the Judicial Conference's support responsibilities and provides assistance in policy and management coordination, and in organizational performance and effectiveness.

The Administrative Office Telephone Directory, issued to all judges, arranges Administrative Office personnel by specific functions and responsibilities and thus identifies the person to contact for a particular request or problem. Most Administrative Office units serve as the primary liaison to a Judicial Conference committee and provide the committees with staff assistance.

## **2. Publications and Reports**

The Administrative Office produces publications on different facets of federal court operations. The best known is the *Annual Report of the Director*, which provides extensive statistics on the federal courts' workload, personnel, budget, and juror use. A preliminary edition of this report is made available soon after September 30; the report must be submitted to the Judicial Conference at least two weeks prior to its March session. The *Annual Report of the Director* is

published in final form along with the *Report of the Proceedings of the Judicial Conference of the United States*.

The Administrative Office also publishes *The Third Branch*, a monthly newsletter for the federal courts that includes appointment and other information on judicial personnel. The Administrative Office also publishes the following reports (which, except as noted, are sent annually to all chief judges and some additional court personnel).

- *Federal Court Management Statistics* (showing a range of performance measures for each appellate and district court);
- *Federal Judicial Workload Statistics* (published in September, December, and March and presenting the preceding year's caseload data in the same categories as those used in the *Annual Report of the Director*); and
- *Guide to Judiciary Policies and Procedures*.

Other Administrative Office publications on specific matters are referred to at appropriate places in this deskbook.

### **3. Investigative Services**

The Judicial Conference has authorized the Administrative Office to assist a circuit judicial council or court in investigating alleged waste, fraud, or abuse by judicial branch employees (JCUS Report, Sept. 1988, at 57). The council or chief district judge of the court that needs the services must request the Administrative Office's aid. The director or deputy director of the Administrative Office supervises the assistance.

### **D. Federal Judicial Center**

Congress created the Federal Judicial Center in 1967, at the request of the Judicial Conference, to place programs of research and continuing education in a single, independent agency (28 U.S.C. § 620). The Center and the Administrative Office maintain a close working relationship.

## 1. Organization

The Federal Judicial Center's board is responsible for its policies. The Chief Justice is the board's ex officio chair, and the director of the Administrative Office is an ex officio member. Two appellate judges, three district judges, and one bankruptcy judge, elected by the Judicial Conference, serve on the board for four-year terms. The board appoints a director and deputy director. The Center operates through functional divisions, headed by division directors. There are currently five divisions:

- *The Court Education Division.* This division provides educational programs and services for nonjudicial court personnel, such as those in clerks' offices and probation and pretrial services offices. The division also supports in-court training programs developed by a district's training coordinator. Its newsletter, *Connections*, features examples of local court training and management programs of national significance and tips on training methods and techniques.
- *The Judicial Education Division.* This division provides educational programs and services for judges and legal staff, including orientation seminars, continuing education workshops, and special focus programs.
- *The Planning and Technology Division.* This division supports the Center's education and research activities by developing, maintaining, and testing information-processing and communications technology. It also supports long-range planning activity in the Judicial Conference and the courts with research, including analysis of emerging technologies, and other services as requested.
- *The Publications and Media Division.* This division develops and produces educational audio and video media, and edits and coordinates the production of all Center publications, including research reports and studies, educational and training publications, reference manuals, and periodicals. The Center's Information Services Office, which is part of this division, maintains a specialized collection of materials on ju-

dicial administration and responds to requests from the judiciary for these materials.

- *The Research Division*. This division undertakes empirical and exploratory research on federal judicial processes, court management, and sentencing and its consequences, often at the request of the Judicial Conference and its committees, the courts themselves, or other groups in the federal system.

The Center also houses two additional offices:

- *The Federal Judicial History Office* develops programs and research tools relating to the history of the judicial branch, assists courts with their own judicial history programs, and provides guidance on the preservation of judges' papers.
- *The Interjudicial Affairs Office* maintains Center liaison with other institutions and organizations interested in relations between state and federal court systems and relations between the U.S. court system and foreign court systems.

Key Center personnel are listed in the Administrative Office Telephone Directory.

## 2. Publications

The Center produces the following major publications on a regular basis, and sends them to judges and senior court staff:

- *Annual Report*—a report providing information on all aspects of Center operations.
- *Bench Book for United States District Court Judges* (3d ed. 1986).
- *Bench Comment*—a loose-leaf series on trends in appellate court rulings, primarily involving procedural issues.
- *Catalog of Publications*—a listing of most Center publications, including research reports, handbooks, and loose-leaf series.
- *Catalog of Audiovisual Media Programs*—a listing of selected videotapes, audiotapes, interactive software diskettes, and films available from the Center's media library.

- *Chambers to Chambers*—a loose-leaf series advising judges of techniques and procedures that other judges have found helpful.
- *Court Historian*—a newsletter covering the Judicial History Office's projects, other court history programs, and resources of interest to judicial historians.
- *FJC Directions*—a serial publication summarizing Center research and education activities.
- *Guideline Sentencing Update*—a loose-leaf series summarizing developments in guideline sentencing case law.

The Center publishes other manuals, monographs, and reports, including, for example, *Manual for Litigation Management and Cost and Delay Reduction* and *Manual on Recurring Problems in Criminal Trials*. It also produces audiocassette and videocassette programs that may interest judges or supporting personnel. To avoid burdening parties with materials they may not want, the Center typically sends notices of the availability of publications to all potentially interested personnel, who can then order the publications. Chief district judges who want copies of a particular Center publication for all judges or other court personnel, or who want tapes of Center-produced video programs, may request them from the Center's Information Services Office.

## E. U.S. Sentencing Commission

Congress created the U.S. Sentencing Commission in 1984 and directed it to establish federal sentencing policies and practices, primarily by promulgating guidelines and policy statements to guide federal judges in sentencing offenders (28 U.S.C. §§ 991, 994). The Commission's initial guidelines went into effect on November 1, 1987, and apply to all offenses committed on or after that date.<sup>32</sup> The Commission has the authority to submit annual guidelines

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32. In addition to *Guideline Sentencing Update*, the Federal Judicial Center publishes and distributes to judges and other judicial personnel involved in sentencing *Guideline Sentencing: An Outline of Appellate Case Law on Selected Issues*, a cumulative outline of guidelines-related appellate decisions.

amendments to Congress, which automatically take effect 180 days after submission unless a law is enacted to the contrary.

The Commission's seven voting members, appointed by the President with the consent of the Senate, must include at least three federal judges selected after consideration of a list submitted by the Judicial Conference. The Conference is required by statute to submit an annual report on the operation of the Commission's guidelines (28 U.S.C. § 994(o)).

#### **F. National Judicial Council of State and Federal Courts**

The Judicial Conference and the Conference of [State] Chief Justices created the National Judicial Council of State and Federal Courts in 1990 to serve as a national coordinator for promoting and encouraging local state-federal judicial councils (*see infra* Chapter 3, section D) and to engage in educational projects in areas of interest to both state and federal courts. The Administrative Office and the National Center for State Courts provide staff assistance to the Council.

### III. Regional Agencies of Federal Judicial Administration

Circuit judicial councils play a key role in the federal judicial administration because, despite the prominence of the Judicial Conference, much judicial administration work is done at the regional level. As noted *supra* in Chapter 2, the councils alone are statutorily authorized to issue orders for the improvement of the administration of justice. This chapter describes the councils and other regional administrative entities.

#### A. Circuit Judicial Councils

The circuit judicial councils were created in 1939 by the same statute that created the Administrative Office of the U.S. Courts. The statutory design for federal judicial administration contemplates Judicial Conference policy making and advice in areas needing national uniformity, and direct council oversight of the administration of justice in the circuit. While tension over the proper mix of national, regional, and local authority is inevitable, the goal is a "system of decentralization" in which the circuit council is "the operating unit in bringing about the proper administration of justice."<sup>33</sup> The councils' general supervisory authority is provided by 28 U.S.C. § 332, which gives a council authority to issue orders "for the effective and expeditious administration of justice within its circuit." The councils, by statute or Judicial Conference policy, are also charged with reviewing numerous plans and policies developed by district courts.

##### 1. Membership

Each circuit council consists of the chief circuit judge as chairperson and an equal number of circuit and district judges. Only active judges may serve on the council, and no more than one judge from each district (it need not be the chief judge) may serve, unless all dis-

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33. Hearings on S. 188 Before a Subcommittee of the Senate Judiciary Committee, 76th Cong., 1st Sess. 20 (1939).



tricts in the circuit are represented. Council members serve for terms fixed by majority vote of all judges in the circuit.

The statute is not entirely clear on how the number of judges and method of selection shall be determined. As the Office of General Counsel of the Administrative Office and the Judicial Conference's Executive Committee interpret it, the precise number is to be determined by a majority vote of all regular active judges of the circuit, and the method of selection is to be determined by each circuit (JCUS Report, Mar. 1991, at 9).

## **2. Functions**

The circuit judicial councils' current duties fall into three categories: (1) oversight of and appeals from district courts, (2) review and clearance of a wide variety of district court business, and (3) review of charges of judicial disability or misconduct.<sup>34</sup>

### **a. Oversight of and appeals from district courts**

The circuit judicial councils' original purpose was to supervise the district courts. The preface to the 1939 statute creating the circuit judicial councils explains Congress's and the judicial leadership's interest in establishing them: "To the end that the work of the district courts shall be effectively and expeditiously transacted . . ." (53 Stat. 1224). Subsequent amendments have broadened the focus of the circuit judicial councils beyond supervision of the district courts only. Now, each council is directed to "make all necessary and appropriate orders for the effective and expeditious administration of justice within its circuit" (28 U.S.C. § 332(d)(1)).

A 1980 amendment provides that, "[u]nless an impediment to the administration of justice is involved, regular business of the courts need not be referred to the council" (28 U.S.C. § 332(d)(3)). Thus, the councils may be summoned to resolve impediments to the administration of justice and may be called upon for assistance at other times, too.

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34. In 1974, the Conference approved a list of the councils' duties as the Powers, Functions, and Duties of the Circuit Councils. JCUS Report, Mar. 1974, at 8; Guide, vol. 3, ch. 2, exhibit A. That list is now outdated.

Apart from these broad mandates, the circuit judicial councils have specific statutory responsibilities, such as monitoring and remedying backlogs of particular district judges. In addition, statutes provide for appeal to the councils when a majority of judges of any district court are unable to agree on various matters, such as the assignment of cases or terms of holding court (*see, e.g.*, 28 U.S.C. §§ 134(c), 137). In some circumstances, circuit judicial councils may be called upon when only one judge or a few judges disagree with an action. Because this situation arises infrequently and in diverse circumstances, little general advice can be given on how to structure the appeal to the council. However, almost any such appeal will be better handled if the chief district judge presents the appeal to the council, since he or she is usually in the best position to summarize the issue and the differences of opinion.

As a general rule, the chief district judge is the link between the circuit judicial council and the court, and should bring to the council those matters that Congress or the Judicial Conference places within the council's purview. Moreover, the Judicial Conference has taken the position that the chief district judge "should be informed when matters concerning his district are under consideration, and shall pass the information promptly to the judges of the district" (JCUS Report, Mar. 1974, at 8).

**b. Review and clearance of district court business**

Congress and the Judicial Conference have assigned the circuit judicial councils the task of periodically reviewing numerous aspects of district court business, including the following:<sup>35</sup>

- local district court procedural rules (for consistency with the rules of procedure and evidence prescribed by the Supreme Court pursuant to 28 U.S.C. § 2072<sup>36</sup>);

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35. Note that Civil Justice Reform Act plans are reviewed by a committee of the chief circuit judge and all circuit chief district judges, not by the circuit judicial council.

36. 28 U.S.C. § 332(d)(4) subjects district courts' rule making to the ongoing scrutiny of their respective judicial councils and empowers the councils to modify or abrogate any rule inconsistent with any rule promulgated under 28 U.S.C. § 2072.

- district court plans on jury selection (28 U.S.C. § 1863), speedy trial (18 U.S.C. § 3165(c)), and representation under the Criminal Justice Act (18 U.S.C. § 3006A(a));
- assignments of senior and active judges (28 U.S.C. §§ 294(c), 295);
- various actions concerning magistrate judges (28 U.S.C. §§ 631, 633(b), 636(h));
- controversies over where district judges must maintain their residences (28 U.S.C. § 134(c));
- allocation of cases by district courts when the judges cannot agree (28 U.S.C. § 137);
- approval of court quarters and accommodations (28 U.S.C. § 462); and
- district court decisions to pretermite a regular court session (28 U.S.C. § 140(a)).

Nonstatutory functions of the councils include certifying to the Administrative Office that retired judges are performing "substantial judicial duties," determining the number of supporting positions necessary for senior judges (JCUS Report, Sept. 1982, at 81), and reviewing district courts' court reporter management plans (JCUS Report, Mar. 1982, at 8). Pursuant to a 1984 statute, the courts of appeals appoint bankruptcy judges with the assistance of the circuit judicial councils; the councils evaluate potential nominees and recommend, for each vacancy, "persons who are qualified to be bankruptcy judges under regulations prescribed by the Judicial Conference" (98 Stat. 333, 345 (codified at 28 U.S.C. § 152)). The councils may appoint merit selection panels as part of this process.

#### **c. Review of charges of judicial disability or misconduct**

Circuit judicial councils have traditionally handled allegations of judges' misconduct. A 1980 statute (94 Stat. 2036-40)<sup>37</sup> clarified the

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37. The Eleventh and D.C. Circuits have upheld the statute against assorted constitutional challenges. *See in re Certain Complaints Under Investigation* by an Investigating Committee of the Judicial Council of the 11th Circuit, 783 F.2d 1488 (11th Cir.), *cert. denied*, 477 U.S. 904 (1986);

councils' role and specified procedures for handling such complaints akin to procedures most councils had already established at the behest of the Judicial Conference (see JCUS Report, Mar. 1979, at 4).

Under 28 U.S.C. § 372(c)(1), "[a]ny person" is authorized to file with the clerk of the circuit court a "written complaint" alleging "that a circuit, district, or bankruptcy judge, or a magistrate [judge], has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, or alleging that such a judge or magistrate [judge] is unable to discharge all the duties of office by reason of mental or physical disability." The complaint is to contain "a brief statement of the facts constituting such conduct." The clerk is to transmit the written complaint to the chief judge of the circuit (or, if the complaint is directed at the chief judge, to the next senior judge) and transmit a copy to the judge who is the subject of the complaint. The chief circuit judge is to review the complaint and either (1) dismiss it, (2) conclude its consideration if corrective action has been taken (transmitting copies of his or her written order to the complainant and the subject of the complaint), or (3) appoint an investigating committee that is to report in writing to the circuit judicial council (advising the subject of the complaint of this action). The chief circuit judge may also, "by written order stating reasons therefor, identify a complaint for purposes of this subsection and thereby dispense with filing of a written complaint" (28 U.S.C. § 372(c)(1)).

The circuit judicial council may take a range of actions in response to a complaint about a judge: temporarily suspend case assignments to the judge; suggest retirement or certify disability under 28 U.S.C. § 372(b); censure the judge; or refer the case to the Judicial Conference (28 U.S.C. § 372(c)(7)(A)), which can then refer the matter to the House of Representatives to consider possible impeachment (28 U.S.C. § 372(c)(8)). The statute also authorizes the circuit judicial councils and the Conference to promulgate rules for conducting these proceedings (28 U.S.C. § 372(c)(11)).

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Hastings v. Judicial Conference, 829 F.2d 91 (D.C. Cir. 1987), *cert. denied*, 485 U.S. 1014 (1988).

The circuit judicial council may direct the chief district judge to take any action concerning a magistrate judge that the council considers appropriate (28 U.S.C. § 372(c)(6)). A majority of the district judges may remove a magistrate judge for "incompetency, misconduct, neglect of duty, or physical or mental disability," provided a full specification of the charges is furnished to the magistrate judge and the judge is accorded an opportunity to be heard on the charges (28 U.S.C. § 631(i)). A majority of the judges on the circuit judicial council may remove a bankruptcy judge for the same reasons and with the same notice and opportunity to be heard (28 U.S.C. § 152(e)).

### **3. Circuit Judicial Conferences**

Under 28 U.S.C. § 333, the chief judge of each circuit is directed to hold an annual circuit judicial conference for "advising means of improving the administration of justice within such circuit." All judges of the circuit must attend the conference and circuit rules must allow for active participation by representatives of the bar. For much of the conferences' history, their social emphasis outweighed their statutory function, but since the late 1970s, a greater emphasis has been placed on their statutory purpose. In 1990, Congress amended the statute to permit the meetings to be annual or biannual (101 Stat. 5117).

### **B. Chief Circuit Judges**

The chief circuit judge chairs the circuit judicial council and, in both that capacity and as chief judge of the court of appeals, plays a leading role in the administration of the circuit. Because the circuit judicial council meets only periodically and action may be necessary without an opportunity to consult other members, most chief circuit judges assume responsibility for acting on various problems without the council's direct assistance.

Chief circuit judges also have specific statutory responsibilities, beyond those assigned to the circuit judicial council, that directly affect district court operations. They receive complaints about judicial disability or misbehavior, and they must approve all intercircuit and

intracircuit transfers (28 U.S.C. § 292). Their approval is required for compensation claims under the Criminal Justice Act in excess of specified maximums (18 U.S.C. § 3006A(d)(3)).<sup>38</sup> In addition, under the Ethics Reform Act of 1989, in order for a senior judge to receive non-cost-of-living salary increases, the chief circuit judge must certify that the senior judge handles the workload required by the Judicial Conference (28 U.S.C. § 371(f)(1); Guide, vol. 3, ch. 7, app. at 23–39).

These statutory responsibilities by no means exhaust chief circuit judges' responsibilities. Many chief circuit judges meet periodically with the chief district judges in the circuit, a practice endorsed by the Judicial Conference (JCUS Report, Mar. 1974 at 8). These meetings, which sometimes coincide with the circuit judicial conference, provide chief circuit judges with an opportunity to hear chief district judges' complaints and concerns and to promote the implementation of circuit-wide innovations. They also foster sharing of information and techniques among chief district judges.

### **C. Circuit Executives**

In 1971, Congress authorized each circuit judicial council to appoint a circuit executive (28 U.S.C. § 332(e)). The statute directs the councils to consider an applicant's experience in administrative and executive positions, familiarity with court procedures, and special training. The statute lists a variety of duties that the council may direct the circuit executive to exercise under the chief circuit judge's supervision (28 U.S.C. § 332(e)). They include the full range of standard court administrative tasks—some to be performed only in the court of appeals, and others, circuit-wide. The specific duties performed by the circuit executives vary considerably from circuit to circuit.

The circuit executives' tasks in the courts of appeals may include administering nonjudicial matters, especially the personnel system and budget. Circuit-wide tasks may include conducting studies and

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38. This also requires certification by the trial court that the excess payment is necessary to provide fair compensation.

preparing reports on the work of the courts of the circuit; serving as the circuit's liaison to state courts, bar groups, the media, and the public; and arranging the circuit judicial conference and meetings of the circuit council and other committees. The circuit executive may also be asked to maintain an accounting system or to establish a property control and space management system, although the statute is silent as to whether these duties apply across the circuit or only to the court of appeals. Circuit executives may also assume other tasks "delegated to [them] by the circuit council" (28 U.S.C. § 332(e)). Some circuit executives provide advice and assistance on automation; others coordinate educational activities in the circuit; and others assist judges and committees in delicate areas such as processing of judicial complaints.

#### **D. State-Federal Judicial Councils**

In 1970, Chief Justice Warren E. Burger suggested that councils of state and federal judges in each state meet periodically to promote cooperation and coordination between the two judiciaries. As noted *supra* in Chapter 2, section F, in 1990 a National Judicial Council of State and Federal Courts was created to serve a similar purpose.

The state-federal judicial councils are usually created by orders of the state supreme court and the federal district or circuit court. The activity level of the state-federal councils has varied considerably over the years; some councils that lapsed into inactivity have been rejuvenated by vigorous chief circuit or district judges. Active councils have dealt with a range of matters and sometimes have agreed on corrective action for the judiciaries to implement. Council agendas frequently include procedures to improve handling of federal habeas corpus petitions, reduce scheduling problems when attorneys are due in federal and state courts simultaneously, and develop cooperative juror paneling arrangements. In a few cases, state and federal judges have also created metropolitan state-federal councils.

## **IV. The Structures of District Court Governance**

District courts and chief district judges have developed structural arrangements to handle judicial administration.<sup>39</sup> In some districts, the chief district judge manages the court alone; in others judicial committees or court officers play a critical role. Regardless of the structure used, the district must have a means of determining policy objectives and monitoring whether they are achieved.

Involving judges other than the chief district judge in the court's administration fosters a collegial environment. Also, in large courts, no single judge can handle all phases of the court's management. However, delegating responsibility to other judges merely shifts—it does not reduce—the amount of non-case activity that district judges must perform. Furthermore, broadening administrative responsibility diffuses it, requiring heightened attention by the chief district judge to ensure that matters are being attended to and policy coordination is in place. Following are examples of devices courts use to manage their administration.

### **A. Committees and Meetings**

Many districts use committees and liaison judges. The specifics vary considerably, but several configurations are common:

- Standing committees are assigned to supervise the work of various offices of the court (e.g., magistrate judges', clerks', or probation and pretrial services') or to bear chief responsibility for specific policy areas (e.g., local rules or court security). Ad hoc committees can also deal with special problems.
- Liaison judges serve as "committees of one" to handle the types of problems assigned to standing or ad hoc committees.
- Executive committees, consisting of the chief district judge and other judges (typically serving by rotation), handle the

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39. As one would expect, the arrangements tend to be more specific as the size of the court increases. See Philip L. Dubois, *Administrative Structures in Large District Courts* 15 (Federal Judicial Center 1981). Although the data used in this study are now dated, a positive correlation between court size and specificity of arrangements is still likely.



court's day-to-day business. Such committees are most often found in large courts. Some courts provide a grace period between the time of executive committee action and implementation, to give other judges an opportunity to object or comment on the proposed action.

Regardless of the committee system it uses, a court will most likely benefit from regularly scheduled meetings of all judges.<sup>40</sup> The chief judge often prepares an agenda, which includes provisions for follow-up action. In addition, many courts hold weekly or monthly meetings of district judges, bankruptcy judges, magistrate judges, probation and pretrial services officers, and clerks.

## **B. Internal Operating Procedures**

Inevitably, courts develop their own practices for administering personnel policies, acquiring equipment, ensuring security, assigning administrative responsibilities to various statutory offices, and establishing other units and committees. These procedures are often embodied in "general orders" or "internal operating procedures." Unlike local rules of court, which deal primarily with the court's public practices, these internal actions need not be published. However, the court's administrative procedures should be recorded and made available to all court personnel.

## **C. Reports and Meetings of the Court and Its Offices**

The chief judge and the district as a whole may benefit from having each court office prepare a brief annual report, describing the work accomplished in the past year and detailing present and projected needs. These reports can summarize valuable information unavailable to judges in the course of their judicial work and help the court maintain oversight of all operations. Such a report is statutorily required from each pretrial services officer (or the chief probation officer when the office provides pretrial services) (18 U.S.C. § 3155).

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40. Some courts hold regular luncheon meetings, but that may be impossible in districts in which judges sit apart from one another.

The various annual reports can be combined into an annual report for the court as a whole (especially if their format and preparation are coordinated by the district court executive or clerk of court). This nonstatutory document would describe for the circuit council, the bar, and others the court's accomplishments and problems over the past year and its plans for forthcoming years. Some chief judges also find it helpful to convene periodic meetings with the district court executive (if serving), clerk of court, chief probation officer, chief pretrial services officer, chief bankruptcy judge, chief magistrate judge, U.S. attorney, U.S. marshal, executive committee, and even the circuit executive.

#### **D. A Management Approach for Chief Judges**

In 1991, the Administrative Office's Office of Administration and Human Resources developed a simple four-component approach to district court management. All courts should have in place a system to develop policies, signs or indicators of whether the policies are working, a reporting system to put those indicators before the key decision makers, and the capacity to take action, based on the reports. A way of thinking of these four elements is shown in the following chart:

**Components of District Court Management**

<b>Management Component</b>	<b>Relation to Top Management</b>	<b>Example</b>
Policies and Plans	Things that should concern the court	Reducing turnover among supporting personnel
Indicators	Things the court should know	Turnover rates
Reports	Things the court should get	Monthly document specifying turnover rates in various court offices
Actions	Things the court can do	Increased training, employee recognition awards

Chief district judges may consider placing other aspects of the court's operations into this scheme to assess and control management areas that are (or should be) under scrutiny.

## **V. District Court Personnel and Related Agencies**

Effective administration of a district court requires familiarity with the functions and interactions of several offices and groups of personnel.

### **A. U.S. Magistrate Judges**

#### **1. Authorization and Appointment**

In 1968, Congress replaced the 175-year-old commissioner system with the magistrates system. Congress changed the name of the office from magistrate to magistrate judge in 1990. The authority of magistrate judges is set forth in 28 U.S.C. §§ 631–639. A magistrate judge is a subordinate judicial officer of the district court. A “chief” or “administrative” magistrate judge position has not been formally established by statute or regulation, but the Judicial Conference’s Committee on the Administration of the Magistrate Judges System has suggested that the district courts consider designating a magistrate judge to serve in this capacity. A “chief magistrate judge” could, for example, coordinate magistrate judges’ activities, make duty assignments, prepare reports, and maintain liaison with other court officers and committees.

The Judicial Conference authorizes magistrate judge positions in accordance with 28 U.S.C. § 633, but Congress must agree to fund them. In determining the number, location, and salaries of magistrate judge positions, the Conference considers the recommendations of the appointing district court, the circuit judicial council, the director of the Administrative Office, as well as the opinions of law enforcement agencies and other interested parties.

Acting through its Magistrate Judges Committee, the Conference focuses on three factors in evaluating requests for new full-time magistrate judge positions:

- the caseload of the district court as a whole and the judges’ need for assistance;

- the effectiveness of the existing magistrate judge system in the district and the court's commitment to using magistrate judges effectively; and
- the volume and kind of judicial business that the judges intend to assign to a new magistrate judge.

The committee also considers the areas and population to be served, convenience to the public and bar, whether criminal cases are receiving prompt attention, the number and extent of federally administered lands in the district, transportation and communication facilities, and other pertinent local conditions. To help the Conference evaluate requests for a new magistrate judge position, the director of the Administrative Office gives the Magistrate Judges Committee, the district court, and the circuit judicial council his report and recommendations containing detailed information about the court's workload and resources.

To initiate requests for additional magistrate judge positions or changes in existing positions, the chief district judge should contact the Administrative Office's Magistrate Judges Division. Once a position is authorized and funded, selection of the magistrate judge proceeds according to the statutory criteria and the standards and procedures promulgated by the Judicial Conference. The selection is normally made by a majority vote of the active district judges of the district. The chief district judge may make the appointment when a majority cannot agree on one individual (28 U.S.C. § 631(a)).

The Federal Magistrates Act imposes two requirements for the appointment and reappointment of magistrate judges: (1) public notice of all vacancies and impending reappointments, and (2) citizen merit selection panels to assist the district courts in identifying and appraising candidates. Specific guidance on appointment procedures is provided in *The Selection and Appointment of United States Magistrates*, a pamphlet from the Administrative Office's Magistrate Judges Division that contains the "Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Appointment of U.S. Magistrates" (Mar. 1980, amended Mar. 12,

1981; Sept. 22, 1982; and Sept. 19, 1985) (see Guide, vol. 1-D, ch. 10, subch. 1330.2, or vol. 9, ch. 1, exhibits 3 and 4).

Filling a magistrate judge position generally involves several steps.

- *Authorization to fill a vacancy.* If there is no change in salary or arrangement, the vacancy may be filled on the recommendation of the director of the Administrative Office, the district court, and the circuit judicial council (JCUS Report, Oct. 1970, at 72). Administrative Office approval can generally be obtained within a week; the time required for circuit council approval varies, but can be up to four weeks.
- *Public notice and merit selection panel.* As noted, the district court must provide public notice of the vacancy and appoint a merit selection panel. Judicial Conference regulations also prescribe the composition and duties of the panel, and the court's options with respect to the list of candidates presented by the panel. No federal judge or other court officer may serve on a merit selection panel for full-time magistrate judges (JCUS Report, Sept. 1986, at 77). Certain requirements as to the merit selection panels may be waived for part-time magistrate judges earning less than one-third the maximum salary for full-time magistrate judges.
- *FBI and Internal Revenue Service (IRS) background reports.* Full-time magistrate judges must undergo complete FBI field investigations, which generally take from 8 to 12 weeks. Only file checks are necessary for part-time magistrate judges, and they generally take no more than 10 weeks. IRS checks are required for both full-time and part-time magistrate judges and may take longer than FBI investigations. Section 4.04 of the Judicial Conference regulations cited *supra* provides that a court may waive the IRS report provided the court takes its own steps to ensure that the nominee has filed required tax returns.

The Administrative Office sends the background reports to the chief district judge for review. The order of appointment then issues, the magistrate judge takes the oath or affirmation prescribed by

28 U.S.C. § 453 and the constitutional oath prescribed by 5 U.S.C. § 3331, and the appointment is entered in the records of the district court and forwarded to the Administrative Office. There is no prescribed format for swearing-in ceremonies.

## **2. Tenure and Assignment**

The term of a full-time magistrate judge is eight years; the part-time term is four years. Magistrate judges may be removed only for incompetence, misconduct, neglect of duty, or physical or mental disability. Removal requires the agreement of a majority of the district judges. If a majority cannot agree, the matter goes to the circuit judicial council (28 U.S.C. § 631(i)).

The Judicial Conference may designate magistrate judges to serve in one or more districts adjoining the district of appointment with the concurrence of the majority of district judges in each court involved (28 U.S.C. § 631(a)). Magistrate judges may also be temporarily assigned to another district in emergencies, provided the chief district judges of the districts concur (28 U.S.C. § 636(f)). This rarely occurs.

The Judicial Conference has authorized district courts, with approval of the circuit judicial council, to reassign a magistrate judge from one authorized location to another within the district at the same salary level. The court must first advise the magistrate judge concerned and the director of the Administrative Office, and give both an opportunity to submit comments to the council (JCUS Report, Sept. 1984, at 72).

A retired magistrate judge may be recalled into service by the circuit judicial council, with the consent of the chief judge of the district involved (28 U.S.C. § 636(h)). Judicial Conference regulations permit recall for a renewable maximum term of up to one year (JCUS Report, Sept. 1987, at 83). Although 28 U.S.C. § 375 allows magistrate judges to be recalled to render "substantial service" for a period of five years, this section has not been implemented.

### 3. Duties of Magistrate Judges

The magistrate judge exercises the jurisdiction of the district court as delegated by statute and by the judges of the court. Magistrate judges' duties, set forth at 28 U.S.C. § 636, fall into four broad categories: (1) initial proceedings in criminal cases, (2) trial of misdemeanors, including petty offenses, (3) pretrial matters and other proceedings referred to them by district judges, and (4) trial of civil cases when consented to by the parties. When a majority of the district judges cannot agree on which magistrate judge shall conduct civil trials, the chief district judge makes the designation (28 U.S.C. § 636(c)(1)). The statute also permits a part-time magistrate judge to preside over civil proceedings, with the consent of the parties and the certification of the chief district judge that no full-time magistrate judge is available.

District courts may also assign magistrate judges "such additional duties as are not inconsistent with the Constitution and laws of the United States," such as assisting the district court with voir dire, Social Security appeals, administrative matters, and case management. Local rules or general orders determine magistrate judges' precise duties in a particular court and the manner of allocating work among magistrate judges.<sup>41</sup>

### 4. Chief District Judges and the Work of Magistrate Judges

Although the services of magistrate judges are available to all district judges, many judges do not know how magistrate judges are being used. Moreover, many judges are unfamiliar with the full potential of magistrate judge delegation. Thus, the chief district judge, alone or through a court committee, must ensure that the court regularly monitors what the magistrate judges are doing and at whose request. Periodic statistical reports from the magistrate judges to the court can aid this monitoring function and serve as the basis for their

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41. Chapter 3 of the *Legal Manual for United States Magistrate Judges*, maintained by the Magistrate Judges Division of the Administrative Office, details the jurisdiction of U.S. magistrate judges. *Inventory of United States Magistrate Judge Duties* is an Administrative Office guide to the types of duties magistrate judges may perform.



office's annual report to the court. Reports designed for local use may be more beneficial in monitoring case assignments than those the magistrate judges provide to the Administrative Office, which serve national statistical reporting functions.

## **B. U.S. Bankruptcy Judges**

### **1. Administrative Authority; Appointment; Places of Holding Court**

The active bankruptcy judges in each district "constitute a unit of the district court to be known as the bankruptcy court for that district" (28 U.S.C. § 151). Whether the relationship implied by this statute is only jurisdictional or also administrative is an unsettled question.

Each circuit judicial council has oversight responsibility for the bankruptcy courts' contribution to "the effective and expeditious administration of justice within its circuit" (28 U.S.C. § 332(d)(1)). The Judicial Conference has instructed each circuit executive to provide to the chief district judge (and the circuit judicial council and the Administrative Office) a quarterly report on bankruptcy cases and motions under advisement for more than 60 days (JCUS Report, Mar. 1985, at 11-12). The chief bankruptcy judge is designated by a majority of the district judges of the courts; when a majority cannot agree, the chief district judge makes the designation (28 U.S.C. § 154(b)). Bankruptcy judges in multi-judge bankruptcy courts are authorized to promulgate rules for the division of business among them, but only "to the extent that the division of business is not otherwise provided for by the rules of the district court" (28 U.S.C. § 154(a)).

Some argue, however, that chief district judges do not have administrative authority over the bankruptcy courts and that the bankruptcy courts may administer their own affairs. Clearly, the chief judge of the bankruptcy court has statutory responsibility to ensure that the business of the bankruptcy court is handled effectively and expeditiously (28 U.S.C. § 154(b)). In addition, a bankruptcy clerk's office may not be consolidated with a district clerk's office without prior approval of both the Judicial Conference

and Congress (28 U.S.C. § 156(d)). In its report to the September 1991 Judicial Conference, the Committee on the Administration of the Bankruptcy System adopted a resolution opposing partial consolidation of bankruptcy and district court clerks' offices, but stated that voluntary cooperative efforts between the clerks' offices, and the combining of certain functions, "may be appropriate in certain rare circumstances."

Since the statutory scheme does not clearly establish the relationship between the district court and the bankruptcy court, and it is a matter affecting the administration of justice in the district, chief district judges should take responsibility for establishing a cooperative and productive relationship with chief bankruptcy judges.

The number of bankruptcy judgeships in each district is specified in 28 U.S.C. § 152(a)(2). The director of the Administrative Office, after consultation with the circuit judicial councils, assists the Judicial Conference in determining the judges' official duty stations and places of holding court (28 U.S.C. § 152(b)(1)). The statute authorizes bankruptcy judges to hold court in such additional places as the business of the court may require (28 U.S.C. § 152(c)).

With the approval of the Judicial Conference and the circuit judicial councils, bankruptcy judges may serve in districts "adjacent to or near" the district to which they were appointed (28 U.S.C. § 152(d)) and, with the approval of the circuit judicial councils, may transfer temporarily to another district (28 U.S.C. § 155(a)). The Conference has established guidelines for intercircuit transfers (JCUS Report, Sept. 1988, at 59-60; *see* Guide, vol. 5, ch. 4).

Bankruptcy judges are appointed to 14-year terms by their courts of appeals (28 U.S.C. §§ 152(a)(1), 153(a)). Congress has directed the circuit judicial councils to assist the courts of appeals in filling vacancies "by evaluating potential nominees and by recommending to such court for consideration for appointment . . . persons who are qualified to be bankruptcy judges under regulations prescribed by the Judicial Conference" (Bankruptcy Amendments and Federal Judgeship Act of 1984, § 120(b), 98 Stat. 344).

Judicial Conference regulations governing the selection of bankruptcy judges (JCUS Report, Mar. 1985, at 22-23) specify the

type of public notice required when a vacancy is to be filled, and authorize the circuit judicial council to appoint a merit selection panel to assist in developing a list of nominees to submit to the court of appeals. Councils that do not appoint a merit selection panel are to perform the panel's duties themselves or appoint a subcommittee of council members to do so. The Administrative Office's Bankruptcy Division's pamphlet, *The Selection and Appointment of United States Bankruptcy Judges*, includes the Judicial Conference regulations and provides guidance to merit selection panels and circuit judicial councils engaged in the process of selecting bankruptcy judges.

By statute, the council cannot submit a list of nominees for consideration by the court of appeals until the council determines that there was adequate notice of the vacancy and an effort to identify qualified candidates, and that the nominees possess solid professional and personal qualifications as detailed in the statute (Bankruptcy Amendments and Federal Judgeship Act of 1984, § 120(c), 98 Stat. 344).

Judicial Conference regulations instruct the courts of appeals to submit their selections for bankruptcy judges to the Bankruptcy Division of the Administrative Office, which is to request a background report by the FBI and a tax report by the IRS. A finalist or nominee for a bankruptcy judgeship may be required to complete a confidential preliminary financial disclosure statement prior to the preparation of the background reports. The FBI conducts a complete field investigation, which generally takes from 8 to 12 weeks. After considering the information in the report, the court of appeals may issue the order of appointment. Under section 4.05 of the regulations, the court may waive the IRS report if, in the court's judgment, the IRS has not completed the report in a timely manner and the nominee has filed his or her tax forms properly (JCUS Report, Mar. 1985, at 23; see Guide, vol. 5, ch. 2).

Following the order of appointment, the bankruptcy judge is to take the judicial oath or affirmation prescribed by 28 U.S.C. § 453 and the constitutional oath prescribed by 5 U.S.C. § 3331. The circuit court clerk then enters the appointment in the records of the circuit

court and district court and forwards it to the director of the Administrative Office.

## **2. Discipline, Removal, and Recall**

Bankruptcy judges are subject to the judicial discipline procedures of 28 U.S.C. § 372(c), which, *inter alia*, authorize the circuit judicial council to remove judges from office (28 U.S.C. § 372(c)(6)(B)(vii)(II)) on the grounds and conditions for removal listed at 28 U.S.C. § 152(e).

With the judge's consent, the circuit judicial council may recall a retired bankruptcy judge to serve in any district overseen by the council (28 U.S.C. § 155(b); JCUS Report, Mar. 1985, at 22; Mar. 1987, at 28). *Ad hoc* recall may be for a fixed (renewable) period of three years (JCUS Report Preliminary Report, Mar. 1992, at 2-3).<sup>42</sup> Under 28 U.S.C. § 375, bankruptcy judges may be recalled to render "substantial service" for a period of five years, but this provision has not been implemented.

## **3. Appointment of a Bankruptcy Court Clerk**

The judges of any bankruptcy court may appoint a clerk of the court upon certification to the circuit judicial council and the Administrative Office that the court's business justifies it (28 U.S.C. § 156(b)). With the approval of the bankruptcy judges, the clerk may, in turn, appoint deputies (in numbers approved by the Administrative Office) and remove them. Classification of bankruptcy court clerks must follow criteria established by the Judicial Conference (JCUS Report, Mar. 1987, at 7).

The bankruptcy clerk is accountable for bankruptcy fees and costs collected pursuant to 28 U.S.C. § 1930,<sup>43</sup> and is the official custodian

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42. Previously, *ad hoc* recall had been for fixed (renewable) periods not to exceed one year (JCUS Report, Sept. 1987, at 82).

43. The Comptroller General of the United States has held that the bankruptcy clerk, not the district court clerk, is the sole officer accountable for bankruptcy fees and costs collected pursuant to 28 U.S.C. § 1930; the district clerk need exercise no role in the collection of fees and costs under 28 U.S.C. § 1930 (Decision Nos. B-217236 and B-217236.2, May 22, 1985).

of the records and dockets of the bankruptcy court (28 U.S.C. § 156(e), (f)).

### **C. Non-Judges and Employees**

The following personnel are appointed by the district court, on the basis of the authority indicated (*see also* Guide, vol. 1-B, ch. 10, subch. 1296.1, pt. B):

- District court executive (JCUS Report, Mar. 1980, at 23).
- Clerk of court (28 U.S.C. § 751(a)).
- Chief and other probation officers (18 U.S.C. § 3602).
- Chief pretrial services officer (18 U.S.C. § 3152).
- Court reporters (28 U.S.C. § 753(a)).
- Court interpreters (28 U.S.C. § 1827(d)(1)).

The chief district judge appoints court reporters and the clerk of court when a majority of the district judges cannot agree on the appointments (28 U.S.C. § 756). The statute does not prescribe the form for certifying or ascertaining court approval or approval by a majority of the judges.

In districts with separate probation and pretrial services offices, a panel of the chief circuit judge, the chief district judge, and a magistrate judge, or their designees, selects the chief pretrial services officer (18 U.S.C. § 3152(c)). The chief probation officer appoints probation clerical staff, pursuant to the Judiciary Salary Plan and 18 U.S.C. § 3672. The chief pretrial services officer may also appoint supporting personnel "with the approval of the district court" (18 U.S.C. § 3153(a)(1)).

The clerk of court is the "appointing officer," authorized to appoint supporting personnel in the clerk's office "with the approval of the court" (28 U.S.C. § 751(b)). Although the Administrative Office's authority does not limit "[t]he authority of the courts to appoint their own administrative or clerical personnel," the director of the Administrative Office, as the disburser of salaries to judicial personnel, may require evidence sufficient to establish the legality of an appointment (28 U.S.C. § 609).

## **1. District Court Executive**

A Judicial Conference pilot program to provide district court executives in the larger district courts began in 1981 but currently exists in only four districts (E.D.N.Y., S.D.N.Y., N.D. Ga., and S.D. Fla.).<sup>44</sup> The district court executives are "selected by and subject to the direction of the judges of the district" in which they serve (JCUS Report, Mar. 1980, at 23).

## **2. Clerk of Court**

Except in courts with district court executives, the clerk of court serves as the chief operating officer, implementing the court's policies and reporting to the chief district judge. The chief district judge generally delegates most administrative duties (other than probation and pretrial services duties) to the clerk of court, and the working relationship between the two is thus vital to the effective management of the court. Clerks, magistrate judges, or both are often responsible for the administration of Criminal Justice Act plans as well.

### **a. Appointment**

The district court appoints and removes the clerk of court (28 U.S.C. § 751(a)). The Judicial Conference has established criteria to classify clerks of court (JCUS Report, Mar. 1987, at 7). The Court Administration Division of the Administrative Office can provide written guidance on the recruitment and selection of clerks of court.

### **b. Staffing**

The clerk of court may appoint deputies and supporting personnel, with the approval of the court, in numbers approved by the director of the Administrative Office (28 U.S.C. § 751(b)). The director determines the numbers based on work measurement studies.

### **c. Duties**

Traditionally, the clerk of court has prime responsibility for receiving the pleadings, papers, and exhibits that constitute case fil-

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44. The Eastern District of Michigan was initially part of the court executive pilot program. It dropped out of the program and combined the court executive position with the clerk of court position to create a "court administrator."

ings, docketing them, routing them to judges for decision, and maintaining them as court records. Many clerks' offices provide support staff for case management. The clerk is also the court's financial agent, charged by statute with receiving all fees and other moneys required by acts of Congress to be prepaid, as well as funds deposited by parties and agencies (except that, as noted, the bankruptcy clerk is responsible for collecting or accounting for bankruptcy fees and costs) (28 U.S.C. § 751(e)). The clerk of court is the disbursing officer for the district court, bankruptcy court, and any collocated appeals court. Additional duties have devolved on the office of clerk of court as management tasks have become more complex and more in need of focused attention.<sup>45</sup>

**d. Courtroom deputies**

Courtroom deputies are employees of the clerk's office and the court. They are not the personal staff of the judge to whom they are assigned.

**e. Pro se law clerks**

On the basis of a Federal Judicial Center study, the Judicial Conference in 1981 approved providing pro se law clerks to districts with significant prisoner litigation—the recommended initial threshold was 300 cases (JCUS Report, Sept. 1981, at 71). In 1985, the Conference reaffirmed its approval of the program and recommended the program's expansion to other courts (JCUS Report, Mar. 1985, at 15; *see also* JCUS Report, Mar. 1987, at 6). The pro se law clerks review civil cases filed by prisoners pro se, including petitions for writ of habeas corpus and complaints for violations of civil rights under 42 U.S.C. § 1983. They also assist the court by screening the complaints and petitions for substance and analyzing their merits, and by preparing recommendations and orders for judicial action, including orders of dismissal. Courts interested in establishing a pro se law clerk position should contact the Court Administration Division of the Administrative Office.

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45. Clerks' duties are described in more detail *infra* in Chapter 6 and in the Guide, vol. 4.

**f. Code of conduct**

The Judicial Conference has adopted a code of conduct for clerks and chief deputy clerks of court (*see* Guide, vol. 2, ch. 2, at 2–3). Only chief circuit judges, chief district judges, and the Conference's Committee on Financial Disclosure may request interpretations of this code from the Committee on the Codes of Conduct (JCUS Report, Sept. 1978, at 55).

**3. Probation Officers**

Under 18 U.S.C. § 3602, the district court is authorized to appoint probation officers and designate a chief probation officer. The Judicial Conference has established criteria to classify chief probation officers (JCUS Report, Mar. 1987, at 7–8).

**a. Staffing of the probation office**

Probation office clerical staff are appointed by the probation officers. The size of the probation office is a function of its workload. Generally, there is one supervising probation officer for every 6 to 11 professionals, and offices with more than 30 professionals have a deputy chief probation officer. Some probation offices—for example, those with many probationers with drug-related problems or organized-crime convictions—establish specialized supervisory units.

**b. Duties**

Probation officers perform important duties for the district court both before and after sentencing. Under Federal Rule of Criminal Procedure 32, they conduct presentence investigations and prepare presentence reports. Under 18 U.S.C. § 3603, they supervise probationers and persons on supervised release. This duty includes reporting on the conduct and condition of these persons as required by the court, and assisting them in improving their lifestyles. Probation officers are required to inform the court when a probationer fails to pay a fine, so that the court may decide whether the sentence should be revoked. They also supervise persons transferred under the Victim and Witness Protection Act, develop community resources, monitor participation in drug programs, oversee payment of fines and restitution, assist probationers in obtaining employment, and provide ad-



vice to probationers' families. As discussed *infra* in section 4, in some districts probation officers also have pretrial services responsibilities.

**c. U.S. Parole Commission duties**

Probation officers perform certain tasks in support of the U.S. Parole Commission. The Commission's duties can include discussing conditions of parole, investigating parole plans, supervising parolees, preparing progress reports, requesting warrants for violations of parole terms, and conducting preliminary hearings for parolees incarcerated under state statutes.<sup>46</sup> The Commission's duties are waning because most offenders are now sentenced under the 1984 Sentencing Reform Act, which eliminated parole.

**d. Chief district judge's responsibility for the probation office**

The chief district judge should stay abreast of probation officers' diverse tasks and foster a sense that these officers are an integral part of the district court. A judge who evaluates the probation office solely on the basis of the presentence reports, for example, may be unaware of difficulties line officers are having in supervising offenders. The chief district judge may want to require periodic inspection of the line officers' reports on persons under their supervision or to inquire whether the nature of the district's offender population justifies establishing specialized units.

An annual report (or perhaps brief monthly reports) from the probation office to the chief district judge, although not required, can provide information on the work performed by the office and help the office's senior staff think in terms of their total administrative responsibility to the court. The need for such a report is especially strong in districts in which probation officers work in locations other than the chief judge's official duty station. The report might quantify the business of the office by division, including presentence investigations and sentences imposed; persons under supervision and those removed, by type of offense; cases closed during the year, by disposition; and, where appropriate, pretrial services activity. The re-

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46. Commission rules and regulations are presented in the Guide, vol. 1, ch. 2, pt. A.

port could also document the office's special projects, programs, and innovations.

**e. Code of conduct**

The Judicial Conference has adopted a code of conduct for probation and pretrial services officers (*see* Guide, vol. 2, ch. 2, at 11–13). Only chief circuit judges, chief district judges, and the Conference's Committee on Financial Disclosure may request interpretations of this code from the Committee on the Codes of Conduct (JCUS Report, Sept. 1978, at 55).

**4. Pretrial Services Officers**

The Pretrial Services Act of 1982 directed that pretrial services be provided in all federal districts. These services include evaluating persons proposed for pretrial release, monitoring and assisting those released, and reporting to the court on these activities (18 U.S.C. § 3154). The statute leaves it to the district court to determine whether to provide such services through the probation office or a separate pretrial services office (18 U.S.C. § 3152); however, Congress has declined to fund pretrial services staff in any metropolitan district that does not provide pretrial services through a separate office. The Judicial Conference has noted that in some courts "the conduct of pretrial service in probation offices is more economical than the creation of separate pretrial service agencies" (JCUS Report, Mar. 1985, at 21), and some smaller districts continue to offer these services through probation offices. The district court and circuit judicial council must approve the creation of a separate pretrial services office (18 U.S.C. § 3152(b)). A panel of the chief circuit judge, chief district judge, and a magistrate judge, or their designees, selects the chief pretrial services officer (18 U.S.C. § 3152(c)). The Judicial Conference has established criteria to classify chief pretrial services officers (JCUS Report, Mar. 1987, at 7–8). The chief pretrial services officer appoints supporting personnel with the court's approval (18 U.S.C. § 3153(a)(1)).

The special effort the chief district judge must expend to monitor probation office activity should also be directed to a separate pretrial services office.

## **5. Court Reporters**

Management of the court reporting service is a district court responsibility, subject to statutory provisions (28 U.S.C. § 753), Judicial Conference policy, and circuit judicial council oversight. The *Court Reporters' Manual* (Guide, vol. 6) is a valuable reference for chief district judges in overseeing management of court reporting services. Questions concerning court reporting matters should be directed to the Court Reporting and Interpreting Branch of the Court Administration Division of the Administrative Office.

### **a. Court reporting management plan**

In 1982, responding to abuses in court reporting services, the Judicial Conference recommended that circuit judicial councils require each district court "to develop a court reporting management plan that will provide for the day-to-day management and supervision of an efficient court reporting service within the court," and specifically assign supervision responsibilities to the clerk, district court executive, judge, or "other person designated by the court" (JCUS Report, Mar. 1982, at 8). If required, the plan must be approved by the circuit judicial council and filed with the Administrative Office, which makes sample plans available through its Court Reporting and Interpreting Branch (*see* Guide, vol. 6, ch. 2).

The Conference has consistently held that court reporters work for the court in a pool, not for individual judges. The precise implementation of this concept varies according to the number of judges and divisions in the district (*see* Guide, vol. 6, ch. 2).

Any court placing some of its reporters on a regular tour of duty must place all reporters in the same location on a regular tour of duty, although courts may exempt from this requirement reporters on staff prior to September 1987 (JCUS Report, Sept. 1987, at 63) (*see* Guide, vol. 6, ch. 4).

### **b. Court reporting supervisor**

District courts may appoint a court reporting supervisor, who may serve in the capacity recommended in the 1982 Conference resolution (quoted *supra*), or may report to the supervisory person who performs that role. In either situation, the court reporting supervisor

is responsible for administering and implementing the court reporting management plan in accordance with statutory requirements and Judicial Conference policies.

**c. Types of reporting services**

Under 28 U.S.C. § 753(b), district court proceedings are to be recorded by stenographic methods, electronic sound recording, "or any other method," subject to Judicial Conference regulations and the court's approval. The method is also subject to the discretion of the individual judge. Currently, steno-based and steno-mask reporting and electronic sound recording are used most often. In 1986, the Conference determined that the electronic sound recording program should be used as a permanent part of the facilities and services available to the judiciary, subject to appropriate funding (JCUS Report, Mar. 1986, at 34). The Guide (vol. 6, ch. 16) includes guidelines for the selection and use of electronic sound recording. Unlike reporting by official court reporters, electronic sound recording is done by employees of the clerk of court's office; the clerk is responsible for arranging transcription from the audio record for parties who request official transcripts. The Committee on Court Administration and Case Management has approved in concept the use of videoconferencing technology for taking depositions and witness testimony (JCUS Report, Sept. 1991, at 55).

**d. Appointment and compensation**

Each district court is authorized to appoint permanent court reporters to serve the court, in numbers approved by the Judicial Conference; the standard ratio is one reporter per active judge (JCUS Report, Mar. 1990, at 90). Reporters authorized beyond that ratio are "additional" reporters, and the Conference has disallowed council-approved requests for additional reporters in districts in which a court reporter management plan was not in place or the existing reporters did not appear to be working for the entire court and to capacity.

Court reporters are federal court employees, subject to the supervision of the court, but they may also collect personal fees for transcripts prepared for parties at rates determined by the court and the

Judicial Conference. Because they earn private income in connection with their judicial employment, the reporters must provide their own supplies and may not use government postage for their correspondence.

The Judicial Conference establishes maximum rates for transcripts (*see* JCUS Report, Sept. 1987, at 64). Court reporters must maintain and certify (under penalty of perjury) proper records, detailing their working hours and earnings, on standardized forms provided by the Administrative Office. District courts are to review these records for completeness and accuracy (JCUS Report, Sept. 1987, at 63; Mar. 1989, at 10).

Under 28 U.S.C. § 753(a), temporary (three-month) court reporter appointments are authorized in emergencies. Chief district judges should explain such needs in writing to the director of the Administrative Office. The circuit judicial council must first approve any requests that exceed the court's complement of assigned court reporters. Upon the advice of the chief district judge, a circuit judicial council may request that the director of the Administrative Office authorize reporters on contract to meet temporary demands (28 U.S.C. § 753(g)); contracts are awarded on a 12-month basis (*see* Guide, vol. 6, ch. 11). The Guide (vol. 6, ch. 1, pt. E) specifies the various kinds of court reporter positions.

## **6. Court Interpreters**

Pursuant to the Court Interpreters Act (28 U.S.C. § 1827(d)(1)), in any federal criminal or civil action, the judge must use a certified interpreter when a party is hearing impaired or has language difficulty that inhibits his or her ability to comprehend the proceedings or communicate with counsel. Likewise, witnesses should be provided with an interpreter if their hearing impairment or lack of command of English inhibits their ability to comprehend questions from counsel and present testimony. A House Report states that if parties waive their right to a certified court-appointed interpreter, they may use a non-certified interpreter of their choice (H.R. Rep. No. 1678, 95th Cong., 7th Sess. 10).

If, in any proceeding, whether instituted by the U.S. or not, the presiding judge denies a request to appoint an interpreter under section 1827(d)(1), an individual who wants an interpreter may ask for assistance from the clerk of court or the Administrative Office (28 U.S.C. § 1827(e)(2), (g)(4)). Upon request of the presiding judge, the clerk of court or a designee may make the services of an interpreter available on a cost-reimbursable basis, but may also require prepayment of estimated expenses.

## **D. Federal Public (or Community) Defenders and Other Forms of Representation**

### **1. Overview of the Criminal Justice Act (CJA)**

Ensuring legal representation to defendants who cannot afford it is a traditional judicial function. Prior to the requirements set out by the Supreme Court, and by Congress in the Criminal Justice Act of 1964, codified at 18 U.S.C. § 3006A, judges appointed attorneys to represent indigents on an ad hoc basis and without providing for their compensation.

The CJA was designed to ensure the availability of legal representation for all individuals charged with certain federal offenses. In 1986, Congress significantly expanded the CJA's coverage (100 Stat. 3642). For example, the CJA now requires that counsel be appointed for all financially eligible persons held as material witnesses and allows judges to appoint counsel for financially eligible persons charged with petty offenses for which confinement is authorized.

The CJA requires each district court to put into operation a plan to achieve the CJA's objectives. The plan must be approved by the circuit judicial council, which may require modifications. A copy of the plan and any modifications are to be sent to the Administrative Office. Chief district judges should ensure that the plan and its administration comport with the statute and relevant Judicial Conference policies. A valuable resource in meeting this responsibility is Volume 7 of the Guide ("Appointment of Counsel in Criminal Cases"), especially section A ("Guidelines for the Administration of the Criminal Justice Act"). This volume includes a model CJA plan, as

well as forms approved by the Conference, and covers such topics as appointment and compensation of attorneys, cases covered by the CJA, defendants' eligibility for representation, investigative and other available services, and vouchers.

## **2. Forms of Representation**

Under 18 U.S.C. § 3006A(g)(1), federal public defender organizations or community defender organizations are authorized in districts or parts of districts in which at least 200 people annually require appointed counsel.

Federal public defender organizations' attorneys and support staff are federal judicial branch employees. The court of appeals appoints the federal public defender who, in turn, appoints other full-time attorneys in numbers approved by the court of appeals (18 U.S.C. § 3006A(g)(2)(A)). The Judicial Conference has approved procedures to guide the courts of appeals in evaluating candidates and has set suggested minimum qualifications for appointment as a federal public defender (*see* Guide, vol. 7, § A, ch. 4).<sup>47</sup> By contrast, community defender organizations are nonprofit defense counsel services established and administered by any group authorized by the plan to provide representation (*see* Guide, vol. 7, § A, ch. 4) (18 U.S.C. § 3006A(g)(2)(B)).

The death penalty resource center is a specialized type of community defender organization that provides services in federal habeas corpus proceedings challenging state death sentences. Resource centers are also authorized to provide representation to defendants in federal capital prosecutions. Resource centers recruit and train private attorneys and provide expert services and consultation to assist those attorneys. Because resource centers also provide services to state courts in connection with post-conviction proceedings, they receive state or other non-federal funds to support those activities.

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47. The decision to house federal public defender organizations within the judicial branch was motivated by administrative convenience; it does not make the federal defender part of the court's or chief judge's staff.

The CJA anticipates that even districts with defender organizations will assign a substantial proportion of cases to private attorneys. Private attorneys are selected from a panel established by the court. The Model Criminal Justice Act Plan, approved by the Judicial Conference Committee on Defender Services, provides that "approximately 25% of the appointments under the CJA annually throughout the district" shall go to private panel attorneys (*see* Guide, vol. 7, § A, app. G-8). The federal public defender organization or community defender organization may play a role in administering the panel of private attorneys.

### **3. Compensation and Administration**

Federal public defenders and assistant defenders are full-time salaried attorneys; the courts of appeals fix compensation for the former and the federal public defenders fix compensation for the latter (18 U.S.C. § 3006A(g)(2)(A)). The CJA establishes maximum hourly rates for compensation of CJA-appointed attorneys, but also authorizes the Judicial Conference to establish higher rates (18 U.S.C. § 3006A(d)). The Conference has approved an amendment to the CJA Guidelines providing for automatic annual increases in the maximum hourly rates (JCUS Report, Sept. 1990, at 79). It has also approved implementation of a pay cost adjustment to increase the attorney compensation rates in most districts, subject to the availability of funds (JCUS Report Sept. 1991, at 56-57).

Under the Anti-Drug Abuse Act of 1988 (ADAA), the presiding judge has authority to fix compensation of attorneys and persons providing expert services in death penalty cases, without regard to the hourly compensation rates and limits set forth in the CJA (21 U.S.C. § 848(q)(10)). The Judicial Conference has established a guideline range of \$75-\$125 hourly compensation for attorneys appointed under the CJA in federal capital prosecutions and habeas corpus death penalty cases (JCUS Report, Sept. 1989, at 62-63). The ADAA also establishes minimum qualifications for counsel providing representation in death penalty proceedings. Death penalty resource centers can assist the courts in finding counsel who possess the qualifications specified by the ADAA.



Community defender organizations receive sustaining grants approved by the Judicial Conference in lieu of hourly payment under section (d) of the ADAA (see Guide, vol. 7, § A, app. D).

Requests for assistance on CJA matters should be directed to the Administrative Office's Defender Services Division.

#### **4. Training**

The CJA authorizes use of appropriated funds for training panel attorneys who provide services under the Act (18 U.S.C. § 3006A(i)). Federal public defender organizations and community defender organizations generally provide seminars and other training for attorneys.<sup>48</sup> In districts that have not established a federal public defender organization, the Administrative Office, working in cooperation with the district courts and local training specialists, organizes training events for panel attorneys.

#### **E. External Agencies**

In its daily administration, the district court works closely with its landlord (the General Services Administration), its security service (the U.S. Marshals Service), state and local courts, and other external agencies.

##### **1. General Services Administration (GSA)**

GSA is an executive branch agency that serves, in effect, as the landlord for executive agencies and the federal judiciary. It is responsible for courthouse construction, renovation, and maintenance (see *infra* Chapter 6, section E). At the request of the Administrative Office, GSA prepared the publication *Guidelines for Federal Courts in Dealing with the General Services Administration—Public Buildings Service (GSA-PBS)*, which assists courts in resolving building services problems. These guidelines state that the field office manager (or, for a building operated through Commercial Facility Management, the

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48. Attorneys and other personnel in these organizations receive training through programs of the Federal Judicial Center's Judicial Education Division, through an interagency funding agreement with the Administrative Office's Defender Services Division.

commercial facility manager) is the primary GSA-PBS official responsible for maintaining GSA-operated buildings. The guidelines note that when courts are “encountering difficulties and need to take the matter to a higher level of attention,” they should contact the appropriate GSA regional director, Real Property Management and Safety Division.

## **2. U.S. Marshals Service**

Each district has a U.S. marshal, appointed by the President with the consent of the Senate, who serves a four-year term (28 U.S.C. § 561).<sup>49</sup> The U.S. Marshals Service is part of the Department of Justice and is responsible for the movement of prisoners, supervision of the department’s Witness Security Program, apprehension of federal fugitives, and, of most direct interest to district judges, security of the court and its personnel. The latter responsibility entails—

- developing a comprehensive nationwide court security program for the federal judiciary;
- assuming primary responsibility and authority for the protection of court proceedings, court officials, and court areas occupied by the federal judiciary;
- conducting comprehensive court security surveys of all federal judicial facilities;
- establishing a court security committee in each district;
- reviewing proposed plans provided by the Administrative Office or GSA for design and installation of security systems in new buildings, and alterations to existing buildings;
- reporting crimes committed on GSA-controlled property to the Federal Protective Service; and

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49. Until vacancies are filled by the President, the Attorney General may designate an interim marshal (28 U.S.C. § 562(a)). In the event the President does not appoint a replacement, the Attorney General’s designee is allowed to serve as acting marshal until 30 days following the end of the next session of the Senate (28 U.S.C. § 562(b)).

- contracting for court security officers and for the installation and maintenance of security systems in space occupied by the federal judiciary.

The Judicial Conference directs marshals to survey each court's security needs and develop a written security plan, containing requests for security services, for each judicial facility in the district; the plan is subject to review and approval by the court security committee. Each marshal also transmits the security plan to the Marshals Service for evaluation in light of available funds and overall security needs. Whenever the Marshals Service denies a security committee's request for services, it must notify the local marshal (and the Court Security Office of the Administrative Office) and provide the reason for the denial. The marshal, in turn, is to notify the committee.

Services provided by the Marshals Service—including technical assistance in evaluating security needs and the provision of deputy marshals for courtroom security and personal security of judges, trial participants, and other judicial officials—are funded in part from the Marshals Service's appropriation. To provide broadened security through contract guards and security equipment, the Administrative Office now transfers to the Marshals Service its annual appropriation for court security.

An April 1987 memorandum of agreement between GSA, the Administrative Office, and the Marshals Service provides for administrative oversight of the marshals' court security service. In preparing the court security appropriation request, the Administrative Office seeks information from each marshal, but requests that both the chief district judge and the marshal sign the summary appropriation form. The Administrative Office's Court Security Office serves as a liaison to the Marshals Service.

### **3. U.S. Attorney's Office**

Maintaining liaison with the U.S. Attorney's Office is important to the efficient operation of the district court. Liaisons can address a range of issues, including case-scheduling problems, case arraignments, prisoner handling, and courthouse operation.

The President appoints a U.S. attorney, with the advice and consent of the Senate, to each district for a four-year term. In the event of a vacancy in the office of a U.S. attorney, the Attorney General may appoint an interim U.S. attorney until the vacancy is filled, but not for longer than 120 days. If no permanent presidential appointment is confirmed by the Senate within that time, the district court may appoint a U.S. attorney to serve until the vacancy is filled. In that event, an order of appointment by the court must be filed with the clerk of the court (28 U.S.C. § 546(d)).

#### **4. State and Local Courts**

The district court will find it beneficial to establish working relationships with state and local courts in its jurisdiction to help resolve scheduling conflicts, to explore sharing some services, such as jury rolls, and to promote cooperation in addressing common problems. As noted *supra* in Chapter 3, section D, state-federal judicial councils can be helpful in this regard.

#### **5. General Accounting Office (GAO)**

The GAO, a congressional agency, is charged primarily with studying the performance of executive branch agencies, but also occasionally conducts studies of federal judicial administration. Examples of such GAO reports are *Justice Automation: U.S. Trustees Bankruptcy Case Management System* (September 1989), *The Judiciary: Problems in Finding Office Space for Circuit Judge Danny J. Boggs* (May 1989), *Domestic Terrorism: Prevention Efforts in Selected Federal Courts and Mass Transit Systems* (June 1988), and *Federal Judiciary: How the Judicial Conference Assesses the Need for More Judges* (1993). GAO reports sometimes become the source of congressional inquiries at the time of the courts' appropriations hearings. They may also be referred to the Judicial Conference and result in internal recommendations for change.

The GAO conducts field research in the courts, often interviewing judges and support personnel, as well as Judicial Conference members or committee chairpersons and Administrative Office and

Federal Judicial Center staff. The GAO sometimes selects particular districts as illustrative and subjects them to more intensive analysis.

The GAO usually advises the Administrative Office that it proposes to contact particular district courts and personnel, whereupon the Administrative Office advises the chief district judge to anticipate the GAO request. A chief district judge who is contacted by the GAO but has not heard from the Administrative Office should contact the director of the Administrative Office.

There is every reason for a district court to cooperate with the GAO whenever practical. The courts should bear in mind, however, that the GAO typically studies executive branch agencies and sometimes assumes that the judicial branch is subject to similar hierarchical control systems. This assumption frequently underlies questions from GAO personnel and can cause confusion in the GAO's dealings with the courts.

## **VI. The Chief District Judge's Management and Administrative Functions**

The chief district judge retains ultimate responsibility for the district court's administrative and management tasks, even though statutes or Judicial Conference policies assign some important tasks to clerks of court, and the chief district judge can delegate other tasks to the clerk. Chief district judges must stay current on various aspects of court management, some of which have already been discussed.

### **A. Activities of Other District Judges**

#### **1. New Judges**

Chief district judges will necessarily spend time on matters related to new judges. They should be prepared to answer questions posed by the appointees. They also must swear in new judges. Although new judges must take the oaths prescribed by 28 U.S.C. § 453 and 5 U.S.C. §§ 3331–3333, there is no prescribed format for swearing-in ceremonies.

The initial task of acquainting new judges with the court's organization and procedures often falls to the chief district judge. Some courts have developed orientation programs in which, for example, an experienced judge is assigned to serve as a mentor, or the clerk of court and chief probation officer provide orientation concerning the work of their offices. The chief district judge may also inform an incoming judge that chambers papers are considered the judge's personal papers, and therefore the judge should arrange for their disposition.<sup>50</sup>

##### **a. Administrative Office orientation programs**

At the time of their confirmation, judges who are new to the federal judiciary are invited to an orientation program given by the Administrative Office. This program focuses on compensation, benefits, security, and administrative aspects of becoming a federal judge.

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50. Further information on preserving chambers papers is available from the Federal Judicial History Office in the Federal Judicial Center.

**b. Federal Judicial Center orientation programs**

The Federal Judicial Center invites each new district judge to two orientation programs. The first is a regional orientation seminar, which a judge ideally will attend shortly before or soon after entering duty. This four-day program is conducted by an experienced district judge using specially prepared video lectures. It stresses practical instruction in court procedure, the rules of evidence, and sentencing, and it includes a tour of a federal correctional facility. Sometime during their first year, new district judges are also invited to the Center's Washington, D.C., orientation seminar, which builds upon the instruction in the initial orientation program.<sup>51</sup>

**c. Federal Judicial Center orientation pamphlet**

A Federal Judicial Center pamphlet, *Individual Orientation for Newly Appointed District Judges*, describes programs and materials that help newly appointed district judges obtain orientation to supplement Center and Administrative Office programs. The pamphlet helps courts plan in-court orientation programs by describing a range of possible programs and suggesting relevant considerations with respect to each. The pamphlet is also designed to help newly appointed judges find additional information or assistance on subjects on which they feel a need for supplemental orientation. It provides an outline of subjects that are common sources of problems and is annotated with references to relevant written and audiovisual materials available from the Center or the Administrative Office. The pamphlet is distributed to each new judge and is available to all chief district judges.

**2. Senior Judges**

A work certification requirement for senior judges is provided in 28 U.S.C. § 371(f). For senior judges to continue receiving the full salary of the office, including increases other than cost-of-living increases administered under 28 U.S.C. § 461, they must be certified by the chief judge of the circuit as having met one of five specified

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51. A similar two-step orientation program is offered to bankruptcy and magistrate judges early in their careers.

workload requirements. The Judicial Conference's *Rules for Certification of Senior Judges* articulates standards for meeting the statutory work requirements (JCUS Report, Mar. 1990, at 10–11, 20; Sept. 1990, at 84; Guide, vol. 3, ch. 7, app. at 23–29).

The chief circuit judge or judicial circuit council may designate a senior district judge to perform “such judicial duties within the circuit as he is willing and able to undertake” (28 U.S.C. § 294(c)). Similarly, the chief district judge may assign duties to a senior judge in that district (*id.*). When and how senior judges can vote for rehearings en banc, and the extent of the circuit judicial council's supervision of senior judges' work assignments, differ among the circuits, and the chief district judge should consult circuit internal operating procedures or the circuit executive.

Under 28 U.S.C. § 294(b)–(e), senior judges are authorized to receive case assignments in their districts, but they are not automatically entitled to chambers and staff. Judicial Conference policy authorizes chambers and staff for senior judges only upon the circuit judicial council's certification to the director of the Administrative Office that the judges are performing judicial service “substantial” enough to justify facilities and that the number of supporting positions requested is necessary based on the judges' actual workload (JCUS Report, Mar. 1958, at 245–46; Sept. 1982, at 81). The information the circuit judicial councils use in making those judgments is provided annually by the Administrative Office's Statistics Division and Human Resources Division, and is based on the caseload data routinely provided by the district courts. Determining the need for support is largely a judgment call, however, and is open to challenge by a chief district judge in the rare event that he or she disagrees with the circuit judicial council. The Conference found “that it was not possible to devise a meaningful formula whereby the service to the judiciary of a retired judge could be measured with any mathematical nicety,” especially because some senior judges sit regularly “while others serve the courts as masters by appointment of the Supreme Court, by service on Judicial Conference committees, and the like” (JCUS Report, Sept. 1975, at 45–46).



Other problems may occasionally develop, as when a senior judge (or a former chief district judge) insists on retaining chambers that other judges should have. Persuasion and compromise solve most problems, but the district court or circuit judicial council could presumably resolve problems by order. The chief district judge should consult circuit internal operating procedures and the circuit executive to determine the circuit's approach to allocating chambers space and staff to senior judges.

The Judicial Conference has directed all courts to make a continuing study of their anticipated space needs for new senior judges (JCUS Report, Sept. 1977, at 48). To facilitate obtaining sufficient space to accommodate both the senior judges and their successors, the Conference has adopted a resolution encouraging judges to notify the President and the Administrative Office as early as possible of their intention to take senior status (JCUS Report, Sept. 1980, at 67-68).

### **3. Retiring Judges**

Vacancies in Article III judgeships impede the administration of justice. To minimize the length of the vacancy, judges nearing retirement should provide notification as soon as possible. The Conference has urged all judges planning to retire to give the President and the Administrative Office 6-12 months' notice (JCUS Report, Mar. 1988, at 31-32). A procedural checklist entitled "Checklist for Judges Fully Retiring or Leaving the Federal System" (AO Form 369) is included in the Guide.

If there is an unanticipated judgeship vacancy, chambers staff may remain on the court payroll for 30 days, with an extension of up to 60 days if requested by the chief district judge. Upon certification by the chief district judge to the director of the Administrative Office that additional staff resources are necessary, one additional extension of up to 120 days beyond the original 90-day period will be allowed. If necessary, additional staffing needs beyond the 120-day extension are funded from existing allocations to the circuits for emergency temporary law clerks and secretaries.

#### **4. Judicial Disability Procedures**

Chapter 3, section A *supra* describes the statutory procedures by which the federal courts are to receive and handle complaints of judicial unfitness and disability. The chief circuit judge and the circuit judicial council have primary responsibility in these matters. Many problems may not reach the circuit level, and some that do still involve the chief district judge.

#### **5. Residence and Place of Holding Court**

Section 134(c) of Title 28 of the United States Code anticipates that it may be in "the public interest" for at least one judge of the district to maintain residence at or near one of the district's designated places for holding court. The circuit judicial council is authorized to make such a determination as well as to determine which judge shall reside near the court if the district judges cannot agree. The chief district judge should obviously try to avoid such a disagreement.

#### **B. Personnel Policies and Management**

Judicial Conference and Administrative Office policies assign to court officers some tasks related to operation of their offices and supervision of their staffs, including hiring, promoting, and demoting court personnel (*see* Guide, vol. 1, ch. 10). Other personnel tasks involve the chief district judge directly, including making the appointments discussed in chapter 5 *supra*, conducting annual performance evaluations of the clerk of court and chief probation and pre-trial services officers, approving requests for emergency law clerks and secretaries, reviewing official adverse personnel actions taken by managers against court employees, and resolving informal disputes that the officers cannot resolve.

An effective personnel management system, with clear and visible performance standards and procedures, spares the chief district judge involvement in most problems. A manual describing each unit's or office's personnel policies should be available to all employees of the unit, outlining the tasks expected of them and how their performance will be evaluated. In addition to completing the rating cards

sent annually by the Administrative Office's Human Resources Division, each unit or office can tailor performance evaluation forms to its own use.

The chief district judge can promote employee effectiveness and morale by greeting new employees at periodic orientation sessions, attending ceremonies that recognize an employee's length of service, and providing awards for superior performance or useful suggestions. Chief district judges should also consider less formal contact with employees, such as an occasional visit to court offices, arranged with the officers, to meet and talk with court employees (see Guide, vol. 1, ch. 10, subch. 1451.1).

### **1. Judiciary Equal Employment Opportunity Program**

The Judicial Conference's Model Equal Employment Opportunity Plan and Discrimination Complaint Procedures require each federal court to adopt and implement an equal employment opportunity (EEO) plan based on a Judicial Conference Model Plan published therein (JCUS Report, Mar. 1980, at 5; Sept. 1986, at 57-58). The court must submit its plan to the Administrative Office's Equal Employment Opportunity and Special Projects Office. The circuit judicial council must approve any deviations from the Judicial Conference's Model Plan. The Model Plan was distributed to the courts and is included in the Guide (AO Form 342, Forms Catalog, United States District Courts). Courts may elect to have separate plans for district court personnel and bankruptcy court personnel, although a consolidated statistical and narrative report covering both courts must be submitted annually.

Under the Model Plan, all judges and management and supervisory personnel must apply EEO principles in their work units. Each court is to appoint an EEO coordinator to oversee the plan's implementation and administration. In most courts, the clerk of court has been designated the EEO coordinator. Coordinators should be familiar with personnel practices generally, with the Model Plan and the court's modifications, and with basic principles of EEO administration. Under EEO procedures, discrimination complaints must be filed with the EEO coordinator, who is to conduct any investigation

deemed necessary, seek an informal resolution of the problem, and issue findings as to whether discrimination occurred.

The Model Plan's complaint procedures require the chief district judge or a designee to review the findings of the EEO coordinator upon written request of a complainant or the target of a complaint. The chief district judge or designee may issue a decision based on the existing record, conduct any additional investigation, or hold a formal hearing. The chief district judge or designee presides at any hearing and determines the complexity of the review needed to decide whether discrimination occurred.

The EEO coordinator maintains records concerning complaints and prepares an annual report for the year ending September 30 on the complaints and their resolution. The report remains in the court, available to the public upon request.

Each court also must submit to the Administrative Office an annual report on the plan's implementation. The report must be submitted by November 30 for the period ending September 30. The Equal Employment Opportunity and Special Projects Office distributes annual instructions to EEO coordinators on how to complete the report according to a prescribed form. The chief district judge typically files the report for the court, and a copy remains in the court, available to the public upon request.

The Federal Judicial Center's Court Education Division can provide technical assistance and limited funding for educational programs for court employees on gender and bias. Chief district judges may find helpful the Administrative Office's annual report, *Judiciary Equal Employment Opportunity in the Federal Courts*.

## **2. Judicial Immunity from Improper Employment Practices**

Decisions by the Supreme Court and circuit courts suggest that although judges enjoy absolute immunity for their judicial and adjudicative acts, they are not shielded from liability for wrongful employment practices resulting from such administrative acts as dis-

missing or demoting employees.<sup>52</sup> After studying the problems of judicial liability and indemnification in light of the Court's decisions, the Judicial Conference approved policy guidelines for the indemnification of judges and employees in appropriate circumstances (JCUS Report, Mar. 1988, at 58-59). These guidelines are published in Volume 1-C of the Guide.

The Administrative Office's General Counsel's memorandum on Judicial Liability, Indemnification and Representation (February 26, 1988) discusses the doctrines of absolute judicial immunity and qualified official immunity. The memorandum also discusses situations in which judges are entitled to representation at the government's expense and the procedures that should be followed to request such representation. The memorandum emphasizes that whenever a judge or judicial employee is served with legal process, the Office of General Counsel should be informed immediately.

### **3. Temporary Personnel for Judges During Judicial Emergencies**

A judge will sometimes want additional, temporary law clerks or secretaries during a "judicial emergency." Judicial Conference policy requires that the judge's declaration of the emergency and request for such assistance, along with the chief district judge's concurrence, be transmitted to the circuit executive for approval by the circuit judicial council for whatever term the council deems appropriate. The Conference discourages such assistance except "where there is a serious problem" that cannot be solved by temporary reallocation and reassignment of cases (JCUS Report, Mar. 1985, at 13).

In situations in which staff are on sick leave or maternity leave, judges may certify their need for temporary assistance to the director of the Administrative Office (JCUS Report, Mar. 1989, at 11-12). The

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52. See, e.g., *Forrester v. White*, 484 U.S. 210 (1988); *Guercio v. Brody*, 814 F.2d 1115 (6th Cir. 1987), *cert. denied*, 484 U.S. 1025 (1988); *McMillan v. Svetanoff*, 793 F.2d 149 (7th Cir. 1986). Cf. *Westfall v. Erwin*, 484 U.S. 292 (1988) (conduct by federal officials must be discretionary in nature, as well as within the scope of their employment, for them to be absolutely immune from state-law tort liability).

Conference has also approved the option of contracting with a temporary help service (JCUS Report, Sept. 1989, at 72).

## **C. Training Programs and Other Assistance**

### **1. Orientation and Continuing Education**

Each unit or office should administer an orientation program to familiarize all new personnel with court personnel procedures, the organization and work of the court, and the federal judicial system. Continued training improves work standards and fosters upward mobility of employees.

The Federal Judicial Center provides resources and assistance in designing orientation and continuing education programs. Information on its programs for court personnel is available in the Center's annual reports and from its Court Education Division. The Center encourages local training in the court, arranged primarily by court personnel, to complement the Center's national and regional programs. Many in-court training programs can be set up with local resources, and the Center can provide advice and modest financial support when necessary. Court training specialists are key elements in the local programs. They are court employees who assume responsibility for identifying local training needs and developing programs to meet them, with the help of the Center. The court training specialist is a recognized position in the Judiciary Salary Plan and may be appointed in the clerk's office, the probation office, the pre-trial services office, and the bankruptcy court. In some courts, specialists perform other duties as well as their training duties.

The Administrative Office's Article III Judges Division, Bankruptcy Division, and Magistrate Judges Division also serve as resources to judges.

### **2. Law Clerk Selection**

At its September 1990 meeting, the Judicial Conference approved revised classification and qualification standards for law clerks to federal judges and magistrate judges (JCUS Report, Sept. 1990, at 91). A district court may find it helpful to establish a central review of law clerk applications, screening not only for general qualifications, but

also for special criteria of interest to particular judges. If a court uses a coordinated selection process, it can also avoid having to ask a candidate to come to the court more than once for interviews with different judges.

## **D. Equipment, Supplies, and Services**

### **1. Procurement Authority**

The director of the Administrative Office has delegated some of his procurement authority for equipment, supplies, furniture, property management, and substance abuse services to chief district judges and federal public defenders. Usually, a chief district judge designates a procurement liaison officer, who must certify that he or she will comply with Chapter VIII of the Guide. This certification letter is kept in the chief district judge's administrative file, and a copy is sent to the Supplies and Equipment Section of the Administrative Office's Contracts and Services Division (CSD). Functions of the procurement liaison officer may be redelegated, but responsibility for conforming with the Guide's policy of open-market procurements may not. There are limits to the authority of the procurement liaison officer. For example, the Contracts Branch of the CSD must give prior approval to procedures used to procure equipment costing over \$25,000 (*see* Guide, vol. 1-B, ch. 8, pt. B for a complete description of the decentralized procurement process).

### **2. Computer Technology**

The Administrative Office provides a variety of computer equipment and specific software applications to the federal judiciary. The various applications and their current and projected status are described in the *Long Range Plan for Automation in the Federal Judiciary*. This plan, first issued in July 1983, is revised annually, and the revisions are reviewed by the Judicial Conference Committee on Automation and Technology. The committee also sets priorities for implementation of the various automation projects that may be funded. Chief district judges receive a copy of the plan with the Conference committee reports. In developing strategies for the im-

plementation of computer technology, the Administrative Office communicates primarily with clerks of court.

Within the limits of its appropriations, the Administrative Office makes office automation equipment available to individual judges for chambers use on request. However, chief district judges may want to consider standardization of office automation equipment throughout the court. Standardization offers such benefits as the electronic exchange of documents between judges' chambers and more efficient training and equipment maintenance. Inquiries about specific approaches to standardized office automation equipment, including repair, updating, and integration of existing automated systems into the JURIST (Judiciary Users Requirements for Integrated System Technology) system, should be directed to the Office Systems Branch of the Administrative Office's Integrated Technology Division of the Office of Automation and Technology (*see also* Guide, vol. 1-A, ch. 4, pt. B).

### **3. Library Service**

The federal court library system offers reference and computerized legal research assistance. Although operated on the circuit level, it serves the district and bankruptcy courts as well (28 U.S.C. § 713(a)). In addition to the libraries in each court of appeals headquarters, satellite or branch libraries with court librarian staffs are in place in almost 100 locations. Although these are not "district court libraries," they serve the judges and court staff in their locations. Advice or assistance on library, law book, and computer-assisted legal research matters is available from the circuit librarian or the Legal Research and Library Services Branch of the Administrative Office's Article III Judges Division.

### **4. Telephone Service**

The clerk of court usually serves as "telephone coordinator" for the court. The coordinator's responsibilities include the probation office but not the bankruptcy court or the federal public defender's office (*see* Guide, *Telephone Coordinators Handbook*, vol. 1, ch. 5, pt.



B). Although the coordinators may delegate their duties, they maintain ultimate responsibility for proper performance of them.

The coordinator is the court's link with the Administrative Office, the General Services Administration (GSA), and the telephone equipment and service vendors. The coordinator is responsible for arranging service maintenance, moves, the purchase of new or additional telephone equipment, and the certification of invoices. Judges requiring telephone service should contact their telephone coordinator.

To provide more effective service to government agencies served by GSA's consolidated full-service telephone systems, GSA negotiates Purchase of Telephones and Services (POTS) contracts with private vendors. POTS contracts simplify procedures for purchasing and maintaining government-owned telephone equipment. The Administrative Office advises the courts when new POTS contracts are awarded and available for use.

## **E. Space and Facilities Program**

The director of the Administrative Office is required to "[p]rovide accommodations for the courts, the Federal Judicial Center, the offices providing pretrial services and their clerical and administrative personnel" (28 U.S.C. § 604(a)(12)). The director carries out this responsibility through programs providing for the acquisition, management, alteration, and construction of facilities for judicial personnel. Primary responsibility for these programs has been delegated to the Space and Facilities Division (SFD) of the Administrative Office.

Chief district judges often find themselves involved in major court alteration and construction projects and other activities related to space and facilities. Chief district judges' active participation is valuable in all of the major functional areas of the space and facilities program: (1) long-range planning, (2) space acquisition, (3) space alterations and construction, and (4) daily building operations and parking policies.

## 1. Long-Range Planning

The Judicial Conference has directed the courts to develop long-range plans for all space occupied by judiciary personnel (JCUS Report, Mar. 1988, at 39). The planning strategy should include:

- forecasting caseload growth in incremental time frames;
- projecting the number of judges and support staff required to meet the forecasted caseload growth;
- determining the amount of additional space required by staff increases; and
- comparing projected space requirements with capacities of existing facilities.

SFD staff will meet with and assist district court representatives in a long-range planning session. The chief district judge should appoint a team leader—often either the district court clerk or the district court executive—to meet with SFD staff. The team leader should then select a knowledgeable planning team consisting of representatives from the district and bankruptcy courts and probation, pretrial services, and federal public defender's offices, and at least one representative from each of the district's divisions. The GSA building manager and members of the U.S. Marshals Service and U.S. Attorney's Office should also be present at each session.

## 2. Space Acquisition

When a need for space is identified by individual court units, the court should verify with the circuit executive whether a space request requires circuit judicial council approval. The court should forward space requests by letter to the SFD. The request will be reviewed for completeness and compliance with the *U.S. Courts Design Guide*.<sup>53</sup> If

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53. The Design Guide, which contains architectural specifications for all court facilities (JCUS Report, Mar. 1984, at 8), is available to chief district judges through the clerk of court. It authorizes circuit councils to approve modifications of its design standards (except as to courtroom size) after consultation with the chief judges of a particular court. At its March 1991 meeting, the Judicial Conference approved the judicial space standards set forth in a revised Design Guide and approved an amendment providing that any

the SFD finds the request satisfactory, its staff prepares and submits to GSA a formal request form. GSA analyzes the request and is empowered to provide government-owned space or to acquire leased space.

Additional information regarding the space acquisition process is available from the Chief, Space Management Branch, SFD.

### **3. Space Alterations and Construction**

Space alteration projects are broken down into several categories: (1) projects costing less than \$5,000; (2) projects costing from \$5,001 to \$25,000; (3) projects costing from \$25,001 to \$1.6 million; and (4) projects costing more than \$1.6 million (prospectus level). Each court is allocated funds at the beginning of a fiscal year for projects costing less than \$5,000. Each circuit council receives allotments for projects in Categories 2 and 3.

Prospectus-level projects typically are improvements to large blocks of space, and they involve the skills of several different trades and can require extensive work on a building's mechanical and electrical systems. They require congressional approval and considerably more time to complete than the other projects. Because of the complexity of these projects, close coordination between the chief district judge, the SFD staff, and GSA's regional and central offices is important. Funding provided by Congress for prospectus projects may not be used for any projects other than those specifically approved. Because these projects must be enumerated in the judiciary's annual budget request to Congress, they must be defined and their cost estimated at least 18 months before the fiscal year in which funds are needed for design or construction.

Additional information regarding space alterations and construction can be obtained from the Chief, Project and Development Execution, SFD.

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significant deviation from the guidelines requires approval by the judicial council in each circuit (JCUS Report, Mar. 1991, at 32).

#### **4. Daily Building Operations and Parking Policies**

The chief district judge may need to know about miscellaneous matters pertaining to daily building operations, such as space rental, parking policies, and use of utilities outside normal working hours. Advice or assistance concerning these matters can be obtained from the Planning and Analysis Branch, SFD.

#### **F. Court Security**

Security for court personnel and participants in the judicial process has been a perennial problem, largely because of a confusing diffusion of responsibility among the U.S. Marshals Service, the courts, and the "landlord" of the buildings occupied by the courts (typically GSA, but for a few buildings, the Postal Service). This problem was ameliorated by a March 1982 agreement between the Chief Justice and the Attorney General adopting the recommendations of the March 1982 *Report of the Attorney General's Task Force on Court Security*. A January 1984 agreement between the Administrative Office and the Marshals Service established guidelines and procedures for implementing those recommendations. An April 1987 memorandum of agreement between the Marshals Service, the Administrative Office, and GSA supplements these guidelines.

The 1982 report of the Attorney General's Task Force recommended (and subsequent agreements endorsed) the establishment of court security committees in each judicial district, consisting of the marshal, chief district judge, U.S. attorney, clerk of court, and a GSA representative. The Judicial Conference has approved expansion of district court security committees to include a representative from the bankruptcy court, a magistrate judge, and, in districts where there is a court of appeals within the district, a representative from the court of appeals (JCUS Report, Mar. 1990, at 15; Mar. 1989, at 13).

The Judicial Conference Committee on Court and Judicial Security oversees all security matters. The committee approves of the Marshals Service's monitoring of courtroom proceedings using closed-circuit video equipment, and recommends that each court issue an order regulating the possession of firearms and other weapons

in the courtroom (JCUS Report, Sept. 1988, at 68). A district court security plan might also include provisions for background checks, including criminal record checks, of employees of contract cleaning services hired by the court.

In general, the Marshals Service bears primary responsibility for court security services. Its duties are spelled out fully *supra* in Chapter 5, section E. As noted, the chief district judge is expected to sign a form supplied by the marshal, to be sent to the Administrative Office, summarizing the court's security situation.

## **G. Statistical Reporting**

Each district court is responsible for sending a variety of statistical data on court operations and caseloads to the Administrative Office, primarily to the Statistics Division (*see* Guide, vol. 11). Some data are also collected by the Equal Employment Opportunity and Special Projects Office and by the Magistrate Judges Division. The data, which form the basis for extensive Administrative Office reports on court operations (*see supra* chapter 3), are prepared by the clerks of court (district and bankruptcy), probation offices, pretrial services offices, federal public defenders, and others, such as the equal employment opportunity coordinators. The Administrative Office is required to prepare semiannual reports, which are available to the public, disclosing motions that have been pending for more than six months, bench trials submitted for more than six months, and cases not terminated in three years (28 U.S.C. § 476). The judges themselves provide information on calendar status to the circuit executive, who then incorporates the information in reports sent to the chief district judges and others.

Clerical personnel who tabulate, collate, and record the data are not ultimately responsible for the accuracy and timeliness of the information—the chief district judges are. Although they are not required to approve or verify each submission, chief district judges should do everything possible to ensure that data sent to the Administrative Office are accurate and complete. Apart from the obvious need for integrity and accuracy in national data that describe the work of the federal judiciary, an individual court's ability to

manage its business effectively will be impaired by incorrect data. The receiving divisions of the Administrative Office will notify a court if its reports are late or are incomplete or otherwise problematic—a notification that may eventually reach the chief district judge.

## **H. Budget and Fiscal Matters**

Under 28 U.S.C. § 605, the director of the Administrative Office, under supervision of the Judicial Conference, is required to provide the Office of Management and Budget with the federal judiciary's annual requests for legislative appropriations to fund the various court operations for the forthcoming fiscal year. These are incorporated into the annual judiciary budget request, which is submitted to the House and Senate appropriations subcommittees, which hold hearings each year to evaluate them. Courts provide the Administrative Office with information for the budget's preparation, mainly in the area of space and facilities requirements. The director has ultimate responsibility for disbursing moneys appropriated for the courts (28 U.S.C. § 604(a)).

In fiscal year 1988, the Administrative Office began implementing a Judicial Conference decision to decentralize selected budget execution functions. Initial implementation took the form of a pilot program designed to provide greater budgeting autonomy in five federal courts. At the request of the Administrative Office, the National Academy of Public Administration evaluated the program, and it recommended the program's expansion. The program has grown, with 66 courts to participate in fiscal year 1993, and the remaining courts to join the program in fiscal year 1994. Under the decentralized process, the clerks of court are responsible for receiving and disbursing funds and managing the budget.

### **1. The Budget Cycle**

The annual judiciary budget request is presented to the House and Senate appropriations subcommittees each winter for the fiscal year beginning the next October. The judiciary budget comprises a series of individual appropriations requests. Some are for particular units,

such as the Supreme Court, the Administrative Office, and the Federal Judicial Center. One appropriation for the courts of appeals and the district and bankruptcy courts covers salaries of judges and supporting personnel, operation and maintenance costs, and space and facilities costs.

Each spring the Administrative Office begins analyzing the judiciary's budgetary needs for the forthcoming fiscal year. It gets the information from a two-phased "budget call" distributed to the circuit and district courts, which is designed to provide the Administrative Office with two kinds of information. In Phase 1, the district court advises the Administrative Office of any special projects it anticipates undertaking in the next fiscal year that would not be accounted for by the various formulas the Administrative Office uses to estimate budgetary and staffing needs.<sup>54</sup> In Phase 2, the district court gives projections for the impending fiscal year for requirements in staffing, space and equipment, travel, and other budget categories for most of the court's offices.

## **2. Operating Without a Budget**

The Administrative Office has prepared *Guidelines for Operating the United States Courts in the Absence of an Appropriation* for those instances in which the legislative process fails to produce an appropriation bill or continuing resolution to fund court operations. Courts will also receive specific advice in the event of such an occurrence. Generally, the Administrative Office's position is that all functions and services necessary to exercise the courts' constitutional responsibilities should be continued, but functions unrelated to the resolution of cases in which jurisdiction has been established should be suspended, and obligations should not be incurred unless absolutely necessary.

## **3. Audit of Moneys in Custody of Court Personnel**

The clerk of court, as the court's financial officer, is accountable for a wide range of financial activities: disbursing funds appropriated

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<sup>54</sup> The Administrative Office formulas are all based on caseload projections.

for travel and the court's normal operation and maintenance, as well as collecting and accounting for funds received for court services and for court-imposed fines, penalties, and forfeitures. The clerk also accounts for other deposited funds that pass through the court to individuals, corporations, and government agencies (*see* Guide, vol. 1-C, ch. 9; vol. 3, ch. 10). As noted *supra* in Chapter 5, section B, a bankruptcy clerk has special accountability for bankruptcy fees and costs.

The Administrative Office has increased the frequency of financial audits of the courts by contracting with a national public accounting firm. The combination of audits completed by the Audit Division of the Administrative Office and its contractors provides a two-year audit cycle; the contractors and the Administrative Office each audit the courts within a four-year period. The Audit Division will continue to focus on the courts' accounting system and internal controls, and the contractors will focus on the accuracy of the courts' accounting reports and will issue opinions.

In addition to the funds described earlier, district courts collect attorney admission fees. Minimum admission fees, authorized in general terms by 28 U.S.C. § 1914(b), are set by the Judicial Conference (currently \$20) and deposited in the Treasury. Amounts greater than that minimum may be required by a district court and maintained for the use of the bench and bar, not merely for the court or to supplement appropriated funds, pursuant to Conference policy governing the administration and use of these funds (JCUS Report, Sept. 1981, at 62; Mar. 1981, at 15). Conference-approved guidelines, which were reaffirmed in 1984 (JCUS Report, Sept. 1984, at 50), appear in the Guide (vol. 1-C, ch. 9, pt. 1102.B). The Conference guidelines recommend that any district court that maintains an attorney admission fund prepare a plan for its use, appoint a custodian, and provide for the fund's periodic audit, either by the Audit Division or by an outside auditor (who may be compensated from the fund).

Pursuant to various statutes and decisions by the Comptroller General, the director of the Administrative Office has delegated responsibility to the Audit Division for evaluating financial irregularities in the official accounts of judges and other employees of the ju-



diciary, such as physical losses, deficiencies of public funds, and improper payment of public funds. The Guide (vol. 1, ch. 3, pt. D) describes the procedures for administrative resolution of irregularities.

Chief district judges can request that the Audit Division conduct a special audit when there is personnel turnover or if they have reason to suspect problems. The Audit Division is also responsible for performing audits whenever a court changes its clerk of court.

## **1. Outside Relations**

### **1. The Media**

Unlike the U.S. Supreme Court and some state courts, federal district courts do not have their own press or public information offices. The court can do several things to assist the media. However, the court must not appear to seek favorable publicity about judges' decisions.

The clerk typically handles routine contact with the press. There is some merit in designating an individual—the clerk or a person on the clerk's staff—as the court's focal point for all contact between journalists and judges or other court officials. That person must be made aware of those areas the judiciary views as inappropriate for comment.

The court may also consider preparing press announcements on non-case subjects. There is potential media and public interest in such topics as appointment of new personnel, elevation of the chief district judge, or institution of a new case-processing procedure.

#### **a. Cameras in the court**

In 1991, the Judicial Conference authorized a three-year experiment allowing media cameras in the courtrooms of selected appellate and district courts for the coverage of civil proceedings (JCUS Report, Sept. 1988, at 83). (Federal Rule of Criminal Procedure 53 prohibits the broadcasting of criminal proceedings.) The experiment began on July 1, 1991, and is scheduled to conclude on June 30, 1994. Two courts of appeals and six district courts are participating. The experiment will permit—but not require—photographing, recording, and broadcasting of certain civil proceedings. The Conference has ap-

proved guidelines for the pilot courts, which provide the presiding judge with discretion to refuse, limit, or terminate media coverage for any reason "considered necessary or appropriate" (JCUS Report, Sept. 1990, at 104).

## **2. The Bar**

### **a. Admission**

The court has considerable discretion as to the mechanics of admitting attorneys to its bar. Using mail-in procedures and setting definite times for swearing-in ceremonies (if any) can simplify the process.

### **b. Disciplinary action**

The Judicial Conference approved the Model Rules of Disciplinary Enforcement of the American Bar Association (ABA) in 1978, and amendments in 1979 and 1984 (JCUS Report, Sept. 1984, at 52; Mar. 1979, at 7; Sept. 1978, at 42-43). These rules provide, *inter alia*, for courts to inform the ABA National Discipline Data Bank of their disciplinary actions so that all courts will have access to information on disciplinary action taken by any court against an attorney.

In March 1984, the Judicial Conference expressed concern that some district and appellate courts had not adopted the ABA Model Rules, preferring to rely on their own procedures for attorney discipline. These procedures typically do not include the national reporting requirements of the Model Rules. The Conference urged all courts to adopt the Model Rules "unless current rules for disciplinary proceedings are objectively more effective and efficient for the implementation of attorney discipline," and it stressed the necessity of reporting all disciplinary actions to "all licensing authorities with jurisdiction over the attorney or attorneys disciplined" (JCUS Report, Mar. 1984, at 9-10).

In communicating the latest amended version of the rules to all chief circuit and district judges on February 4, 1985, the chairman of the Judicial Conference's (then) Court Administration Committee

stated that federal efforts toward the goal of proper enforcement of attorney discipline had fallen far short, and added:

On behalf of the Conference, I urge you to adopt the Model Rules, utilize the form affidavit to ascertain attorney licenses, and otherwise make every effort to ensure that the public will be protected from unscrupulous practitioners. I hope that formal action by the Judicial Conference to implement their policy will not prove necessary.

### c. Services

The chief district judge is typically the initial contact between the court and members of the bar with regard to court services to lawyers. The Administrative Office has consistently held that attorney admission fees collected by the court in excess of the Judicial Conference minimum may be used to provide and equip lounge facilities for attorneys. Some courts also use these funds to compensate court-appointed attorneys for expenses that may not be paid from Criminal Justice Act appropriations. Courts have sponsored educational programs for members of the bar, a concept endorsed by the Conference on the basis of a report of its Committee to Consider Standards for Admission to Practice in the Federal Courts. The Conference recommends that district courts "support continuing legal education programs on trial advocacy and federal practice subjects and encourage the practicing bar to attend" (JCUS Report, Sept. 1979, at 105).

## 3. The Public

The court should also have procedures in place for dealing with the public and special groups. Two Federal Judicial Center publications available from the Administrative Office—a booklet, *Federal Courts and What They Do*, and a brochure, *Welcome to the Federal Courts*—help federal courts explain their function and introduce visitors to the courthouse.

The chief district judge will be called upon to represent the court at various public events and official ceremonies, such as naturalization, and most chief district judges receive more speaking invitations than other judges do from bar groups and civic groups.

## **VII. The Chief District Judge and Case Management: Responsibilities and Options**

The chief district judge plays a role in an array of decisions affecting the district court's disposition of cases. Each district must decide, for example, what type of case assignment system to use and when to seek additional judicial assistance. It must also devise procedures for activities such as juror selection and court reporting. The chief district judge may also deal with whatever individual or systemic problems arise. However, in recent years, the circuit judicial councils and chief circuit judges have played a more active problem-solving role. The chief district judges, meanwhile, have increasingly concerned themselves with ensuring an effective case management system, particularly in light of the Speedy Trial Act deadlines and more recent legislative requirements for civil justice expense and delay reduction planning and advisory groups.

### **A. Chief District Judge's Caseload**

The chief district judge must decide whether to take a reduced caseload. A 1980 Federal Judicial Center study on the administration of the 15 district courts with 10 or more judgeships reported that chief district judges spent from 10% to 80% of their time on non-case responsibilities. Only four of the chief district judges carried a full caseload and participated in the normal random case assignment system.<sup>55</sup> Some chief district judges are reluctant to reduce their caseloads, either because they fear giving the appearance that they are shirking responsibilities that will devolve on other busy judges or because they regard trying cases as the essence of a judgeship and thus a full caseload as their primary obligation. However, to create the conditions under which all judges can meet their responsibilities, it is necessary for the chief district judge to give proper attention to a court's systemic administrative needs. The conventional view, at least

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55. Philip L. Dubois, *Administrative Structures in Large District Courts* 14 (Federal Judicial Center 1981).

in larger courts, is that a chief district judge should not carry a full caseload.

There are numerous ways for chief district judges to reduce their caseloads. They can take only criminal cases or only civil cases, or take a reduced percentage of case assignments—civil, criminal, or both. They can take responsibility for only particular types of cases or matters, such as pre-indictment motions or grand jury instructions. However, reassignment of present cases is inefficient and impedes an effective case management system.

Regardless of any caseload reduction, certain kinds of cases may be especially important for the chief district judge to take. For example, the court might make an exception to the random case assignment system in order to assign to the chief district judge cases filed by repeat litigators. Congress has assigned one type of case to chief district judges: judgments rendered on settlements accepted by the Attorney General in veterans' suits over life insurance (38 U.S.C. § 1984(i)).

## **B. Case Assignments**

Pursuant to statute, the district court is charged with designing rules or orders that specify how cases will be assigned to the individual district judges. The chief district judge is "responsible for the observance of such rules and orders, and shall divide the business and assign the cases so far as such rules and orders do not otherwise prescribe" (28 U.S.C. § 137). The chief district judge or the court sometimes delegates this responsibility to the most senior active judge in a division or place of holding court for cases filed in that location.

### **1. Random Assignment**

Most district courts use some random case assignment system. There are various devices for ensuring that cases are indeed assigned randomly, ranging from sealed envelopes to marbles in a bin. An automated system is available from the Court Information Systems Branch of the Administrative Office's Office of Automation and Technology. The automated system works for both district and bankruptcy courts. Random case assignment guards against the appearance that particular cases have been channeled to judges inclined

to favor a particular disposition of the case. Random assignment is typically accompanied by the individual calendar system, whereby a case is the responsibility of one judge from assignment through disposition.

Random case assignment can produce unequal workloads that threaten the court's ability to serve litigants fairly. Such situations may call for intervention by the chief district judge. Working with the clerk of court, the chief district judge—or a judge delegated the task—should monitor the effects of the court's random case assignment system by routinely examining caseload statistics. Imbalances in pending caseloads can be resolved informally by encouraging judges to help one another or by shifting cases from one judge's calendar to another's. Care should be taken to ensure that shifting cases does not penalize judges who manage their caseloads more efficiently. Chief district judges can also ensure that new judges do not receive a disproportionate number of those cases that other judges simply do not want to handle. Some courts have established "calendar committees" to relieve the chief district judge of the day-to-day responsibility for dealing with such matters as recusals or the need to reduce a particular judge's case assignments.

## **2. Protracted, Difficult, or Unusual Cases**

Frivolous or repetitive litigation (frequently pro se) may become a serious enough problem to warrant the chief district judge's intervention. A litigant who files repeated cases generally viewed as meritless should be regarded as a court problem rather than simply a problem of the judge who happens to receive the case. The burden on the court can be alleviated in two ways. First, all cases from the litigant can be assigned to the judge who received the litigant's first case. This approach provides some means of monitoring issues that the court has already dismissed, but it has the potential of unduly burdening a single judge. Second, the court or the appropriate committee can order the clerk of court to accept no more pleadings from the litigant without the approval of the chief district judge or other designated judge. This approach focuses responsibility and relieves most of the court of the burden of dealing with the problem. A dan-

ger to be guarded against with either approach is that the judge who continually sees the same type of litigation may become inured to the point of having difficulty recognizing the infrequent meritorious claim that might be filed.

Chief district judges should be aware that in October 1971, the Judicial Conference adopted the "Bar Harbor Resolution" for the purpose of "assuring that cases likely to be protracted, difficult, or unusual are not allowed to pend for periods more lengthy than that required for so-called routine cases." The recommended means to that end is increased involvement of the chief district judge or the court in screening cases and assigning those likely to present problems "to judges most available to assure orderly and prompt disposition under existing statutes and rules of procedure" (see JCUS Report, Oct. 1971, at 71-74). In November 1984, the Chief Justice sent a copy of the resolution to all district judges. However, the resolution has rarely been followed.

### **3. Cases Under Civil Priority Statutes**

Some of the so-called civil priority statutes create special case assignment duties for chief district judges. For example, if neither the defendant nor the Attorney General asks for a three-judge panel in a voting rights case, or if the Attorney General certifies a public accommodations case or employment discrimination case as one of "general public importance" yet does not request a three-judge panel, the chief district judge is "to designate a judge" in the district to hear the case on an expedited basis. If no judge in the district is available, the chief district judge is to ask the chief circuit judge to assign a judge (either district or circuit) to the district to hear the case. (See 42 U.S.C. § 1971(g) (voting rights); 42 U.S.C. § 2000a-5(b) (public accommodations); 42 U.S.C. § 2000e-16(a) (employment discrimination<sup>56</sup>).) Likewise, the chief district judge is to order expedited treatment for civil RICO cases that are certified by the Attorney General to be of "general public importance" (18 U.S.C. § 1966). The

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56. In some districts, magistrate judges often hear these "expedited EEO cases."

chief district judge is also to advise the chief circuit judge when the Federal Trade Commission or Department of Justice seeks an injunction in connection with pre-merger notification and waiting periods requirements, so that the chief circuit judge can appoint a district judge to hear the request (15 U.S.C. § 18a(f)).

## **C. Use of Judges Other Than Those in Regular Service in the District**

A district court may call upon judges other than its complement of active judges and magistrate judges to help process cases on a regular or special basis. Assistance is usually available from a district court's own senior judges. In addition, as noted *supra* in Chapter 2, section B, Congress has authorized temporary intracircuit and inter-circuit assignments to relieve backlogs or handle particularly sensitive cases that the judges in a district are disqualified from hearing (28 U.S.C. §§ 291, 292). Although rarely used, there is also a statutory provision for emergency assignment of magistrate judges (*see supra* Chapter 5, section A).

### **1. Chief District Judge's Role**

Procedures for intracircuit and intercircuit assignments differ. Although the chief circuit judge certifies the need for outside assistance, as a practical matter a chief district judge may initiate such requests. By statute, the Chief Justice may assign active district judges to serve temporarily on a district or circuit court of another circuit, upon a chief district judge's presentation of a certification of necessity (28 U.S.C. § 292(d)). The chief circuit judge is authorized to designate circuit or district judges to serve temporarily on another district court within the circuit (28 U.S.C. §§ 291(b), 292(b)). In some circuits, council committees or the circuit executive (in emergencies) makes assignments on behalf of the chief district judge.

### **2. Standards for Temporary Assignments**

#### **a. Intracircuit assignments**

Chief circuit judges vary considerably in their willingness to authorize intracircuit assignments. In general, standards are growing



stricter, and there is resistance to making assignments desired for the personal convenience of the visiting judge.

**b. Intercircuit assignments**

The Judicial Conference Committee on Intercircuit Assignments assists the Chief Justice in making temporary assignments. The committee develops guidelines in consultation with the Chief Justice to provide direction to the committee and the courts when they are seeking additional judges. The current guidelines (adopted in 1986 and amended in 1988—see JCUS Report, Mar. 1989, at 18–19; Mar. 1987, at 23–25) provide that circuits lending active judges cannot borrow judges from other circuits, and those borrowing active judges cannot lend judges. However, the “lender/borrower” rule may be relaxed with respect to senior judges, provided the chief district judge of the lending circuit is consulted to ensure that the needs of that circuit are met first. A judge assigned to work on the appellate court should serve for at least one regular sitting on the circuit to which he or she is assigned. A judge assigned to work on the general calendar of a district court should serve at least two weeks. The chief circuit judge must consent to the assignment of an active judge from his or her circuit, but senior judges can consent to their own assignment.

The Judicial Conference has also promulgated guidelines governing intercircuit assignments of bankruptcy judges as authorized by 28 U.S.C. § 155(a). The guidelines require the approval of the circuit judicial councils involved (JCUS Report, Sept. 1988, at 59–60).

**3. Responsibilities to Visiting Judges: Accommodations, Staff, Trial-Ready Docket**

When a visiting judge is assigned, the district court, and ultimately the chief district judge, has several major responsibilities. These responsibilities fall immediately to the clerk of court. However, when a division in a multidivision court is to receive visiting judges, the responsibilities should be specifically assigned to personnel in that division.

Visiting judges and their staff are due various amenities, such as suitable hotel accommodations, adequate chambers and courtroom arrangements, and support staff when needed. Judicial Conference

guidelines allow a judge on assignment to bring up to two staff members; the host court is expected to furnish any additional staff. Whenever possible, the host court should ensure that a courtroom deputy and other support services are available. The host court should also make sure that the visiting judge's cases are ready for trial, a task that is frequently overlooked. Some courts use a "visiting judge's checklist" to guide clerk's office personnel in reviewing each case to be certain that a pretrial conference has been held and no motions are undecided when the judge arrives. The visiting judge should receive a copy of the complaint and response (or the indictment), any pretrial orders, and other necessary papers. A telephone discussion with the judge can ensure that everything needed is available.

It is important for the clerk to schedule cases to accommodate the judge's visit and then to advise attorneys of the trial dates. In one court, for example, all trials assigned to a visiting judge are scheduled for the first Monday of a two-week visit.<sup>57</sup>

#### **D. Places and Times of Holding Court**

District courts, divisions of the court in some districts, and places of holding court are prescribed in 28 U.S.C. §§ 81-131. Under 28 U.S.C. § 141, a special session of court is authorized. Although Congress has abolished "formal terms" of court (28 U.S.C. § 138), in practice many courts continue to honor the concept, especially in districts with more divisions than judges. As a result, judges must specify when they will be available at the various divisions. The court is to determine the times of holding court, and a court may pretermitt a court session with circuit judicial council approval (28 U.S.C. §§ 138-140).

Occasional pressure to increase the number of places of holding court, perhaps to benefit the local bar or enhance the prestige of a community, led the Judicial Conference to adopt the position that

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57. Further suggestions regarding visiting judges are available in Donna Stienstra, *Visiting Judges in Federal District Courts* (Federal Judicial Center 1985).

Congress should establish new places of holding court only upon a strong showing of need, corroborated by data, and with the support of the chief district judge and circuit judicial council (JCUS Report, Apr. 1972, at 33). In accordance with standing Conference policy, first adopted in 1978, the Conference will not consider proposals to change the geographical and organizational configurations of federal judicial districts unless both the district court and circuit judicial council have approved the change and filed a brief report with the Committee on Court Administration and Case Management summarizing their reasons.

## **E. Local Rules**

### **1. Authority, Public Comment, and Distribution**

The chief district judge should oversee local rule making. Both Federal Rule of Civil Procedure 83 and Federal Rule of Criminal Procedure 57 authorize district courts, by majority action of their judges, to make and amend rules of practice not inconsistent with the federal rules. Rules 83 and 57 both specify that the making and amending of rules require public notice and comment. Likewise, 28 U.S.C. § 2071(b) requires "public notice and an opportunity for comment" before district courts can promulgate new rules.

Congress has directed courts of appeals and district courts to appoint advisory rules committees to study their rules of practice and internal operating procedures, and to make appropriate recommendations (28 U.S.C. § 2077(b)). However, a court may not want to have its administrative decisions held hostage to the potentially lengthy delay for publication and notice that are appropriate for rules specifying local practice. Instead, the court can restrict its local rules to practice issues and memorialize its administrative decisions in internal operating procedures or general orders (*see supra* Chapter 4, section B).

Local rules take effect when the district court directs and remain in effect unless the court amends them or the circuit judicial council abrogates them. Circuit judicial councils are authorized to modify or abrogate local rules by the Federal Rules of Civil and Criminal

Procedure. They are also authorized to do so by a 1988 amendment to 28 U.S.C. § 332 requiring each circuit judicial council to periodically review local rules for consistency with the Federal Rules of Procedure and Evidence prescribed by the Supreme Court. This amendment, part of the Judicial Improvements and Access to Justice Act, 102 Stat. 4651, subjects all local rule making by district courts to scrutiny by circuit judicial councils.

Federal Rule of Civil Procedure 83 and Federal Rule of Criminal Procedure 57 further direct that copies of local rules be furnished to the circuit judicial council and the Administrative Office. Copies of the rules and internal operating procedures should also be sent to the Information Services Office of the Federal Judicial Center. Rules 83 and 57 further specify that local rules are to be made available to the public. Some appellate courts are making rules available to the public through electronic bulletins. In March 1985, the Judicial Conference authorized an amendment to the miscellaneous-fee schedules, promulgated pursuant to 28 U.S.C. §§ 1914 and 1930, to allow the courts to either charge fees for copies of the local rules or distribute them free of charge (JCUS Report, Mar. 1985, at 8-9).

A court might also consider providing its rules to the bar in loose-leaf or bound format. The Judicial Conference has urged each district court to adopt a uniform numbering system for its local rules, patterned on the Federal Rules of Civil Procedure, to help the local bar locate rules applicable to a particular subject and to ease the incorporation of new local rules into indexing and computer services such as Westlaw and LEXIS (JCUS Report, Mar. 1988, at 103).

## **2. Purpose**

The use, and even the existence, of local rules has long been the subject of controversy, as has judicial rule making generally. District courts, and especially chief district judges, should consider the purposes their local rules are to serve and the appropriate processes for their adoption, modification, and distribution to the bar.

Local rules generally should specify how lawyers and the court are expected to behave. In addition, a handbook for attorneys explaining court procedures, and perhaps significant variations in the practices

of the court's individual judges and magistrate judges, can assist attorneys in filing and preparing cases and thus reduce the number of questions they put to the clerk's office.

If the court adopts rules laying out what is expected of lawyers and the court, it should consider whether tangential matters, such as the court's assignment system or the duties of the clerk of court, should also be prescribed in the rules. Such rules enable attorneys to challenge particular assignments if they are inconsistent with the court's practice. In adopting such rules, courts should consult with the bar, in addition to providing the statutorily required "appropriate public notice and opportunity for comment." A preferable alternative is to publish descriptions of the court's administrative policies as internal operating procedures or general orders, thus avoiding the need for public notice and comment (*see supra* Chapter 4, section B).

## **F. Speedy Trial Act**

The Speedy Trial Act of 1974, as amended (18 U.S.C. §§ 3161–3174), requires each district court to implement a plan describing the court's goals and performance under the Act. The statute contemplates an active role for the chief district judge in preparing and approving the plan, and more important, in seeking suspensions of the Act's time limits under 18 U.S.C. § 3174.

### **1. Planning Process**

The statute mandates that a planning group prepare and update a speedy trial plan for each district. The planning group is to consist, "at minimum," of the chief district judge, a magistrate judge (if the chief district judge designates one), the U.S. attorney, the clerk of court, the chief probation officer, the federal public defender (if any), two private attorneys (one experienced in criminal defense litigation and one in civil litigation), and a criminal justice expert to act as reporter (18 U.S.C. § 3168). Each district's plan must be approved by a circuit-level review panel consisting of the circuit judicial council and the chief district judge or his or her designee. Upon approval, the plan is forwarded to the Administrative Office.

## **2. Suspensions**

Judicial emergencies and suspensions of the Act's time limits are of immediate concern to the chief district judge. Although used sparingly, 18 U.S.C. § 3174(a) authorizes the chief district judge, "after seeking the recommendations of the planning group," to apply to the circuit judicial council for a suspension of up to a year of the Act's time limits for commencement of trial (18 U.S.C. § 3161(c)). Under 18 U.S.C. § 3174(e), the chief district judge may also order a 30-day suspension, but a request for a longer suspension pursuant to subsection (a) must be filed with the council within 10 days.

## **G. Civil Justice Reform Act**

The Civil Justice Reform Act of 1990, 28 U.S.C. §§ 471-482, directs each district to have an advisory group, appointed by the chief judge, on civil justice delay and expense reduction. Each advisory group is to report its recommendations in time to allow the district court to implement a plan for civil justice delay and expense reduction by the end of 1993 (some courts had to submit plans by the end of 1991, either mandatorily as "pilot districts" or optionally as "early implementation districts").<sup>58</sup> The district court is to review its plan annually in consultation with its advisory group. Section 474(a) of the Act directs a circuit-wide committee of the chief circuit judge and chief district judges (or their designees) to review the plans and reports for districts in the circuit and suggest changes. Section 474(b) directs the Judicial Conference to review the plans, and the Conference may request that the district court take additional action to respond to the conditions of the civil or criminal docket or to the advisory group's recommendations. The statute also directs the

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58. The Judicial Conference must submit a report to the Senate and House Committees on the Judiciary, assessing the results from the pilot districts no later than December 31, 1995. The report must include a recommendation as to whether some or all districts should include in their delay and expense reduction plans the six guidelines identified in 28 U.S.C. § 473(a). If the Conference recommends inclusion of the guidelines, it shall prescribe rules implementing such; if the Conference does not recommend inclusion of the guidelines, it shall identify alternative, more effective cost and delay reduction programs that should be implemented.

courts, in consultation with the advisory groups, to assess their dockets annually to determine whether additional actions should be taken to reduce litigation cost and delay (28 U.S.C. § 475). The Act is in effect until December 1, 1997.

## **H. Jury Matters**

### **1. Random Selection**

Under 28 U.S.C. § 1863, each district court is required “to devise and place into operation a written plan for random selection of grand and petit jurors that shall be designed to achieve the objectives of sections 1861 and 1862 of this title”; those sections state the federal policies favoring randomness and opposing discrimination in jury selection. As in the Speedy Trial Act plan, a circuit-level panel consisting of the circuit judicial council and the chief district judge or a designee must approve the juror selection plan before it can be put into operation.

The statute sets out the basic procedures and criteria that the court must use to select jurors randomly. Among other things, it authorizes either the clerk or a jury commission to manage the selection process and directs the clerk or commission to “act under the supervision and control of the chief judge of the district court or such other judge of the district court as the plan may provide” (28 U.S.C. § 1863(b)(1)). The statute directs the chief district judge (or another judge if the court’s plan so provides) to determine whether prospective jurors are qualified, exempt, or to be excused from jury service (28 U.S.C. § 1865(a)).

### **2. Reports and Analyses**

Section 1863(a) of Title 28 of the United States Code calls on each court to submit a report on its jury selection process to the Administrative Office “in such form and at such times as the Judicial Conference of the United States may specify.” The report is to analyze the district’s jury selection practices in light of its demographic composition.

Since 1982, the Judicial Conference, pursuant to its authority just quoted, has relieved the courts of their previous obligation to submit

these reports to the Administrative Office and has indicated that the clerk of court or a designee should perform the statistical analysis to evaluate the randomness of the district's selection procedures (JCUS Report, Sept. 1982, at 114). This analysis involves taking a statistical sampling of the jury wheel and comparing the sample with data on the relevant general population. The Administrative Office suggests that the sample be taken six months after the jury wheel is refilled (as specified in the jury plan) and that, unless the chief district judge directs otherwise, the results of the comparison be made available to the court within three months after that (*see* Guide, vol. 11, ch. 4).

### **3. Juror Utilization**

Techniques to improve juror utilization are generally known to judges, but use of these techniques often requires the chief district judge's exhortation. Inefficient juror utilization reflects on the court as a whole and is not likely to be attributed only to those judges who are responsible for the high level of non-service. The Judicial Conference has established a national goal of limiting to 30% those jurors not selected, serving, or challenged (JCUS Report, Sept. 1984, at 88).

The appropriate length of a term of jury service is an important policy matter for each court to decide when developing its jury plan. However, the length of the term must be consistent with the Jury Selection and Service Act's provision that, unless an exception applies, a person shall not have to attend court or serve as a juror for more than 30 days in a two-year period (28 U.S.C. § 1866(e)). The Judicial Conference recommends that all district courts adopt a term of petit jury service of no more than two months, or a shorter term if local circumstances permit (JCUS Report, Sept. 1986, at 91).

Technical assistance in improving a court's juror utilization record is available from the Court Administration Division of the Administrative Office. In addition, the Federal Judicial Center's *Handbook on Jury Use in the Federal District Courts* (1989) discusses basic concepts related to administering federal juries. The handbook also reviews statutory requirements, Judicial Conference policies, and various juror utilization procedures used in the district courts.



Although it is intended primarily for staff, district judges may find the handbook useful. The Center's manual, *Jury Selection Procedures in United States District Courts* (1982), describes how six federal district judges conduct voir dire and handle juror challenges. The Administrative Office's annual report, *Grand and Petit Juror Service in United States District Courts*, may also prove informative.

#### **4. Juror Orientation**

A court may want to make the chief district judge responsible for ensuring that citizens called to the court for jury service receive necessary orientation to their roles and obligations. Although the clerk of court can provide this orientation, jurors' perceptions of the importance of their task are likely to be enhanced if the jurors have exposure to a judge. The chief district judge may want to greet a new panel briefly before having the clerk of court explain the details of its assignment.

In districts in which jury pools are assembled in various court divisions, it is obviously impossible for the chief district judge to greet all jurors in person. Indeed, this task may be overly burdensome for the chief district judge even at the headquarters location. A videotaped greeting from the chief district judge is an attractive substitute and has the advantage of ensuring consistency in the greeting throughout the district. Some courts have video cameras that can be used to produce such a videotaped greeting. An alternative is for the chief district judge to arrange to videotape a jury orientation at the Federal Judicial Center. The Center's Washington, D.C., studios have the technical resources to produce and edit a professional-quality tape and can provide duplicates to the court for use in all its divisions.

Additional resources the court can use with any orientation are two media programs: *The Federal Grand Jury: The People's Panel* (1985) and a program on petit juries, *And Justice for All* (1976). Both of these programs are recommended by the Judicial Conference. Courts that want to preview the programs may request copies from the Administrative Office's Court Administration Division or the Federal Judicial Center's Information Services Office, and those electing to

use the programs on a permanent basis may edit out portions. Additional copies of the film *And Justice for All* can be obtained from Post Script, 34034 Eight Mile Road, Suite 100, Farmington Hills, Michigan 48335-5206. Attn: Shelby Newhouse (telephone: (313) 477-6812). This film is also available in VHS format for playing on video-cassette recorders.

Two handbooks prepared by the Administrative Office under the supervision of the Judicial Conference contain important information relevant to juror orientation. The *Handbook for Jurors Serving in the United States District Courts* and the *Handbook for Federal Grand Jurors* are available, free of charge, from the GSA National Forms Center in Fort Worth, Texas. To order copies, see Guide, Forms Catalog, Form AO ISF.

## **5. Grand Juries**

Although most of a court's energies are commonly directed toward effective utilization of petit juries, district courts should not overlook their responsibility to ensure that U.S. attorneys make effective use of grand juries as well. The chief district judge may want the clerk of court to investigate how many grand juries are currently impaneled, how frequently they meet, how much time they spend in active session, and whether the court has impaneled more juries than necessary (perhaps because of lack of coordination with the U.S. Attorney's Office).

### **a. Special grand juries**

All districts with more than 4 million people must summon a special grand jury at least once every 18 months, unless another special grand jury is then serving (18 U.S.C. § 3331 (a)). In smaller districts, the Attorney General may request that a chief district judge impanel a special grand jury.

### **b. Instructions**

In some districts, instructing the grand jury is a function traditionally assumed by the chief district judge. The Federal Judicial Center's *Bench Book for United States District Court Judges*, section 3.02,

includes grand jury instructions approved by the Judicial Conference in 1986 (JCUS Report, Mar. 1986, at 33).

## **I. Circuit Judicial Councils and Case-Flow Management**

Statutory provisions authorize circuit judicial council oversight of case-flow management and intervention in poorly administered district courts. The councils' statutory charter holds that "regular business of the courts need not be referred to the council" except when "an impediment to the administration of justice is involved" (28 U.S.C. § 332(d)(3)). However, the statute also provides a circuit judicial council with the blanket mandate to "make all necessary and appropriate orders for the effective and expeditious administration of justice within its circuit" (28 U.S.C. § 332(d)(1)), and directs "[a]ll judicial officers and employees of the circuit . . . [to] promptly carry into effect all orders of the judicial council" (28 U.S.C. § 332(d)(2)). The Judicial Conference has emphasized this role of the circuit judicial councils on several occasions, most recently in 1985 (JCUS Report, Mar. 1985, at 11-12).

The circuit judicial councils are provided with all important data involving district court dockets. Administrative Office statistical reports are first received by the chief circuit judge, who in turn submits them to the councils for "such action thereon as may be necessary" (28 U.S.C. § 332(c)). The Administrative Office must "prepare and transmit semiannually to the chief judges of the circuits, statistical data and reports as to the business of the courts" (28 U.S.C. § 604(a)(2)). Pursuant to this charge, the Administrative Office distributes its *Federal Judicial Workload Statistics* (see *supra* Chapter 2, section C). The data and reports, along with the director's recommendations, are "public documents" also submitted to the Judicial Conference, the Attorney General, and Congress (28 U.S.C. § 604(a)(2)-(4)).

Semiannual reports prepared in accordance with 28 U.S.C. § 476 are of more direct value as case management and oversight tools. These reports show, for each judge and magistrate judge, lists of motions pending for more than six months, bench trials submitted for more than six months, and civil cases pending for more than three

years (JCUS Report, Sept. 1991, at 45–46). The Executive Committee of the Judicial Conference has adopted uniform standards for determining when cases and motions are subject to the reporting requirements. Any questions regarding reporting requirements should be addressed to the Administrative Office's Statistics Division.

Bankruptcy judges also submit quarterly information on their cases and motions (including adversary proceedings) under advisement for more than 60 days. This information is submitted to the circuit executive, who prepares a consolidated report for submission to the council, the chief district judges, and the Administrative Office.

Management reviews are available from the Administrative Office and may be particularly useful to new chief district judges. A management review can involve all of the court's functions, or only one aspect of the court, such as automation or chambers management.

## **1. Chief District Judges and Case Delay<sup>59</sup>**

The sources just discussed help keep chief district judges abreast of case-flow problems. Although there are no statutory provisions directing chief district judges to deal with delayed civil cases<sup>60</sup> on other judges' calendars, many chief district judges regard this as one of their responsibilities.

The first step the chief district judge should take is to identify the extent and cause of delay. This begins with analysis of the case management data, but more is required than simply perusing statistical reports. It is important to discuss and analyze the reports at judges' meetings or in other forums.

There are several causes of delay. Some delay is a natural consequence of the particular litigation; for example, discovery in complex cases is often unavoidably time-consuming. Sometimes delay results from factors beyond the court's direct control, such as the impact on

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59. Parts of the analysis in this section are drawn from a presentation by Chief Judge Sam Pointer (N.D. Ala.) to the Federal Judicial Center's May 1992 Conference of Chief District Judges.

60. As a result of the Speedy Trial Act, delay in the federal courts is, for the most part, confined to civil cases.

the civil docket of more criminal filings, extended judicial vacancies, or related proceedings (e.g., civil proceedings that had to be stayed because the parties were also involved in criminal cases or related bankruptcy proceedings). When case delay results from factors largely beyond the court's control, the chief district judge should consider recording that situation in brief memoranda for reference in responding to inquiries from the circuit judicial council or the media.

However, delay sometimes results from poor case management or other factors within the court's or individual judge's control. Here are some court-wide changes that chief district judges have made or encouraged to help their courts deal with unacceptably large numbers of delayed cases:

- Giving judges time off from criminal cases to concentrate on delayed civil cases.
- Adjusting the civil assignment system when judges fall behind.
- Ensuring that old cases not be transferred to new judges.
- Making greater use of magistrate judges (including encouraging parties to consent to trials by magistrate judges).
- Making greater use of alternative dispute resolution techniques.
- Placing limits on trial length and discovery.
- Making better use of Federal Rules of Civil Procedure 42 (consolidation and bifurcation) and 56 (summary judgment).
- Requesting help from visiting judges.
- Encouraging senior judges to assist in caseload management.
- Making creative adaptations of calendaring systems as alternatives to the individual calendar system, including joint trial dockets and pairing of judges to assume trial assignments.
- Loaning to delayed judges the extra personnel chief district judges are entitled to.

On some occasions chief district judges should meet informally with judges who have high proportions of old cases. The circuit judicial council can also be of valuable assistance. A letter or telephone call from the chief circuit judge requesting an inquiry about a district judge's delinquent cases can provide the chief district judge with an opportunity to raise the issue with that judge.

In addition to all these measures to help alleviate delay, it is important that the chief district judge establish an expectation that judges take case management seriously and be committed to furthering the just, speedy, and economic resolution of their cases. Chief district judges should make a point of setting a good example in this regard.

## **Appendix: Nationally Prescribed Duties of Chief District Judges**

This appendix lists specific duties assigned to chief district judges by statute and identifies some major duties assigned by the Judicial Conference. It does not describe duties prescribed by circuit or local policies or pervasive but informal duties that some or all chief judges exercise. It also does not include references to chief judges in Administrative Office directives, because those references and directives take many different forms.

### **Bankruptcy Judges**

#### *Statutory*

The chief district judge is to designate a chief bankruptcy judge in a multi-judge bankruptcy court whenever a majority of the district judges are unable to agree on the designation. (28 U.S.C. § 154(b))

### **Case Assignment and Case Management**

#### *Statutory*

The chief district judge has precedence and is to preside at any court session he or she attends. (28 U.S.C. § 136(b))

The chief district judge is to implement the court's rules for case assignment and to divide the business of the court among the judges insofar as the court's rules and orders do not otherwise prescribe. (28 U.S.C. § 137)

The chief district judge (or a designee) is to serve with the chief circuit judge and all other chief district judges in the circuit on a committee that reviews plans and reports submitted pursuant to the Civil Justice Reform Act and makes suggestions for additions or modifications for reducing cost and delay in civil litigation. (28 U.S.C. § 474(a))

Various statutes, cited in the text, impose specific case assignment duties on the chief district judge with regard to particular types of priority civil cases.

#### *Nonstatutory*

The "Bar Harbor Resolution" contemplates that chief district judges will take steps to ensure that the case assignment system promotes

the effective disposition of protracted, difficult, or unusual cases. (JCUS Report, Oct. 1971, at 71)

### **Circuit Judicial Councils**

#### *Nonstatutory*

Chief district judges should be informed about and inform the other district judges when matters concerning the district are before the council. (JCUS Report, Mar. 1974, at 8)

### **Court Reporters**

#### *Statutory*

Chief district judges are to seek approval for temporary and contract court reporter assistance. (28 U.S.C. § 753(a), (g))

### **Court Security**

#### *Nonstatutory*

The chief district judge or a designee is to sit on the district's court security committee. (Jan. 1984 Administrative Office-Marshals Service agreement)

### **Juries (Petit and Grand)**

#### *Statutory*

The chief district judge or a designee is to sit on the panel that reviews the district court's jury plan. (28 U.S.C. § 1863(a))

The chief district judge or a designee is to supervise court personnel implementing the jury plan. (28 U.S.C. § 1863(b)(1))

The chief district judge (or another judge if the plan so provides) is to determine the validity of juror qualifications, exemptions, or excuses. (28 U.S.C. § 1865(a)-(b))

In districts of less than 4 million people and at the request of the Attorney General, the chief district judge is to impanel special grand juries. (18 U.S.C. § 3331(a))

### **Magistrate Judges**

#### *Statutory*

The chief district judge may appoint or reappoint magistrate judges if there is no concurrence among the other members of the court. (28 U.S.C. § 631(a))



When the parties request that a magistrate judge conduct a civil trial, the chief district judge must designate the magistrate judge if a majority of the district judges cannot concur. (28 U.S.C. § 636(c)(1))

The chief district judge must certify in accordance with circuit guidelines that no full-time magistrate judge is available when parties request that a part-time magistrate judge preside over a civil proceeding. (28 U.S.C. § 636(c)(1))

The respective chief district judges must agree to a temporary emergency assignment of a magistrate judge from one district to another. (28 U.S.C. § 636(f))

The chief district judge must consent to the recall of a retired magistrate judge. (28 U.S.C. § 636(h))

Chief district judges are to take such actions as the circuit judicial council considers appropriate in the case of a magistrate judge whose conduct becomes the object of an official circuit council committee investigation. (28 U.S.C. § 372(c)(6)(B)(i))

## **Places of Holding Court**

### *Nonstatutory*

The Judicial Conference position is that Congress should establish new places of holding court only upon a strong showing of need, corroborated by data, and with the support of the chief district judge and circuit council. (JCUS Report, Apr. 1972, at 33)

## **Speedy Trial Act**

### *Statutory*

The chief district judge is to participate in the adoption and review of the court's Speedy Trial Act plan and to initiate any requests for suspensions. (18 U.S.C. §§ 3165; 3168; 3174(a), (b), (e))

## **Supporting Personnel**

### *Statutory*

The chief district judge may appoint "any officer of [the] court" (e.g., clerk and chief probation officer) when a majority of the district court cannot agree on the appointment. (28 U.S.C. § 756)

Chief pretrial services officers are appointed by a panel consisting of the chief circuit and district judges and a magistrate judge, or their designees. (18 U.S.C. § 3152(c))

*Nonstatutory*

The chief district judge or a designee is to review the EEO coordinator's findings as to filed complaints of discrimination and preside over any necessary proceedings. (Judicial Conference Model Affirmative Action Plan, JCUS Report, Mar. 1980, at 5)

The chief district judge must concur in any declaration of a judicial emergency and a request based thereon, by a district judge, bankruptcy judge, or magistrate judge, to the circuit judicial council for additional temporary assistance. (JCUS Report, Mar. 1985, at 13)

Only chief circuit or district judges, or the Judicial Conference's Committee on Financial Disclosure, may request interpretations of the codes of conduct for clerks and deputy clerks of court and for probation or pretrial services officers. (JCUS Report, Sept. 1978, at 55)

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## **About the Federal Judicial Center**

The Center is the research and education arm of the federal judicial system. It was established by Congress in 1967 (28 U.S.C. §§ 620–629), on the recommendation of the Judicial Conference of the United States.

By statute, the Chief Justice of the United States chairs the Center's Board, which also includes the director of the Administrative Office of the U.S. Courts and six judges elected by the Judicial Conference.

The Court Education Division provides educational programs and services for non-judicial court personnel such as those in clerks' offices and probation and pretrial services offices.

The Judicial Education Division provides educational programs and services for judges. These include orientation seminars and special continuing education workshops.

The Planning & Technology Division supports the Center's education and research activities by developing, maintaining, and testing information processing and communications technology. The division also supports long-range planning activity in the Judicial Conference and the courts with research, including analysis of emerging technologies, and other services as requested.

The Publications & Media Division develops and produces educational audio and video programs and edits and coordinates the production of all Center publications, including research reports and studies, educational and training publications, reference manuals, and periodicals. The Center's Information Services Office, which maintains a specialized collection of materials on judicial administration, is located within this division.

The Research Division undertakes empirical and exploratory research on federal judicial processes, court management, and sentencing and its consequences, often at the request of the Judicial Conference and its committees, the courts themselves, or other groups in the federal system.

The Center's Federal Judicial History Office develops programs relating to the history of the judicial branch and assists courts with their own judicial history programs.

The Interjudicial Affairs Office serves as clearinghouse for the Center's work with state-federal judicial councils and coordinates programs for foreign judiciaries, including the Foreign Judicial Fellows Program.