

Deskbook for Chief Judges of U.S. District Courts

Third Edition

**Federal Judicial Center
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This Federal Judicial Center publication was undertaken in furtherance of the Center's statutory mission to develop and conduct education programs for the judicial branch. The views expressed are those of the authors and not necessarily those of the Federal Judicial Center.

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Foreword

This deskbook is one element of the Federal Judicial Center's efforts to assist chief judges in meeting the increasingly complex challenges of leading their district courts. It describes those challenges and the many statutes and administrative policies that affect district courts. It is likely to be of most immediate help to new chief judges and those judges about to assume the position. It should also be of use to other judges and court personnel who have responsibilities and interests in the administration of the district court—especially new judges not familiar with district court governance.

Even if you are a chief judge or a chief judge-to-be, we realize you probably won't read the deskbook from cover to cover but will use particular chapters and sections to help you deal with specific issues. Therefore, there is some overlap and extensive cross-references. The Detailed Table of Contents and the Index can help you identify portions of the deskbook most likely to have the information you need.

The deskbook contains two types of materials. Much of it summarizes numerous statutes and Judicial Conference policies and describes relevant resources and assistance available from the Center and the Administrative Office of the U.S. Courts. Other portions, in particular Chapter II, provide suggestions to consider as you approach your role as chief judge and as you confront particular matters. These suggestions are based on comments from experienced chief judges as well as literature about the management of public and private organizations.

The Center published the first edition of this deskbook in 1984. Center staff members John Cooke, Kay Loveland, Jennifer Evans Marsh, Michael Siegel, Sylvan Sobel, Donna Stienstra, Elizabeth Wiggins, Thomas Willging, and Russell Wheeler are the primary contributors to this third edition. Martha Kendall and Matt Sarago provided invaluable editorial and reference assistance in the preparation of this edition. The Center is grateful to the judges, court personnel, and Administrative Office staff members who read and commented on portions of the text.

Deskbook for Chief Judges of U.S. District Courts

Although the deskbook synthesizes policies affecting chief district judges, it does not itself represent policy of the Judicial Conference, the Administrative Office, or the Center, and should not be cited as such.

Fern M. Smith, Director
Federal Judicial Center

Abbreviations Used for Standard Sources

Guide—*Guide to Judiciary Policies and Procedures*. The Guide is a multivolume set provided to all judges by the Administrative Office of the U.S. Courts. It can be accessed on the J-Net.

JCUS Report—*Report of the Proceedings of the Judicial Conference of the United States*, which can be found on the J-Net. Previously, JCUS Reports were included in the *Annual Report of the Director*, which also contained *Activities of the Administrative Office of the U.S. Courts and Judicial Business of the U.S. Courts*.

J-Net—the Administrative Office's Web site on the courts' national intranet. The J-Net is accessible to judges and other computer users in the federal courts via the Data Communications Network (DCN). The Federal Judicial Center also maintains a Web site on the courts' intranet at <http://jnet.fjc.dcn>.

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.

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

A. *Evolution of the Office*

The title and concept of chief judge of the U.S. district court did not come into existence until well into the twentieth century. During the first half of the century, many district courts consisted of a single judge. The judge on a multijudge court who was senior in service was called the *senior district judge* and performed whatever administrative tasks were needed. In 1948, as part of the recodification of Title 28, Congress replaced the term *senior district judge* with *chief judge*, “in view of the great increase of administrative duties of such judges.”¹ Since then, Congress has barely altered the office’s structure. It has passed laws governing who is eligible to become a chief judge (discussed in section I.B, *infra*) but has left the details of administration to the judiciary.

Although this statutory framework has not changed, the size of the district courts and the tasks of managing them have increased steadily since then. Today, there are essentially no single-judge districts, and it is not uncommon for a district to have ten or more judgeships. The number of court staff—clerk’s office employees, probation and pretrial services officers, pro se and death penalty law clerks—has also grown. Court budgets have expanded, and reliance on information technology has increased. In response to these trends and to the courts’ needs to manage their operations more efficiently, the director of the Administrative Office has delegated substantial operational authority to the courts. All of these factors, coupled with district judges’ membership on the Judicial Conference and circuit judicial councils, have transformed the office of chief district judge.

1. 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. 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).

B. Qualifications and Term of Office

Section 136 of Title 28 provides that a vacancy in the office of chief district judge is filled by the judge in regular active service who (1) is senior in commission, (2) is under the age of sixty-five, (3) has served at least a year as district judge, and (4) has not previously served 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, except when there is a delay until another judge becomes eligible. No judge may serve as chief judge beyond the age of seventy, unless no other judge is eligible to become or act as chief judge.

Whether seniority is the best method for choosing chief judges has been debated from time to time.² The Long Range Plan for the Federal Courts adopted by the Judicial Conference in 1995 reiterates that chief judges of the district and appellate courts "should continue to be selected on the basis of seniority subject to statutory limitations on age and tenure." The commentary to this provision, however, calls for study of possible alternatives and for providing training and technical assistance to chief judges to help them discharge their administrative responsibilities (Judicial Conference of the United States, Long Range Plan for the Federal Courts, Implementation Strategy 47b, at 81–82 (Dec. 1995)).

C. Declining the Office, Resignation, and Incapacity

District judges who do not wish to serve or to continue serving as chief judges but who want to retain their status as active judges may certify that fact to the Chief Justice (28 U.S.C. § 136(d)). The

2. See, e.g., Commission on Revision of the Federal Court Appellate System, Structure and Internal Procedures: Recommendations for Change, A Preliminary Report 108 (April 1975); Commission on Revision of the Federal Court Appellate System, Structure and Internal Procedures: Recommendations for Change 68 (June 1975). For the arguments for and against the seniority system, see Russell R. Wheeler & Gordon Bermant, *Federal Court Governance: Why Congress Should—and Why Congress Should Not—Create a Full-Time Executive Judge, Abolish the Judicial Conference, and Remove Circuit Judges from District Court Governance* 76 (Federal Judicial Center 1994).

position of chief judge then devolves pursuant to the statutory criteria. 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)).

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II. The Chief District Judge as Leader

This chapter provides an overview of the responsibilities that chief district judges generally exercise, the various constituencies with which they must deal, structures and practices of district court governance, and educational and staff assistance available to chief judges. It also summarizes some basic leadership and management techniques used by chief judges and by leaders in non-judicial public and private organizations. Chapter VI discusses many of the chief district judge's specific duties.

A. *Elements of the Leadership Role of the Chief District Judge*

1. Formal and Informal Sources of Authority

As a new chief judge, you may be surprised to learn that there is no single or simple statement of your authority and responsibility. (There is no equivalent to 28 U.S.C. § 154(b), which says, "The chief judge of the bankruptcy court shall insure that the rules of the bankruptcy court and of the district court are observed and that the business of the bankruptcy court is handled effectively and expeditiously.")

Many responsibilities devolve on you as the result of disparate statutory provisions, Judicial Conference policies, and delegations from the director of the Administrative Office. The Administrative Office's *Compendium of Chief Judge Authorities* (Judges Information Series no. 8, October 2002), available from the AO's Article III Judges Division, is an extensive catalog of such provisions and policies. Congress and the Judicial Conference have assigned many responsibilities to the district court (or its active judges), to the chief judge specifically, or to a court officer appointed or approved by the entire court. Some tasks that fall to chief district judges have no specific statutory or administrative underpinnings.

Despite this lack of clear-cut formal authority, 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 Administrative Office regulations. Some courts emphasize that all the district's judges have a collective responsibility for these functions, and they downplay any special executive role for the chief judge. But even if judges as a group share considerable management responsibility—collectively or through an executive committee—someone must coordinate their doing so. One judge is better able to integrate the court's activities than a group would be. Much information does not regularly reach all the judges. One person, working alone or through committees, must ultimately ensure that the court keeps the big picture in sight. Ordinarily, that is the chief judge.

2. Responsibilities

Your official and unofficial responsibilities fall into several basic categories.

a. Strategic leadership

As chief district judge, you are uniquely situated to lead the district court in determining the administrative policies and actions the court should initiate, continue, or discontinue. Courts have adopted a variety of structures and procedures for making policy decisions. Whatever form these take, the chief judge ordinarily plays a pivotal role in the development of court policy.

b. Court-management oversight

The chief judge, primarily through oversight of court unit executives, ensures that the court operates effectively. This responsibility includes making sure that laws, regulations, and court policies are followed, that the needs of court employees are properly addressed, and that administrative tasks are carried out. Many of your management and administrative functions are described in Chapter VI of this deskbook.

Chief judges attend to some oversight tasks personally and delegate some to other judges or to supporting personnel. You cannot delegate ultimate responsibility for these tasks, however. Even when statutes or rules assign tasks directly to other personnel or the court as a whole, if problems arise, other judges, court employees, and the public will look to you for solutions. Your oversight and stewardship

roles have taken on added significance in light of the specific financial, procurement, and personnel management authorities that the Administrative Office has delegated to district courts. The Administrative Office's *Management Oversight and Stewardship Handbook* (2001) provides guidance on these authorities. The handbook can be found on the J-Net.

c. Case-management oversight

Statutes and national procedural rules provide you with limited authority over the court's assignment of cases and even less authority over how other judges manage their dockets. You are, however, well positioned to monitor caseloads and trends and to identify problems—either systemic ones or those of individual judges. Dealing with problems of individual judges is discussed in section B.9 of this chapter, and case management, in Chapter VII.

d. Plans and reports

Statutes and Judicial Conference policy call for district courts—only rarely for chief judges, specifically—to file numerous reports and plans with the circuit judicial council, the Administrative Office, or other entities. You should ensure that required reports are timely filed, and you may choose to review some reports in order to monitor court business.

e. Requests and appeals to the circuit judicial council

District courts need circuit council approval of some actions, and councils may have to resolve differences between district judges that they cannot resolve themselves. The chief district judge usually serves as the contact with the circuit judicial council. Section IV.A.3, *infra*, provides further discussion of circuit judicial councils.

f. Sensitive issues of judicial performance

You may be the initial or only person consulted concerning the fact, or the allegation, of another judge's mental impairment, substance abuse, poor judicial temperament, or prejudicial or otherwise improper conduct. Circuit-level mechanisms exist for receiving and handling complaints, but not all issues of this sort need reach that level; you may be able to resolve some issues informally, perhaps working with the chief circuit judge. Sections II.B.9, IV.A.3.b, and

VI.A.1.d, *infra*, provide further discussion of how to deal with judicial performance.

g. Liaison with outside groups

The federal district court is of interest to numerous outside groups, such as bar associations, civic groups, federal and state agencies, law schools, and the press. The chief district judge is typically seen as the court's representative and focal point for dealing with such groups.

3. Relationship of the Chief Judge with Other Constituencies

A basic, but sometimes overlooked, aspect of leadership is a clear understanding of the various constituencies with which the leader must deal.³ Various groups affect, and are affected by, the district court's operations. First are those who set the rules and guidelines under which you must operate. This group consists of Congress; the Judicial Conference of the United States, which provides policies and guidance; and the Administrative Office, which promulgates regulations under the direction of the Judicial Conference; the General Services Administration; and the circuit judicial council. To change or deviate from these rules and guidelines normally requires authorization from one or more of these groups. In addition to establishing rules, these entities, as well as the Federal Judicial Center, can provide help in addressing issues and problems.

Your colleagues constitute another important group. They can be a source of advice and support. Other chiefs can be especially valuable as advisers and sounding boards. Other judges on your court are more than colleagues: They share a collective role in managing the court. How they exercise this collective role varies, depending on, among other things, the court's size, organization, and culture.

People and organizations outside the court have a great interest in the court. These groups include the public generally and the court's bar, bar associations, civic associations, state courts and

3. The discussion in this section is based in part on Richard N. Haass, *The Power to Persuade: How to Be Effective in Government, the Public Sector, or Any Unruly Organization* 1–2 (1994).

judges, state and local government agencies and officials, schools, and the media.

Those who work for the chief judge and the district court are an extremely important constituency. The court unit executives and the employees whom they supervise serve as valuable advisers to you and carry out the day-to-day execution of court policies.

Other parts of this deskbook describe these constituencies in greater detail. Section B of this chapter provides suggestions for dealing with some of them.

4. Structures and Practices of District Court Governance

A new chief district judge will inherit some existing policies and practices of court governance. Early on, assess these policies and practices to determine whether changes are needed, and, if so, how to implement them.

a. *Structures of district court governance*

A few courts leave most administrative oversight to the chief judge, but most use one or more of the following structures:

- standing or ad hoc committees of judges, each of which supervises the operation of an office (e.g., the clerk of court or probation office), project (e.g., building renovation or automation transition), policy (e.g., rules of court or public outreach), or functional area (e.g., budget, court security, Criminal Justice Act, or information technology);
 - liaison judges—individual judges who serve in much the same roles as the committees described above; and
 - an executive committee, consisting of the chief judge and other judges, to share general supervision and ensure that important information is shared with those who need it.
- Such committees are most often found in large courts.

Some courts involve senior judges and magistrate judges in such management structures, either as full partners or in a significant but lesser capacity.

b. *Relationship with the bankruptcy court*

The relationship of the district court with the bankruptcy court differs from that with other parts of the court. The bankruptcy

court's relative independence makes the personal relationships of the respective chief judges and the clerks of the two courts especially important. Section V.A, *infra*, discusses the administrative relationship of the district and bankruptcy courts.

c. Local administrative practices

Within the confines of national and circuit policies, district courts develop their own practices for administering personnel, acquiring equipment, ensuring security, assigning administrative responsibilities, and establishing other units and committees. These administrative practices need not be released to the public but should be recorded and made available to all court personnel. Local rules are usually not a good vehicle for documenting administrative practices, inasmuch as the Rules Enabling Act directs courts to submit their local rules for public notice and comment, and most aspects of the court's internal administration are not appropriate for public comment.

d. Internal reports and meetings

Many courts have systematic methods for collecting and sharing information about the court's units. In some courts, each court office prepares periodic reports describing the work accomplished and detailing present and projected needs and issues. In others, the chief judge, perhaps with other judges, has periodic meetings with the court unit executives and others (e.g., the U.S. marshal, the U.S. attorney, and the federal defender).

5. Preparation and Orientation for New Chief District Judges

a. Local programs

Continuity between the outgoing and incoming chief judges is important. The transition should begin about six months before the change. It is normally easier for the outgoing chief judge to initiate the transition process.

Steps for preparing the incoming chief judge may include ensuring that copies of all significant correspondence relating to the court are provided to the incoming chief; including the incoming chief in meetings relating to the court's business; informing (and, perhaps, consulting with) the incoming chief about key decisions;

having unit executives brief the incoming chief on key issues and initiatives; and having the incoming chief visit different courthouses and court units. Also, courts often assign the incoming chief to the court's executive committee or to a key management role.

A smooth transition is most likely when the current chief creates a system for familiarizing the new chief judge with the court, its key people, and major issues.

b. National programs

The Federal Judicial Center and the Administrative Office offer you various types of assistance before and after you become chief; this deskbook is but one example.

The Administrative Office invites each new chief judge, along with the court's clerk (or executive), to an orientation program on such matters as the chief judge's authority, budget and financial management, personnel issues, authorized judgeships and caseload data, and the services available to chief judges from the Administrative Office.

The Federal Judicial Center offers an annual three-day conference for all chief district judges. Incoming chief judges are invited to attend with the incumbent in the year preceding their assumption of the position. The Center offers other leadership programs for chief judges as well, some of which include unit executives. And in the Center videotape *Making the Transition: From District Judge to Chief District Judge*, experienced chief judges discuss issues and responsibilities a new chief judge should know about. The video is available from the Center's Information Services Office.

c. Additional staff

In courts with five or more judgeships, chief district judges are authorized to employ an additional secretary or law clerk to assist with the administrative workload. Whether or not you are entitled to hire an additional law clerk or secretary, you should consider how to allocate the additional work that will flow into your chambers. Some chief judges arrange for additional support within the clerk of court's office.

d. Caseload

The position of chief judge is time-consuming. In the words of one chief judge, it is “not a part-time job to be worked at only when judgeship duties permit.” Some chief judges set aside specific periods daily or weekly to devote to chief judge responsibilities.

Many chief judges take a reduced caseload. You should consider whether to do so, probably in consultation with the outgoing chief judge and with your colleagues. Section VII.E.1, *infra*, provides further discussion of the chief judge’s caseload.

B. Leadership and Management Skills and Techniques

Many judges become chief judge with no formal training and limited practical experience in leading and managing an organization. This section discusses some topics in which chief judges, especially new chief judges, often express interest. Other parts of the deskbook describe established structure and process—the agencies, rules, and practices in the judiciary that you should know about. Those parts are primarily about “what,” and occasionally “why.” The discussion in this section, based largely on reported experiences of chief judges and non-judicial leaders, suggests leadership principles and techniques that you may want to adopt. It is about “how.” The topics are not in order of importance; their importance will vary from judge to judge.

There is no “best way” to lead a court, or any organization, and no single set of guidelines on how to be a good leader. In addition to the advice in the rest of this chapter, other valuable sources of guidance and information include the *Management Oversight and Stewardship Handbook* (2001) published by the Administrative Office⁴; articles on leadership and management in the business sections of national newspapers and magazines; and books on management, some of which are listed in the bibliography.

4. On pages 4–8, the handbook lists six management oversight practices: delegate; set standards; establish effective governance mechanisms; encourage cooperation and open communication; establish a reporting and review process; and ensure that the court develops plans. The handbook is available on the J-Net.

1. Enhancing Collegial Leadership

In a collegial organization like a district court, colleagues share authority and responsibility to one degree or another. Your job is to use good faith consultations and, in many cases, joint decision making to produce effective outcomes.

There are various ways to keep your colleagues informed and involved. These methods vary with the size and geography of the court. They include holding scheduled meetings with a prepublished agenda; holding informal meetings regularly over lunch or coffee; systematically forwarding relevant correspondence from the circuit, the Administrative Office, the Federal Judicial Center, and similar sources; and sending e-mail updates on key matters. Involving other judges in court management, on committees or as single liaisons, helps keep others informed and interested in the court's administration.

Another tool for encouraging judges to be involved in court administration and for enhancing collegiality is a local orientation program for new judges that complements the orientation programs of the Federal Judicial Center and the Administrative Office. A local orientation program can introduce a new judge to his or her new duties and the practices and procedures followed in the court. It can also give the new judge a sense of appreciation and responsibility for the court as an institution and for the other judges and staff who work in it. Section VI.A.1.a, *infra*, provides further discussion of local orientation programs for new judges.

2. Building Relationships

Building relationships takes time, but it is a great investment. As the saying goes, "The best time to make friends is before you need them." Good relationships with members of all the court's constituencies are valuable, but the relationships with colleagues and court unit executives are especially important. Most likely, you already know your colleagues reasonably well, but you may be less familiar with court unit executives. Early visits with the unit executives are a good first step. These meetings will help you learn more about each unit executive's operations and major areas of emphasis and concern, as well as get better acquainted with the unit execu-

tives. Whether you should also discuss ideas and goals or more specific expectations for the unit executives at these initial meetings will depend on the circumstances. Unit executives and other employees will want some guidance, but you may need to learn more about the organization and its people and to discuss initiatives with colleagues before proposing specific goals, especially if they may involve major change.

Similarly, if you are not well acquainted with the chief circuit judge, the circuit executive, or the district's chief bankruptcy judge, try to meet with these individuals before or soon after becoming chief.

Furthermore, it is good to establish contacts with outside constituencies in anticipation of future needs. Even a judge with long-standing personal contacts with the local media, law school and other educational personnel, and the state judiciary may find it helpful to meet with them upon becoming chief judge to enhance lines of communication and cooperation.

Once you establish these relationships, you need to maintain them. Keep people informed, solicit their views, recognize their achievements, and, when necessary, make corrections. All of this contributes to solid relationships. Although some meetings and contacts may offer no immediate payback, they are of lasting value.

3. Listening

Being a good listener is a key to successful leadership. You have no doubt developed listening skills in the courtroom that you can put to good use in your leadership role. One management expert describes effective listening as "listening with a non-rebutting mind."⁵

The more you know about the organization and, especially, the people in it, the more effective you can be as a leader. Furthermore, avoid getting hung up on rank or protocol. People in the lowest ranks of the official hierarchy often have helpful insights about the organization's activities and performance. A good example comes

5. Isaiah Zimmerman, Address at the Federal Judicial Center Conference of Chief District Judges, Seattle, Wash. (Apr. 13, 2000).

from a Navy ship commander, whose casual conversation with a sailor helped him discover that he could save thousands of dollars in paint costs by switching to rust-proof fittings on the ship—a practice that is now standard Navy-wide.⁶ Leaders like this commander have discovered a basic truth: it's not a person's rank but a person's knowledge that counts in making organizational improvements.

By visiting and talking with staff informally at their work sites a leader may learn things that people would be less likely to talk about in a different setting. Moreover, a visit by the leader can boost employees' morale, as illustrated in an article about Colin Powell:

[A] maintenance worker in the parking garage beneath the State Department headquarters building asked Ruth Davis, a Foreign Service executive, if she had met the new Secretary of State, Colin Powell. Davis said she had, and was in fact on the way to meeting with him. "Well, we've met him, too," another maintenance worker chimed in. "He came over here and said 'hi' and asked us what we were doing. It was great."⁷

4. Consulting

Closely related to good listening skills is effective consultation. Consider who should be involved in various decisions and how to reach well-informed decisions and consensus efficiently. Failure to consult adequately can lead to poor decisions and lack of support.

Psychologists warn of "groupthink," the tendency of decision-making groups to form a consensus before making a sufficiently rigorous analysis of their assumptions or the consequences of their beliefs. Groups can quickly form the illusion of consensus and block out any dissenting opinions. Psychologist Irving Janis has documented the phenomenon in studies of juries and presidential decision making. Janis points out that in the Bay of Pigs incident, President Kennedy's advisers were much too quick to reinforce Kennedy's notion that he could liberate Cuba by sending in troops and

6. D. Michael Abrashoff, *Retention Through Redemption*, Harv. Bus. Rev., Feb. 2001, at 137–41.

7. Brian Friel, *The Powell Leadership Doctrine*, 23 The Government Executive no. 7, at 22 (June 2001).

fomenting a revolution against Fidel Castro.⁸ Learning from his Bay of Pigs mistakes, during the Cuban missile crisis, Kennedy took specific measures to ensure an open and honest debate among members of an “executive committee” of top officials he created to deal with the crisis. One measure he took was to leave the room during various stages of the committee’s deliberations.⁹

Another deliberate choice Kennedy made was to use a questioning technique to continually probe when his advisers floated proposals and plans. He asked, for example, “Have you thought out all the consequences of this course of action?” “What if we do this?” “How do you think the U.S.S.R. would react if we did this?”¹⁰

In a different context, Sir Charles Powell, a close adviser to Prime Minister Margaret Thatcher for seven years, observed:

What she really enjoyed was argument. She tested views out in argument. She sometimes took outrageous positions simply just to see what you would suggest. But if at the end of the discussion she thought your view was better than hers, she would shamelessly adopt your view, without of course ever admitting that she had changed her mind at all. It was a seamless transition. Therefore, it wasn’t nearly as difficult as people think, provided they were prepared to argue with her.¹¹

You should make a special effort to include in a meeting or decision-making process those who are not inclined to agree with your own positions. “Inclusion creates the opportunity for a better product, since even those who disagree with you might have something useful to contribute. New ideas surface; familiar ones get improved.”¹² Moreover, if you exclude those who hold different views, they may well feel they have no stake in the decision made and may

8. Irving L. Janis, *Groupthink: Psychological Studies of Policy Decisions and Fiascoes* 132–58 (1982).

9. Robert F. Kennedy, *Thirteen Days: A Memoir of the Cuban Missile Crisis* 53 (1999).

10. Statements attributed to John F. Kennedy, in *The Cuban Missile Crisis: A Case Study in Decision-Making* (The Hathaway Group, Advanced Knowledge, Inc. 1999).

11. Charles Powell, quoted in Haass, *supra* note 3, at 75.

12. Haass, *supra* note 3, at 157.

be less likely to support it. This doesn't mean you should include everyone who might have an interest in every meeting, but you should at least weigh the potential costs of exclusion when determining whom to invite.

5. Sharing Information

Keeping people informed is an important element of leadership. Often, people fail to follow procedures, policies, or priorities not because they disagree with them but simply because they are operating with different information.

William Kristol, when chief of staff to Vice President Quayle, described the importance of regular staff meetings:

Sharing information is extremely important. It is underrated. Simply making sure that everyone who needs to know knows things is a big task in government. We had effective meetings where nothing was decided and I didn't say a word, but at least the legislative guy told the press guy what he had to know to answer questions, and the domestic policy guy found out information from the legislative guy. It's very evident that everyone gets so wrapped up around their own little ball of wax . . . You have to try very hard to pull people together. The centrifugal forces—the forces that push you out—are stronger.¹³

Althea Caldwell summarized the importance of a leader's sharing information with employees:

Information empowers. When employees understand the vision and goals that have shaped their jobs and the results they are expected to achieve, they are more likely to give of themselves and contribute suggestions for more effectively achieving the results.¹⁴

You are uniquely positioned to facilitate information sharing. Some tools for sharing information are newsletters and various forms of meetings. You can encourage and monitor these communications without originating every communication or being present at every meeting.

13. William Kristol, quoted in Haass, *supra* note 3, at 138.

14. Althea O. Caldwell, *Establishing Controls*, in AMA Management Handbook 1–46 (American Management Association, 3d ed. 1994).

6. Persuading

Different people are persuaded differently. Franklin Delano Roosevelt “knew how to persuade one person by argument, another by charm, another by a display of self-confidence, another by flattery, another by encyclopedic knowledge.”¹⁵

Commands are not likely to be effective in today’s workforce. This may be especially true in courts, not only with respect to other judges, but also as to employees. Senior employees are often far more familiar with their office’s or section’s work than the chief judge is. Moreover, they know that the tenure of an individual chief judge is limited. Court employees can generally be counted on to fulfill their duties capably, but, like employees everywhere, they are more likely to pursue a given course of action when they are convinced of its value.

Richard Neustadt bolsters the point. In *Presidential Power*, he observed, not only about legislators but even about executive branch officials, that their “willingness to act upon the urging of the [President] turns” on whether they see the action as right for them. “The essence of a President’s persuasive task is to convince [them] that what the White House wants of them is what they ought to do for their sake and on their authority.”¹⁶

Jay Conger describes “effective persuasion [as] a negotiating and learning process through which a persuader leads colleagues to a problem’s shared solution.” He identifies four essential steps to effective persuasion:

- Establish credibility. In the workplace, credibility grows out of two sources: expertise and relationships.
- Frame goals in a way that identifies common ground with those to be persuaded. Even a goal with a lot of credibility must identify shared benefits. This often means viewing the world not through one’s own eyes, but through the eyes of those to be led—and asking “what’s in it for me?”

15. James MacGregor Burns, *Leadership* 375 (1985).

16. Richard Neustadt, *Presidential Power* 27 (1980).

- Use various kinds of evidence. Effective persuaders supplement numerical data with examples, stories, metaphors, and analogies to make their positions come alive.
- Connect on a personal level. Good persuaders show their own strong commitment to the position they are advocating. More important, effective persuaders have a good sense of their audience's attitude and feelings, and they adjust the tone of their arguments accordingly. Effective persuaders often canvass key staff members who have a good feel for the mood and expectations of those to be persuaded, and test possible reactions to proposals in advance.¹⁷

7. Clarifying Expectations

Clear expectations are essential in your relations with the key managers in the court. Court unit executives are almost always highly skilled and capable professionals on whom you will rely heavily. Those in your court may have extensive experience in running court operations, but they need to understand what you want, and you need to understand what they want.

Two things that most subordinates want (and all need) are guidance and feedback. The clerk of court, the chief probation officer, and the chief pretrial services officer should each know what you see as the most important things they must do in their jobs. These are the four or five things on which you will evaluate their performance. The more specific the guidance, the better these managers will be able to prioritize their work, and the fewer surprises there should be.

Court managers deserve an answer to the question, "How will I know that I am successful at my job?" The response should focus on the results you expect, relative to specific tasks and responsibilities. For example, is it the number of docket entries per day that is important? Or is it a reduction in problems with chambers?

17. Jay Conger, *The Necessary Art of Persuasion*, Harv. Bus. Rev., May–June 1998, at 86.

8. Monitoring the Court

You need to reinforce your expectations of court managers. Just saying what you expect carries little weight if there is no feedback or follow-up. Monitoring the court necessitates monitoring performance and providing candid and constructive comments on it. Lack of feedback can lead to complacency in an underperforming employee and frustration in an excelling worker. It is important to correct a failure to meet standards, to recognize when standards are met, and to reward superior performance.

Monitoring performance does not mean “micromanagement.” The mechanisms for supervision, and the level of detail involved, vary. Mechanisms include regular meetings, activity reviews, reports, and briefings. Occasional visits to court officers (“management by walking around”) can be an effective way to check on things that would never appear in a report. Delegating some oversight activities to colleagues can make monitoring more efficient. The important thing is to stay sufficiently informed and to ensure that others are informed so that you can identify potential problems and deal with them early. When a problem does arise, you need to assess it fully and to take prompt corrective action if necessary.

9. Dealing with Problems

There is no textbook solution for dealing with problems, particularly people problems. Problems come in all forms, and most do not have a perfect—or even a very good—solution. As one chief judge said, “Some problems are just facts.” Nevertheless, problems seldom get better with time. When a leader is faced with a problem, careful gathering of the facts, accompanied by objectivity, common sense, and compassion for the people affected, are important in finding a solution. Moreover, consulting with colleagues, key staff, and appropriate subject-matter experts almost always contributes to a better solution.

Particularly difficult are problems associated with the performance of another judge, such as physical or mental infirmity. These problems require sensitivity to the judge’s professional independence and personal pride. Formal mechanisms exist (see *infra* section IV.A.3.b) but are not always required. You will usually find it help-

ful to discuss possible approaches with colleagues, the chief circuit judge, the circuit executive, or another trusted adviser, but take care to protect the privacy and reputation of the judge in question. Seeking the advice of a doctor or other professional may also be useful. Having a close friend and trusted colleague discuss the problem with the judge concerned in a sensitive but candid way has worked in some situations.

Another occasional problem are judges who are behind in their work. If the problem is temporary—owing to illness or an exceptionally large and complex case—several tools are available, such as temporarily reallocating work or requesting visiting judges from inside or outside the circuit (see *infra* section VII.F). Chronic problems are more difficult. Many courts circulate to all judges reports of caseloads and backlogs of all judges in the court. This approach creates an incentive for all to carry their share, but it can also create resentment. Some courts gather to discuss techniques that individual judges and the court as an institution can use to expedite disposition of cases.

In some instances, you may wish to discuss the backlog with the judge concerned or ask another experienced colleague to do so. If the problem continues, you may decide not to appoint the judge to positions within the court's governing structure and may advise the chief circuit judge to consider the problem when making appointments to circuit positions and commenting on suitability for positions on Judicial Conference committees.

Another occasional challenge is helping the clerk of court or other staff deal with competing (and sometimes unrealistic) requests put to them by other judges. Some courts have internal policies that cover some of these issues and have committees of judges that review some categories of requests. You need not get involved personally in each problem, but you should be accessible so that the clerk can discuss such matters with you discreetly. If the clerk is following established court policy, be especially careful before directing an exception.

10. Establishing a Vision

Leadership and management literature are full of talk about “vision.” What is “vision,” where does it come from, and why is it important? Basically, “vision” refers to the core values and broad goals that the leader brings to the job. They become the guiding principles for setting priorities, making decisions, and executing policies.

To say that a chief judge should have vision does not mean that you should define the mission of the district court. That’s been done in the Constitution, in statutes and rules, and in mission statements that individual courts have adopted. Indeed, the mission is summed up well in Rule 1 of the Federal Rules of Civil Procedure: “to secure the just, speedy, and inexpensive determination of any action.”¹⁸ Within the confines of these authorities, however, there is room for emphasis on certain goals and values over others. Vision may be something quite measurable (like a new courthouse that serves the needs of the court and the public), or it may be more amorphous (like solid relations with the local bar or a district court workforce with a high sense of public service and ethics). One chief judge recently stated a goal to “demystify the legal process—to make the court a little friendlier place for others.” Another sought “to make our court as user-friendly as possible.”

Unlike leaders in other sectors, who are often chosen at least in part for their demonstrated vision, a chief judge attains the position on the basis of the fortuity of birth and appointment dates. That provides a weak mandate and makes it necessary to adopt a vision that represents either an existing consensus or one that other judges will support.

Why is vision important for chief district judges? Some dismiss vision as something for the private sector. It is enough, they say, for government officials to know that they serve the “public interest.” In fact, when you consider the Speedy Trial Act and other statutes, jury management plans, court reporter plans, GSA requirements, circuit judicial council plans, and AO guidance and proce-

18. Judicial Conference of the United States, Long Range Plan for the Federal Courts, 6–7 (Dec. 1995) also contains a mission statement developed by the Conference’s Committee on Long Range Planning. The Plan is available on the J-Net.

dures—not to mention colleagues who point out that all judges on the court have the same certificate of appointment—you might well think that the last thing you need to worry about is vision.

It is precisely because of all those pressures that you need some bigger picture of what the court should be. Establishing a vision of the kind of court that you want to promote—and that the rest of the court accepts—will provide you with a steady guide in the face of inevitable egos, power struggles, or turf wars. One government official put it this way:

You have to be prepared to have a daily interaction between the philosophical and the real. If you don't allow for that you become a lunatic. You're just a crazed participant in the political system. That's something you have to comprehend. But the penalty of not having a philosophy is a total lack of direction, getting easily bogged down, and atrophy.¹⁹

In short, “[u]nless you know where you’re going, and why, you cannot possibly get there.”²⁰

19. Kim Beazley, Australian Minister of Employment, Training and Education, quoted in Haass, *supra* note 3, at 43.

20. Warren Bennis, *On Becoming a Leader* 39–40 (1994).

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III. Federal Judicial Administration at the National Level

The chief district judge works within a network of offices and agencies responsible for the management and administration of the federal judicial system.²¹ 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 “supervision and direction” of the Administrative Office of the U.S. Courts in the performance of its many administrative tasks (28 U.S.C. §§ 604, 605, 612). The circuit judicial councils, however, are the only agencies that have statutory authority to issue orders about judicial administration.

The Conference and the councils, and individual courts, are served by two national support agencies: the Administrative Office and the Federal Judicial Center. This chapter describes federal judicial administrative offices and agencies at the national level; Chapter IV describes those at the regional level.

A. Chief Justice of the United States

The Chief Justice is at the apex of the pyramid of federal judicial administration. Other members of the Supreme Court, unlike members of the highest court in some state systems, are largely free of administrative responsibilities for the system. Statutes confer various responsibilities on the Chief Justice. Ex officio duties include presiding over the Judicial Conference and chairing the Board of the Federal Judicial Center. 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.

21. For a closer look at the evolution of federal court governance, see Wheeler, *supra* note 1.

The Chief Justice's administrative role derives from statutory assignments, the inherent authority of the office, and the incumbent's personal disposition. Starting with Chief Justice Taft, incumbents have used the office to direct the attention of federal judges, Congress, the executive branch, the bar, the media, and the public to systemic problems in the administration of justice and to mobilize resources to deal with those problems.

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 conference's name to the Judicial Conference of the United States (62 Stat. 902).

1. Membership

The Judicial Conference consists of twenty-six members, in addition to the Chief Justice as presiding officer: the chief judges of the thirteen courts of appeals; a district judge from each regional circuit, elected to three-year to five-year terms by the district and circuit judges of their circuits; and the chief judge of the Court of International Trade.

The director of the Administrative Office serves as secretary to the Judicial Conference. The Office of the Judicial Conference Executive Secretariat assists the director by coordinating administrative support for the Conference.

2. Duties and Responsibilities

The Judicial Conference's responsibilities are conferred by statute.²² In some areas, the Conference has specific authority to implement its policies; in others, Congress has vested authority in the director of the Administrative Office, who functions under Conference supervision. In still other areas, the Conference merely recommends or requests action by judges or other court personnel. Un-

22. Section 331 of Title 28, when read in conjunction with 28 U.S.C. §§ 604, 605, and 612, sets out the basic responsibilities.

like circuit judicial councils, the Conference does not have general authority to make orders for the “effective and expeditious administration of justice” (*see infra* section IV.A.1).

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 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 statistical reporting, budget, personnel policies, and logistical support. No single statutory charge gives the Conference plenary authority in these areas. The Conference’s responsibilities are derived from various legislative directives, the most important of which 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, 605, and 612. As stated in section 604: “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” The statutes then enumerate a wide range of tasks, including preparing the federal judicial budget for submission to the Conference and then to 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; gathering and publishing statistics on the courts’ work; developing a long-range information technology plan for the courts; and overseeing court information

technology efforts “to ensure the effective operation of existing systems and control over development of future systems.”²³

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.” Thus, for example, in 1996, the Conference “strongly urge[d]” the circuit judicial councils to use their order-making authority to permit television coverage of appellate court proceedings and to disallow such coverage of district court proceedings (JCUS Report, Mar. 1996, at 17). The Administrative Office, responsible for carrying out Conference policies, is the source of much administrative and management advice given to the courts.

iii. Making intercircuit and intracircuit assignments of judges

Section 331 of Title 28 authorizes the Judicial Conference “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). The Conference, however, does not regularly make systemic “plans” for intercircuit assignments as described in the statute (*see infra* section VII.F.1.b, on requesting and providing for visiting judges). Implementing statutes authorize the Chief Justice to assign active circuit judges to serve temporarily on other courts of appeals (28 U.S.C. § 291(a)), to assign active district judges to serve temporarily on a district or court of appeals 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* section VII.F.1.b). 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)),

23. Other statutory assignments also specify the relationship between the Judicial Conference and the Administrative Office. 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’ travel.

and may designate circuit judges to serve temporarily on a district court within the circuit (28 U.S.C. § 291(b)).

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, subject to funding by Congress, 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* section V.B).

v. Judicial conduct and financial reporting

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 supporting personnel. A judge may seek advice from the Conference’s Committee on Codes of Conduct on whether an action contemplated by the judge, 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 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. 4 §§ 101–111). The committee receives and reviews financial

disclosure reports submitted by judges and high-salaried judicial branch personnel.

- *Judicial discipline.* The Judicial Conference may grant petitions to review how a circuit judicial council disposed of judicial misconduct or disability allegations (28 U.S.C. § 356(b)). As authorized by statute, the Conference created a Committee to Review Circuit Council Conduct and Disability Orders (JCUS Report, Sept. 1982, at 120), and the Conference has adopted rules for processing certificates from circuit judicial councils that assert impeachable conduct by a judge (Guide, vol. III-A, sec. C, ch. II, exhibit B-3). (The statutory provisions are 28 U.S.C. §§ 351–363.)

b. Federal rules of practice and procedure

Section 331 of Title 28 directs the Judicial Conference 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. 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 separate advisory committees’ preparation of new and amended rules of evidence and rules of criminal, civil, appellate, and bankruptcy procedure. The advisory committee sends the proposals it recommends to the Standing Committee so that they can be circulated to the public, including notice in the *Federal Register*, for public hearings and comment. The Standing Committee then sends its proposed rule changes to the Judicial Conference for review and approval.²⁴ If the Judicial Conference approves them, proposed changes are sent to the Supreme Court, which may submit them to Congress (not later than May 1 for any given year). Amendments

24. 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* (1997), a publication available from the Rules Committee Support Office of the Administrative Office and on the Internet at <http://www.uscourts.gov>.

take effect after the following December 1 “unless otherwise provided by law.”²⁵

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 and 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); *see also infra* section VII.A).

c. Legislative advice and liaison

Title 28 directs the Chief Justice to report to Congress on the Conference’s “proceedings . . . and its recommendations for legislation” (28 U.S.C. § 331). The nature of the legislative process makes it unrealistic for Congress to rely much on this brief report, however. Thus, Conference committee members, working through the Administrative Office’s Office of Legislative Affairs, frequently correspond with and testify before congressional committees; Administrative Office officials occasionally testify as well.

The Conference comments on bills Congress refers to it and suggests other legislative changes on its own initiative. The Office of Legislative Affairs 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. It frequently comments on how proposed legislation would affect the federal judicial workload.

25. Rules of evidence do not take effect “unless approved by Act of Congress” (28 U.S.C. § 2074(b)).

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, 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 mail ballot in July 1996 to approve funding for an experimental approach to deal with the scientific issues involved in the silicone breast implant multidistrict litigation. 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). Conference meetings are open only to members, selected committee chairpersons, key staff, and invited guests.

b. Bringing matters before the Conference

Procedures for bringing matters before the Judicial Conference are described in *The Judicial Conference of the United States and Its Committees*, which the Conference approved in 1998 (JCUS Report, Sept. 1998, at 40). A copy of this publication is available on the J-Net. Courts and judges who have matters they want the Conference to consider may transmit their requests, in writing, to the director of the Administrative Office (Attention: Office of the Judicial Conference Executive Secretariat).

The Judicial Conference does most of its work through committees. The director of the Administrative Office has been delegated the authority to assign matters to the appropriate committee and notifies the requesting court or judge of the committee assignment. When the Administrative Office recommends that a committee reject a request submitted by a judge or court, it must notify the judge or court in time to permit the submission of responsive material to the committee before a decision is reached. 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.

c. Reports of Conference actions

Shortly after each Conference session, the director releases a summary memorandum, and later, a more detailed account of the session's actions (*Report of the Proceedings of the Judicial Conference of the United States*). Both are available on the J-Net, and Conference reports are also available through the judiciary's private files on WESTLAW.

4. Committees

The Executive Committee is the senior executive arm of the Conference, "capable of implementing its policies between sessions" (JCUS Report, Sept. 1987, 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 inter-committee jurisdictional disputes, and dealing with matters requiring emergency action.

The Chief Justice has been delegated sole authority to make Judicial Conference committee appointments; the Administrative Assistant to the Chief Justice and the director of the Administrative Office provide assistance. All active and senior Article III judges are eligible for membership on any Conference committee except the Executive Committee, which is restricted to Judicial Conference members. (The Executive Committee consists of a chairperson and six other judges, and the director of the Administrative Office.) Most committees also have magistrate judges and bankruptcy judges as members. State judges, private and government lawyers, and law professors serve on some committees, as well. 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. The director of the Administrative Office, in the capacity of Secretary to the Judicial Conference, surveys all judges biennially to identify those who are interested in committee service and to determine their committee preferences. In 2003, about 250 circuit, district, bankruptcy, and magistrate judges served on Conference committees.

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

1. History and Authority

Prior to 1939, the Department of Justice was responsible for administering the federal judiciary's budget and personnel system, and for reviewing and auditing federal court administration. In 1939, Congress created the Administrative Office of the U.S. Courts, and over time has shifted administrative functions to it. The Administrative Office provides administrative support to the federal courts under the direction of the Judicial Conference (see 28 U.S.C. §§ 601–612).

2. Organization and Functions

Section 601 of Title 28 provides that the director and deputy director of the Administrative Office are appointed by the Chief Justice after consultation with the Judicial Conference. The Administrative Office provides a broad range of legislative, legal, management, financial, information technology, program support, and other administrative services to the federal courts. A primary responsibility is providing staff support and counsel to the Judicial Conference of the United States and its committees and carrying

out Conference policies. The Administrative Office also does the following:

- furnishes program leadership, expertise, and guidance;
- provides centralized core administrative functions (e.g., payroll and accounting services);
- administers the personnel system and monitors EEO activity;
- develops and executes the judiciary's budget;
- collects and analyzes detailed statistics on court operations;
- conducts audits of court financial operations;
- develops and supports information technology and related systems;
- conducts training programs relevant to administrative and operational responsibilities that the director has delegated to court personnel;
- acts as liaison between the judicial branch and the executive and legislative branches;
- conducts some studies and assessments; and
- fosters communication both within the judiciary and between the judiciary and outside entities.

Activities of the Administrative Office of the United States Courts, which can be found on the J-Net, presents a complete listing of the agency's offices and their duties. The Administrative Office telephone directory on the J-Net arranges Administrative Office personnel by specific offices and can help identify staff members to contact for particular requests or problems.

3. Publications and Reports

The Administrative Office produces publications on different facets of federal court operations. The best known are the *Guide to Judiciary Policies and Procedures*, *Reports of the Proceedings of the Judicial Conference of the United States*, and *Judicial Business of the U.S. Courts*, which provides extensive statistics on the federal courts' work. The Administrative Office also publishes *The Third Branch*, a monthly newsletter for the federal courts. Other Administrative Of-

fice publications on specific matters are referred to at appropriate places in this deskbook. Administrative Office publications are available on the J-Net.

4. 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 wants the services must request the Administrative Office's aid. The Administrative Office director or associate director for management and operations supervises the assistance.

D. Federal Judicial Center

1. History and Authority

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 (see 28 U.S.C. §§ 620–629). The Center and the Administrative Office maintain a close working relationship.

2. Organization and Functions

The Federal Judicial Center's board is responsible for Center 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, one bankruptcy judge, and one magistrate judge, all elected by the Judicial Conference, serve on the board for four-year terms. The board appoints the Center's director and deputy director. The Center's divisions and offices are responsible for

- planning and producing education and training programs and publications for judges and court personnel;
- examining and evaluating current and alternative federal court practices and policies, primarily in support of the Judicial Conference and its committees;

- developing innovative ways to help courts and scholars study and preserve federal judicial history; and
- providing information to judicial and legal officials from foreign countries.

A complete description of the Center's divisions and offices and contact information for key personnel are available on the Center's site on the courts' intranet at <http://jnet.fjc.dcn>.

3. Publications, Reports, and Programs

The Center produces reference guides and manuals such as this one, monographs, research reports, and catalogs of its products and services, and sends many of these publications to judges and other court personnel. It also produces audiocassette and videocassette programs for judges and supporting personnel. Judges who want particular Center publications, or who want tapes of Center media programs, may request them from the Center's Information Services Office. Most Center publications are also available on the Center's site on the courts' intranet at <http://jnet.fjc.dcn>.

E. U.S. Sentencing Commission

1. History and Authority

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 for federal judges to apply in sentencing offenders (28 U.S.C. §§ 991, 994).

2. Organization

The Commission's seven voting members are appointed by the President with the consent of the Senate. They must include at least three federal judges selected after consideration of a list submitted by the Judicial Conference.

3. Publications and Reports

The Commission publishes the *United States Sentencing Commission Guidelines Manual* and an *Annual Report* of Commission activities. Its annual *Sourcebook of Federal Sentencing Statistics* provides

descriptive figures, tables, and charts, as well as selected district, circuit, and national sentencing data. The Commission prepares reports to Congress and other research reports. Its publications are available on its site on the Internet at <http://www.ussc.gov>.

IV. Federal Judicial Administration at the Regional Level

Circuit judicial councils play a key role in federal judicial administration. This chapter describes the councils and other regional administrative entities.

A. *Circuit Judicial Councils*

1. History and Authority

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 provides for Judicial Conference policy making and advice in areas needing national uniformity, and direct council oversight of the administration of justice in the circuit. The circuit judicial councils' original purpose was to supervise the district courts.

Subsequent legislation broadened the focus of the circuit judicial councils to include oversight of the business of all the courts within the circuit. 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)). The statute also 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)). However, the councils, by statute or Judicial Conference policy or recommendation, are charged with reviewing numerous plans and policies developed by district courts.

2. Membership

Each circuit council consists of the chief circuit judge as chairperson and an equal number of circuit and district judges. Active and senior judges may serve as members of the council (28 U.S.C. § 332(a)). No more than one judge from each district (it need not be the chief judge) may serve as members, unless all districts in the circuit are represented. Council members serve for terms fixed by

majority vote of all judges in the circuit. Some circuits include bankruptcy and magistrate judges as non-voting participants.

The statute is not clear on how to determine the number of judges and method of selection. As the Office of General Counsel of the Administrative Office and the Judicial Conference's Executive Committee interpret the statute, 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).

3. Functions

The circuit judicial councils' current duties fall into two categories: (1) review, clearance, and oversight of a wide variety of court business, including local rules, and (2) review of judicial disability or misconduct complaints. A Federal Judicial Center "template" of chief circuit judge and circuit council functions is available on the Center's site on the courts' intranet at <http://jnet.fjc.dcn>.

a. Review, clearance, and oversight of court business

Congress and the Judicial Conference have directed the councils to periodically review numerous aspects of court business, including the following:

- local district court procedural rules (for consistency with the national rules of procedure and evidence²⁶);
- 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));
- various actions concerning magistrate judges (28 U.S.C. §§ 631, 633(b), 636(h));
- various actions concerning bankruptcy judges (28 U.S.C. § 152);
- 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);

26. 28 U.S.C. § 332(d)(4).

- approval of court quarters and accommodations (28 U.S.C. § 462);
- district court decisions to prepermit a regular court session (28 U.S.C. § 140(a)); and
- authorization of temporary law clerks and other personnel for judges of the courts within the circuit.

Nonstatutory functions of the councils include certifying to the Administrative Office that senior judges are performing “substantial service” and thus may continue to receive office space and staff support; determining the number of supporting positions necessary for senior judges (Guide, vol. III, sec. B, ch. VI, pt. 7); 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” (Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333, 345 (1984) (codified as amended at 28 U.S.C. § 152 (1994))). The councils may appoint merit selection panels as part of this process (*see infra* section V.A.2).

In some circumstances, circuit judicial councils may be called upon to resolve differences between judges of a district court, such as where judges maintain their residences. 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 presented by the chief district judge, who 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 of judicial disability or misconduct complaints

Sections 351–363 of Title 28 provide a mechanism for filing complaints and allegations of judicial disability and misconduct, as well as specific procedures for referring complaints to the council. Under 28 U.S.C. § 351(a), "[a]ny person" is authorized to file with the clerk of the circuit court a "written complaint" alleging "that a judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, or alleging that such a 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.

Under 28 U.S.C. §§ 352 and 353, 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, and advise 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. § 351(b)).

The circuit judicial council may take a range of actions in response to a misconduct or disability complaint about a judge: temporarily suspend case assignments to the judge; suggest retirement, certify disability, or censure the judge under 28 U.S.C. § 354(a)(2); or refer the matter to the Judicial Conference (28 U.S.C. § 354(b)), which can then refer it to the House of Representatives to consider possible impeachment (28 U.S.C. § 355(b)).²⁷ The statute also

27. This statute governs actions regarding senior judges as well (JCUS Report, Mar. 1996, at 23).

authorizes the circuit judicial councils and the Conference to promulgate rules for conducting these proceedings (28 U.S.C. § 358).

The circuit judicial council may direct the chief district judge to take any action concerning a magistrate judge that it considers appropriate except removal (28 U.S.C. § 354(a)(2)(c)). 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)).

4. Circuit Judicial Conferences

Under 28 U.S.C. § 333, the chief judge of each circuit may, but is not obligated to, convene a circuit judicial conference annually or biennially for “advising means of improving the administration of justice within such circuit.” Judicial attendance is optional. Circuits sometimes invite members of the bar, U.S. attorneys, federal defenders, and other court personnel to attend the conference.

B. Chief Circuit Judges

The chief circuit judge chairs the circuit judicial council and in that capacity, as chief judge of the court of appeals, and as a statutory member of the Judicial Conference, plays a leading role in the administration of the circuit. Because the circuit judicial council meets only periodically and the chief circuit judge may need to take action 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, and may recognize on their own, complaints about judicial disability or misconduct, and they must approve all intercircuit and intracircuit transfers (28 U.S.C. § 292). Their approval (like that of the trial court) is re-

quired for compensation claims under the Criminal Justice Act in excess of specified maximums (18 U.S.C. § 3006A(d)(3)). In addition, in order for a senior judge to receive salary increases other than cost-of-living adjustments, the chief circuit judge must certify that the senior judge handles the workload required by the Judicial Conference (28 U.S.C. § 371(e)(1); Guide, vol. III, sec. C, ch. I, pt. B).

These statutory responsibilities do not exhaust chief circuit judges' responsibilities. Many chief circuit judges meet periodically with the chief district judges in the circuit. These meetings, which sometimes coincide with the circuit judicial conference, provide chief circuit judges with an opportunity to hear chief district judges' 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 lists 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 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 from circuit to circuit.

The circuit executives' tasks in the courts of appeals may include such non-judicial matters as financial management or management of the personnel system or the information technology systems. Examples of their circuit-wide tasks include providing staff support to council committees, arranging the circuit judicial conference and meeting of the circuit judicial council, providing technical assistance to courthouse construction projects within the circuit, and providing circuit-wide area network (information technology) support to courts within the circuit. Circuit executives also may assume other tasks "delegated to [them] by the circuit council" (28 U.S.C. § 332(e)).

D. State–Federal Judicial Councils

In some states, councils of state and federal judges meet periodically to promote cooperation and coordination between the two judiciaries. Active councils have dealt with a range of matters, such as reducing scheduling problems when attorneys are due in federal and state courts simultaneously and developing cooperative juror paneling arrangements. The *Manual for Cooperation Between State and Federal Courts* (Federal Judicial Center 1997) further describes the work of state–federal judicial councils as well as numerous other less formal means of cooperation and collaboration between state and federal courts.

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V. District Court Units and Personnel; Other Related Agencies

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

A. U.S. Bankruptcy Judges

1. Authority

The relationship of the bankruptcy court and the district court has been a matter of debate and occasional friction. 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). This language in the Bankruptcy Amendments and Federal Judgeship Act of 1984²⁸ was a response to the Supreme Court decision in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*²⁹ *Marathon* held that the previous statutory scheme, which vested broad jurisdiction in virtually independent bankruptcy courts (then referred to as “adjuncts” to district courts), violated Article III of the Constitution. The 1984 Act tied bankruptcy courts more closely to district courts in order to remedy the jurisdictional problem after *Marathon*, but it only incidentally addressed the administrative independence of bankruptcy courts.

The courts of appeals appoint bankruptcy judges (28 U.S.C. § 152(a)(1)), and the district court designates a chief judge of the bankruptcy court (28 U.S.C. §154(b)). The bankruptcy court may “promulgate rules for the division of business among the bankruptcy judges 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)). Section 154(b) of Title 28 vests the chief bankruptcy judge with responsibility to ensure that the business of the bankruptcy court is handled effectively and expeditiously. Section 156(b) provides that the bankruptcy judges in a district may appoint a bankruptcy court

28. Pub. L. No. 98-353, 98 Stat. 344.

29. 458 U.S. 50 (1982).

clerk, “[u]pon certification to the judicial council of the circuit involved and to the Director of the Administrative Office of the United States Courts” that the number of cases warrants it. Section 156(d) provides that “[n]o office of the bankruptcy clerk of court may be consolidated with the district clerk of court office without the prior approval of the Judicial Conference and the Congress.”

This allocation of statutory authority makes the informal relationship between the district court and the bankruptcy court all the more important. You should do your best to establish a cooperative and productive relationship with the chief bankruptcy judge and the bankruptcy court.

2. Appointment

The number of bankruptcy judgeships in each district is specified in 28 U.S.C. § 152(a)(2). 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. 345 (1984)).

Judicial Conference regulations governing the selection of bankruptcy judges 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 (JCUS Report, Mar. 1985, at 22–23). 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 pamphlet *The Selection, Appointment, and Reappointment of United States Bankruptcy Judges* (1998) includes the Judicial Conference regulations and provides guidance to merit selection panels and circuit judicial councils engaged in the process of selecting bankruptcy judges. The pamphlet is available from the Bankruptcy Judges Division and on the J-Net.

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).

3. Tenure, Discipline, Assignment, and Recall

Bankruptcy judges are appointed to fourteen-year terms (28 U.S.C. §§ 152(a)(1), 153(a)). They are subject to the judicial discipline procedures of 28 U.S.C. §§ 351–363, which, *inter alia*, authorize the circuit judicial council to remove them from office (28 U.S.C. § 354(a)(3)(B)) on the grounds and conditions for removal listed at 28 U.S.C. § 152(e).

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)). Section 152(c) authorizes bankruptcy judges to hold court in such additional places as the business of the court may require.

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. III, sec. B, ch. II, exhibit B-1). The guidelines provide that the chief judges of the lending and borrowing bankruptcy courts shall be notified of a proposed assignment when the request is made (JCUS Report, Mar. 1995, at 11).

With the judge's consent, any 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; JCUS Report, Mar. 1987, at 28). Judicial Conference regulations permit ad hoc recall for a fixed (renewable) period of one year and a day

(Guide, vol. III, sec. B, ch. VII, exhibit A). Extended service recall may be for a fixed (renewable) period of more than one year but not more than three years (Guide, vol. III, sec. B, ch. VII, exhibit B). Under 28 U.S.C. § 375, bankruptcy judges may be recalled to render “substantial service” for a period of five years, but this provision had not been implemented as of December 2002. The Judicial Conference recommends that each circuit judicial council develop written guidelines for setting staffing levels for recalled bankruptcy judges (JCUS Report, Sept. 1995, at 90).

4. Appointment of a Bankruptcy Court Clerk

The judges of the 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 clerk positions 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. § 1930,³⁰ and is the official custodian of the records and dockets of the bankruptcy court (28 U.S.C. § 156(e), (f)). 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.

30. Comptroller General Decision Nos. B-217236 and B-217236.2, May 22, 1985.

B. U.S. Magistrate Judges**1. Authority**

A magistrate judge is a judicial officer of the district court who exercises the jurisdiction of the district court as delegated by statute and by the judges of the court.³¹ Magistrate judges' duties, set forth in 28 U.S.C. § 636, fall into four broad categories:

1. initial proceedings in criminal cases;
2. trial of petty offenses, and of misdemeanors with the defendant's consent and waiver of the right to trial before a district judge;
3. pretrial matters and other proceedings referred to them by district judges; and
4. trial of civil cases when authorized by the district court and when consented to by the parties.

By rule, all district courts have authorized magistrate judges to try civil cases on consent. Part-time magistrate judges may try civil cases on consent if the chief district judge certifies that a full-time magistrate judge is not reasonably available in accordance with guidelines established by the judicial council of the circuit (28 U.S.C. § 636(c)(1)). Magistrate judges' contempt authority in criminal and civil cases is set forth in 28 U.S.C. § 636(e).

District courts may also assign magistrate judges "such additional duties as are not inconsistent with the Constitution and laws of the United States." These "additional duties" typically include civil and criminal case pretrial matters, prisoner cases, Social Security appeals, and post-judgment duties. Local rules or general orders determine magistrate judges' precise duties in a particular court and the manner of allocating work among magistrate judges. The Long Range Plan recommends that "[i]ndividual districts should retain flexibility, consistent with the national goal of effective utilization

31. The *Inventory of United States Magistrate Judge Duties* (1999), published by the Administrative Office, and Chapter 3 of the *Legal Manual for United States Magistrate Judges* (1991), maintained by the Magistrate Judges Division of the Administrative Office, detail the jurisdiction of U.S. magistrate judges.

of all magistrate judge resources, to have magistrate judges perform judicial services most needed in light of local conditions and changing caseloads" (Long Range Plan for the Federal Courts, Judicial Conference of the United States, Recommendation 65, at 101 (Dec. 1995)).

2. Appointment

The judges of the district court appoint its magistrate judges. By statute (28 U.S.C. § 631(b)(5)), the district court must provide public notice of a 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. 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 (28 U.S.C. § 631(a)). The Administrative Office's pamphlet *The Selection, Appointment, and Reappointment of United States Magistrate Judges* (2002) includes the Judicial Conference regulations and provides guidance on appointment procedures (see Guide, vol. III, sec. B, ch. V, exhibit A-1). The pamphlet is available from the Magistrate Judges Division and on the J-Net.

The Judicial Conference authorizes magistrate judge positions in accordance with 28 U.S.C. § 633, but the positions cannot be filled unless Congress agrees 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, and the director of the Administrative Office, as well as the opinions of law enforcement agencies and other interested parties.

The Conference, with the assistance of its Committee on the Administration of the Magistrate Judges System, 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 Conference also considers local conditions, such as 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; and transportation and communications facilities.

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 Judicial Conference regulations governing appointment of magistrate judges.

3. Tenure, Discipline, Assignment, Reappointment, and Recall

Full-time magistrate judges are appointed to eight-year terms; part-time magistrate judges are appointed for four years. Magistrate judges are subject to the judicial discipline procedures of 28 U.S.C. §§ 351–363, which, *inter alia*, authorize the circuit judicial council to remove magistrate judges from office (28 U.S.C. § 354(a)(3)(B)) on the grounds and conditions for removal listed at 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); Guide, vol. III, sec. B, ch. II, pt. C & exhibit C-1).

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).

Reappointment is, of course, a concern to most magistrate judges. The court should have some process for providing its magistrate judges with periodic feedback on their performance, so that they have an opportunity to correct any deficiencies and so that a decision not to reappoint does not come as a complete surprise.

In any event, not less than one year before the expiration of an incumbent magistrate judge's term of office, the district court should determine whether it wants to consider the incumbent's reappointment. "Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Appointment and Reappointment of United States Magistrate Judges" (Guide, vol. III, sec. B, ch. V, exhibit A-1) states that courts should give due consideration to the professional and career status of the position of U.S. magistrate judge. If the court wants to consider the incumbent's reappointment, then it should issue public notice of consideration of reappointment, solicit comments from the bar and public, and select a merit selection panel to review the incumbent's performance. If the court decides not to reappoint the incumbent, it should notify the incumbent and follow the selection process for an initial appointment.

Non-reappointment can have a significant effect on the magistrate judge's retirement pay and other benefits (including eligibility for health insurance), particularly if the magistrate judge has not reached the age of sixty-five. Eligibility for pay and benefits should not, of course, control the decision whether to reappoint, but the court should be aware of these considerations in making its decision.

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 ad hoc recall for a fixed (renewable) period not to exceed one year and one day. A retired magistrate judge may be recalled on a full-time or when-actually-employed basis (Guide, vol. III, sec. B, ch. VIII, exhibit A). Extended service recall may be for a fixed (renewable) period of more than one year but not more than three years (Guide, vol. III, sec. B, ch. VIII, exhibit B). Under 28

U.S.C. § 375, magistrate judges may be recalled to render “substantial service” for a period of five years, but this section had not been implemented as of December 2002. Conference regulations provide each court and circuit council with flexibility in determining whether and at what level to provide staff, facilities, law books, and supplies to recalled magistrate judges. The level of support is to be tied directly to the volume and nature of the work the magistrate judge is expected to perform (JCUS Report, Sept. 1993, at 52).

4. Chief District Judges and the Work of Magistrate Judges

You should ensure—by yourself or through a court committee—that the court regularly monitors what the magistrate judges are doing and at whose request. Periodic statistical reports from the magistrate judges can aid this monitoring function and serve as the basis for their office’s annual report to the court. Reports designed for local use may be more beneficial in monitoring case assignments and ensuring that magistrate judges are used effectively than reports the magistrate judges provide to the Administrative Office, which serve national statistical reporting functions. Some district courts have designated a (nonstatutory) “chief” or “administrative” magistrate judge to coordinate magistrate judges’ activities, make duty assignments, prepare reports, and maintain liaison with the district judges and other court officers and committees.

C. Employees

1. Appointments; Code of Conduct

The following personnel are appointed by the district court or the chief district judge, on the basis of the authority indicated (*see also* Guide, vol. III, sec. A, ch. V, pt. B):

- clerk of court (28 U.S.C. § 751(a));
- pro se and death penalty law clerks (28 U.S.C. § 752);
- 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)); and
- 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, the chief district judge serves as a member of a panel with the chief circuit judge and a magistrate judge, or their designees, to select the chief pretrial services officer (18 U.S.C. § 3152(c)). The chief probation officer appoints probation clerical staff pursuant to 18 U.S.C. § 3672. The chief pretrial services officer appoints other pretrial services personnel “[w]ith the approval of the district court” (18 U.S.C. § 3153(a)(1)).

The clerk of court is authorized to appoint supporting personnel in the clerk’s office “with the approval of the court” (28 U.S.C. § 751(b)). The Administrative Office’s authority does not limit “[t]he authority of the courts to appoint their own administrative or clerical personnel” (28 U.S.C. § 609). However, 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.

The Judicial Conference has adopted a code of conduct for all court employees (see Guide, vol. II, ch. II). Court employees who have questions concerning the code should consult first with their supervisor or appointing authority for guidance. If a question remains, the employee or the employee’s chief judge, supervisor, or appointing authority may request an advisory opinion from the Conference’s Committee on Codes of Conduct.

2. Clerk of Court³²

a. Appointment

The district court appoints and removes the clerk of court (28 U.S.C. § 751(a)). The Judicial Conference has established criteria for classifying clerk of court positions (JCUS Report, Mar. 1987, at 7). The District 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 and available funding.

c. Duties

In almost all district courts, the clerk of court serves as the chief administrative officer, implementing the court's policies and reporting to the chief district judge. (A few districts have district court executives or other positions that perform this administrative role.) Chief district judges generally delegate most administrative duties (other than probation and pretrial services duties) to the clerk of court, and your working relationship with the clerk is thus vital to the effective management of the court.

Notwithstanding the delegation or assignment to the clerk of administrative responsibilities related to court management, however, you have ultimate responsibility for the court's management. As discussed in Chapter II, the chief judge oversees court management by setting priorities and standards, establishing procedures for planning and decision making, fostering communication, and keeping informed of key actions and issues.

32. For a general history of the clerk's office, see I. Scott Messinger, *Order in the Courts: A History of the Federal Court Clerk's Office* (Federal Judicial Center 2002). This publication is available on the Center's Web site on the courts' intranet at <http://jnet.fjc.dcn>.

Traditionally, the clerk of court has prime responsibility for receiving the pleadings, papers, and exhibits that constitute case filings; docketing them; routing them to judges; and maintaining them as court records. Many clerks' offices provide support staff for case management. Clerks of court are often responsible for the administration of Criminal Justice Act plans. The clerk is the district 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 (28 U.S.C. § 751(e)). The clerk of court is also 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.³³

d. Courtroom deputies

Courtroom deputies are employees of the clerk's office and the court. Although they work closely with the judge to whom they are assigned, they are not part of the judge's chambers staff.

e. Pro se and death penalty law clerks

i. Pro se law clerks

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. The chief district judge appoints and supervises pro se law clerks under 28 U.S.C. § 752, but has discretion to delegate this responsibility to another district judge, a magistrate judge, or the clerk of court (JCUS Report, Sept. 1994, at 48). The Judicial Conference has established allocation formulas for pro se law clerk positions (JCUS Report, Sept. 1995, at 90). Courts interested in establishing a pro se law clerk position should contact the District Court Administration Division of the Administrative Office.

33. Clerks' duties are described in more detail in the Guide, vol. III, sec. A, ch. V, pt. B.

ii. Death penalty law clerks

Death penalty law clerks assist the court in the management of death penalty cases. In 1999, the Conference agreed to provide funding on a national basis for death penalty law clerks in the district courts at the rate of one law clerk for each fifteen capital habeas corpus cases, if requested by the circuit judicial council (JCUS Report, Mar. 1999, at 24). The chief district judge appoints and supervises the death penalty law clerks under 28 U.S.C. § 752. Courts interested in establishing a death penalty law clerk position should contact the District Court Administration Division of the Administrative Office.

3. Probation Officers and Pretrial Services Officers**a. Appointment**

Under 18 U.S.C. § 3602, the district court is authorized to appoint probation officers and designate a chief probation officer. 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 chief pretrial services officer appoints officers and other personnel with the court's approval (18 U.S.C. § 3153(a)(1)). The Judicial Conference has established criteria for classifying chief probation officer and chief pretrial services officer positions (JCUS Report, Sept. 2000, at 56–57).

b. Probation officers and clerical staff

The chief probation officer appoints probation office clerical staff. The size of the probation office is a function of its workload. Generally, there is one supervising probation officer for every six to eleven line officers. Larger offices generally also have a deputy chief probation officer. Many probation offices—for example, those that supervise many offenders with drug-related problems or organized-crime convictions—establish specialized supervisory units.

Probation officers perform important duties for the district court both before and after sentencing, and in many districts probation officers also have pretrial services responsibilities. 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, which 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 an offender fails to adhere to the conditions of release, so that the court can decide whether the conditions should be amended or the offender's release should be revoked. They supervise persons transferred under the Victim and Witness Protection Act, develop community resources, monitor offenders' participation in substance abuse and mental health treatment programs, oversee payment of fines and restitution, arrange for electronic monitoring, assist offenders in obtaining employment, and provide advice to offenders' families. Probation officers also serve as parole officers for the few pre-November 1987 offenders still eligible for parole or military parole.

c. Pretrial services officers

The Pretrial Services Act of 1982 directed that all federal districts provide pretrial services, including evaluating persons proposed for pretrial release, monitoring and assisting those released, and reporting to the court on these activities (18 U.S.C. § 3154). Many of the duties pretrial services officers perform are similar to those performed by probation officers, including gathering and presenting relevant information to be considered by the court, supervising defendants on supervised release, arranging for substance abuse and mental health treatment, and reporting apparent violations to the court. 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). The district court and circuit judicial council must approve the creation of a separate pretrial services office (18 U.S.C. § 3152(b)). The Conference has affirmed the principle that decisions regarding the form of organization should continue to be made by individual district courts and circuit councils (JCUS Report, Sept. 1997, at 66).³⁴

34. The Judicial Conference approved distribution of the Judicial Conference Committee on Criminal Law's *Directory of Cooperative and Sharing Arrangements in Districts with Separate Pretrial Services and Probation Offices* (1998) to these districts

d. Chief district judge's responsibility for the probation office and pretrial services office

You can help the probation office and the pretrial services office carry out their management and stewardship responsibilities by staying abreast of officers' diverse tasks. It is not enough to evaluate the probation office solely on the basis of the presentence reports. That would not reveal, for example, difficulties line officers are having in supervising offenders. You may want to meet regularly with the chief probation and pretrial services officers and to receive reports on recurring issues and specific programs and initiatives. These meetings and reports can provide information on the work performed by the offices and help the offices' senior staffs think in terms of their total administrative responsibility to the court. They also help foster a sense that probation and pretrial services offices are an integral part of the district court. The need for reports is especially strong in districts in which officers work in locations other than the chief judge's official duty station.

4. Court Reporters

a. District court responsibility

Managing 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* (1998) (Guide, vol. VI) is a valuable reference for chief judges in overseeing management of court reporting services. Questions concerning court reporting matters should be directed to the District Court Administration Division of the Administrative Office.

b. Court reporting management plan

The Judicial Conference has 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

(JCUS Report, Sept. 1998, at 66); this publication is available on the J-Net.

clerk, judge, or “other person designated by the court” (JCUS Report, Mar. 1982, at 8). District courts may appoint a court reporting supervisor. The court reporting supervisor is responsible for implementing and administering the court reporting management plan. Sample plans are available through the District Court Administration Division of the Administrative Office (see Guide, vol. VI, ch. II).

The Conference has consistently held that court reporters work collectively for the court, not for individual judges. The implementation of this concept varies according to the number of judges and divisions in the district and the wishes of the judges (see Guide, vol. VI, ch. III).

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, with the approval of the circuit judicial council, exempt from this requirement reporters on staff prior to September 1987 (JCUS Report, Sept. 1987, at 63; see Guide, vol. VI, ch. IV).

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. To the extent that funding is available, the Conference has endorsed the use of real-time reporting technologies, which allow the record to be transcribed electronically and displayed on a video monitor in the courtroom, by official court reporters in district courts (JCUS Report, Sept. 1994, at 49). In 1999, the Conference recommended that courts use various courtroom technologies for taking the record, including electronic methods (JCUS Report, Mar. 1999, at 8) and digital audio recording (JCUS Report, Sept. 1999, at 57; Guide, vol. VI, ch. XVI, pt. 16.4).

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). For senior judges, the Judicial Conference approved allocation of one position for 650 senior judge hours (JCUS Report, Mar. 1996, at 25).

Court reporters are federal court employees, subject to the supervision of the court, but they may also charge the parties 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 forms for completeness and accuracy (JCUS Report, Sept. 1987, at 63).

5. Court Interpreters

Section 1827 of Title 28 directs the Administrative Office to establish a program to provide interpreters, in proceedings instituted by the United States, for parties and witnesses who speak only or primarily a language other than English or who are hearing impaired so as to inhibit comprehension. The Administrative Office has certified interpreters in Spanish, Navajo, and Haitian Creole, and these interpreters should be used, if available. If a certified interpreter is not available, an “otherwise qualified” interpreter should be used. The Administrative Office maintains a database of certified and otherwise qualified interpreters on the J-Net.

Most court interpreting is performed by contract interpreters. In district courts in which there is a daily need for certified Spanish interpreters, the Judicial Conference has approved the hiring of staff interpreters. The staff interpreters are supervised and assigned by the clerk of court.

D. Federal Public Defenders, Community Defenders, and Other Methods of Providing Representation**1. Criminal Justice Act (CJA) Requirements**

The Criminal Justice Act (CJA), 18 U.S.C. § 3006A, requires appointment of counsel for financially eligible defendants in certain circumstances and authorizes appointment in others. The CJA requires each district court to have a plan to achieve the CJA's objectives. The plan must be approved by the circuit judicial council, which is required to supplement the plan with provisions for representation on appeal and may require other modifications to the plan. 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 VII of the Guide ("Appointment of Counsel in Criminal Cases"), especially section A ("Guidelines for the Administration of the Criminal Justice Act and Related Statutes"). This volume includes a model CJA plan, as well as forms approved by the Conference, and covers such topics as defendants' eligibility for CJA services, appointment and compensation of attorneys, and the authorization of investigative, expert, and other service providers.

2. Methods of Providing Representation

Section 3006A(g)(1) of Title 18 authorizes federal public defender organizations or community defender organizations in districts or parts of districts in which at least 200 people annually require appointed counsel. Two adjacent districts or parts of districts may aggregate the number of persons who require appointed counsel to become eligible for a defender organization to serve both districts. If the adjacent areas are located in different circuits, the judicial council of each circuit must approve the plan for furnishing representation.

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 federal public defenders (*see Guide*, vol. VII, sec. A, ch. 4).

Although federal public defender attorneys and support staff are federal judicial branch employees, they are not part of the court's or chief judge's staff. The decision to house federal public defender organizations within the judicial branch was motivated by administrative convenience.

Community defender organizations are nonprofit defense counsel services established and administered by any group authorized by the court's CJA plan to provide representation (*see Guide*, vol. VII, sec. A, ch. 4; 18 U.S.C. § 3006A(g)(2)(B)). Their personnel are not federal judicial branch employees.

The CJA anticipates that even districts with defender organizations will assign "a substantial proportion" of cases to private attorneys (18 U.S.C. § 3006A(a)(3)) selected from a panel designated or approved by the court. The Judicial Conference's Model Criminal Justice Act Plan provides that, where practical and cost-effective, "approximately 25% of the appointments under the CJA annually throughout the district" shall go to private panel attorneys (*see Guide*, vol. VII, sec. A, app. G). The federal public defender organization or community defender organization may play a role in administering the panel of private attorneys. The Judicial Conference has encouraged chief district judges to establish CJA committees made up of representatives from government agencies and private attorneys involved in the federal criminal justice system (JCUS Report, Mar. 1994, at 17–18).

3. Compensation and Administration

Federal public defenders and assistant federal public defenders are full-time salaried attorneys. The courts of appeals fix compensation for federal public defenders, and the federal public defenders fix compensation for the assistants. For the federal public defender, the rate may not exceed the compensation paid to the U.S. attorney; for assistant defenders, it may not exceed the compensation for assistant

U.S. attorneys of similar qualifications and experience (18 U.S.C. § 3006A(g)(2)(A)).

Under 18 U.S.C. § 3006(g)(2)(B), community defender organizations receive sustaining grants approved by the Judicial Conference in lieu of payments under § 3006A(d) and (e) (*see Guide*, vol. VII, sec. A, ch. IV & app. D).

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 CJA guidelines provide for automatic annual increases in the maximum hourly rates (JCUS Report, Sept. 1990, at 79; JCUS Report, Mar. 2002, at 13–14). Under Judicial Conference policy, each chief district judge is provided annually with a list of attorneys in that district who claimed compensation under the CJA for more than 1,000 hours of services in the preceding year.

The Judicial Conference has also adopted recommendations regarding the costs and quality of representation in federal death penalty cases (JCUS Report, Sept. 1998, at 67–74). The Anti-terrorism and Effective Death Penalty Act of 1996 sets a maximum of \$7,500 for the payment of fees and expenses for services other than counsel in a capital case, unless a greater amount is certified as necessary by the court and approved by the chief judge or designee of the circuit (JCUS Report, Mar. 1997, at 23; *see Guide*, vol. VII, sec. A, ch. 6).

Questions relating to CJA matters should be directed to the Administrative Office's Defender Services Division.

E. External Agencies

1. General Services Administration (GSA)

The General Services Administration (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* section VI.C). Generally, the field office manager (or, for a building operated through Commercial Facility Management, the commercial facility

manager) is the primary GSA official responsible for maintaining GSA-operated buildings.

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). (Section 562 provides for interim and acting appointments.) The U.S. Marshals Service (USMS) 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 (*see infra* section VI.C.2). 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
- contracting for court security officers and for the installation and maintenance of security systems in space occupied by the federal judiciary.

Marshals survey each court's security needs and develop a written security plan, which contains the marshal's 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 USMS for evaluation in light of available funds and overall security needs. Whenever the USMS 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 USMS—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 USMS's appropriation. To provide broadened security through contract guards and security equipment, the Administrative Office now transfers to the USMS the judicial branch annual appropriation for court security.

An April 1987 memorandum of agreement between GSA, the Administrative Office, and the USMS 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 USMS (*see generally* Guide, vol. I, ch. IX).

3. U.S. Attorney

Each district has a U.S. attorney, appointed by the President with the consent of the Senate, who serves a four-year term (28 U.S.C. § 541). 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 (28 U.S.C. § 546(d)).

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

4. General Accounting Office (GAO)

The General Accounting Office (GAO), a legislative branch agency, studies the performance and expenditures of the federal

government, primarily executive branch agencies. It performs most of its studies at the request of Congress. The GAO occasionally conducts studies of federal judicial administration, such as reports on the use of recalled magistrate and bankruptcy judges (1999), weighted filings assigned to senior district and magistrate judges (1999), and population and case filings per judgeship for U.S. district courts (1998). 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 Administrative Office's Office of Management, Planning and Assessment.

5. State and Local Courts

Good working relationships with state and local courts in its jurisdiction can help a district court resolve scheduling conflicts; explore sharing some services, such as jury rolls; and promote cooperation in addressing common problems. As noted in section IV.D, *supra*, state-federal judicial councils can be helpful in establishing such relationships. The *Manual for Cooperation Between State and Federal Courts* (Federal Judicial Center 1997) describes the work of state-federal judicial councils as well as numerous other less formal means of cooperation and collaboration between state and federal courts. This publication is available on the Center's Web site on the courts' intranet at <http://jnet.fjc.dcn>.

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

Chapter II provides an overview of chief judges' responsibilities and summarizes some basic leadership and management techniques used by chief judges and by leaders in non-judicial public and private organizations. This chapter describes in more detail the chief district judge's primary management duties. The Administrative Office's *Compendium of Chief Judge Authorities* (Judges Information Series no. 8, October 2002) lists chief district judges' responsibilities pursuant to statute, rules of procedure, Judicial Conference policy, and delegations from the director of the Administrative Office. It is available from the Article III Judges Division.

As chief judge, you are ultimately responsible 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 even though you may have delegated other tasks to the clerk. You need to stay current on various aspects of court management, some of which have already been discussed. The Administrative Office can conduct a management review, which may be particularly useful to new chief district judges. A management review can include all of the court's functions or only one aspect of the court, such as information technology or chambers management.

A. People

1. Other Judges in the District

a. New judges

Chief judges assist new judges in the transition to their new duties. They also 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 Guide, vol. III, sec. B, ch. IX, has further information and guidance on judicial investitures.

i. Court-based orientation programs

Some courts have court-based orientation or mentor programs that can help new judges learn about local rules and procedures and familiarize them with their new colleagues, court staff, and the courthouse. Such programs frequently give new judges an opportunity to watch experienced colleagues in action, ask questions, and learn about important features of the work, practices, and policies of the court.

Local orientation or mentor programs take various forms. Some courts designate a standing mentor judge or panel of judges. Others make ad hoc assignments as the need arises. Alternatively, new judges may be scheduled to spend time with and observe each of the court's judges who want to participate. Small districts sometimes arrange with nearby districts to supplement their resources and broaden the new judge's exposure to different approaches.

Local orientation or mentor programs should provide new judges with the following:

- an opportunity to discuss setting up chambers with other judges and the clerk of court;
- opportunities to observe courtroom proceedings and chambers activity, including chambers conferences and interaction with chambers staff;
- opportunities to observe critical proceedings, such as jury impanelment; civil and criminal motion calendars; Rule 16, final pretrial, and settlement conferences; suppression hearings; plea taking; and sentencing proceedings; and
- introductions to the various departments and officers of the court (and officers who work with the court, such as the U.S. attorney, federal public defender, and U.S. marshal) and an opportunity to learn where they are, who they are, and what they do.

A tour of court facilities is also useful.

ii. 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. It stresses practical instruction in court procedure, the Federal Rules of Evidence, judicial ethics, 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 week-long, Washington, D.C., orientation seminar, which builds upon the instruction in the initial orientation program. (A similar two-step orientation program is offered to bankruptcy and magistrate judges in their first year on the bench.) The Center also sends new judges a collection of its reference guides, manuals, and other materials, including the *Benchbook for U.S. District Court Judges* (4th ed. 1996), *Manual on Recurring Problems in Criminal Trials* (5th ed. 2001), *Reference Manual on Scientific Evidence* (2d ed. 2000), and *Manual for Complex Litigation, Third* (1995).

iii. Administrative Office orientation programs

The Administrative Office invites judge nominees to attend an individual orientation program in Washington, D.C., at the time of their confirmation hearings and pays the travel costs. This several-hour program covers compensation, benefits, ethics, security, and administrative aspects of becoming a federal judge. In addition, judge nominees receive the Administrative Office handbook *Getting Started as a Federal Judge* (1997, 1998 update), which provides practical advice and information addressing the most frequent inquiries received from nominees and newly appointed judges during the transition to the federal bench. This publication is available on the J-Net.

b. Senior judges

The chief circuit judge or circuit judicial 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)). The chief district judge may also assign duties to a senior judge in that district (28 U.S.C. § 294(c)). The extent of the circuit judicial council's supervision of senior judges' work assignments differs among the circuits; for guidance, consult circuit internal operating procedures or the circuit executive. The Judicial Conference has stated that senior judges "should suffer no diminution in status because of their retirement from active service" and "should be treated

for all purposes exactly like active judges except to the extent otherwise required by statute or policy of a circuit judicial council” (JCUS Report, Sept. 1995, at 86).³⁵

Two separate workload requirements apply to senior judges. First, in order for a senior judge to receive salary increases other than cost-of-living adjustments, the chief circuit judge must certify that the senior judge handles the workload required by the Judicial Conference (28 U.S.C. § 371(e)(1); Guide, vol. III, sec. C, ch. I, pt. B). The Judicial Conference authorizes retroactive certification when a senior judge’s additional workload in a subsequent year is sufficient to offset a reduced workload in a prior year (JCUS Report, Sept. 1997, at 73). The Conference’s *Rules for Certification of Senior Judges* (1990) articulates standards for meeting the statutory work requirements (JCUS Report, Mar. 1990, at 10–11, 20; JCUS Report, Sept. 1990, at 84; Guide, vol. III, sec. C, ch. I, exhibit B-3).

Second, the Conference authorizes chambers and staff for senior judges only upon the circuit judicial council’s certification to the director of the Administrative Office that the judge is performing “substantial service” to the court to justify facilities, and that the number of supporting positions requested is necessary based on the judge’s actual workload (JCUS Report, Mar. 1958, at 245–46; JCUS Report, Sept. 1982, at 81; Guide, vol. III, sec. B, ch. VI, pt. 7). The information the circuit judicial councils use in making those judgments is provided annually by the Administrative Office’s Office of Human Resources and Statistics, and is based on the caseload data routinely provided by the district courts.

Determining the need for support is largely a judgment call and is open to challenge by a chief district judge who 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

35. See Commentary to Recommendation 64, Long Range Plan, *supra* note 18, at 100–01.

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. 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 encouraged 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).

c. *Unanticipated vacancies*

If there is an unanticipated judgeship vacancy, chambers staff may remain on the court payroll for 90 days, with an extension of an additional 120 days if the chief district judge certifies to the circuit judicial council that additional staff resources are necessary (JCUS Report, Sept. 1996, at 61). 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.

d. *Judicial disability procedures*

Section IV.A.3.b, *supra*, describes the statutory procedures by which the federal courts receive and handle complaints of judicial misconduct 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.

e. *Residence and place of holding court*

Section 134(c) of Title 28 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 de-

termination as well as to determine which judge shall reside near the court if the district judges cannot agree.

f. Judicial travel

Judicial travel regulations authorize reimbursements for judges for travel to hold court or to attend authorized judicial meetings (as defined in the regulations) whenever they determine such travel to be necessary (see Guide, vol. III, sec. C, ch. V, exhibit A). For other official travel by judges, reimbursement is authorized only when the travel is approved in advance by the appropriate chief judge (i.e., the chief district judge for district, bankruptcy, and magistrate judges in the district), or, in certain instances, by the chair of the appropriate Judicial Conference or circuit judicial council committee. Travel to Federal Judicial Center programs and meetings is reimbursed by the Center and requires the advance approval of the Center.

Judicial travel regulations also direct the chief district judge to send the director of the Administrative Office the reports on “non-case-related travel” required to be filed annually by all judges in the district. Travel is “non-case-related” if it is not directly related to the judge’s assigned cases but nevertheless involves judicial administration, education, or extrajudicial activities permitted by law and the Code of Conduct for United States Judges, and if the expenses are paid for (either directly or by reimbursement to the judge) by another person, an organization, or an agency of the federal government (see Guide, vol. III-A, ch. V, exhibit A, sec. G).

2. Court Staff Personnel Policies and Management

a. The chief judge’s role and responsibility

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. I, ch. X). Other tasks involve the chief district judge directly, including the following:

- making the appointments discussed in Chapter V, *supra*;
- supervising the clerk of court and chief probation and pre-trial services officers (including conducting annual perform-

ance evaluations, authorizing and approving official travel, and approving leave);

- 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.

For court unit support staff (not including chambers law clerks and secretaries, court reporters, interpreters, and certain other employees), you can request from the director of the Administrative Office a delegation of authority to establish and classify positions under the Court Personnel System (CPS), determine the qualifications of those positions, and fill them at appropriate pay levels. You can re-delegate this authority to the relevant court unit officers.

To promote employee effectiveness and morale, consider greeting new employees at periodic orientation sessions, attending ceremonies that recognize an employee's service, and providing awards for superior performance or useful suggestions (*see* Guide, vol. I, ch. X, subch. 1451.2, on employee recognition programs). Informal visits with court employees that are arranged with the officers can also boost morale. (Section II.B, *supra*, discusses other ways to contribute to employee morale and effectiveness.)

b. Interviewing and hiring practices

The Federal Judicial Center's *Conducting Job Interviews: A Guide for Federal Judges* (1999) helps judges interview applicants for court unit executive positions (clerk of court, chief probation officer, and chief pretrial services officer) and law clerk positions. The guide recommends a process for analyzing a job and the experience needed to fill it. It also provides suggestions for simple, fair, and effective hiring practices, as well as examples of interview questions. The guide is available from the Center's Information Services Office and on the Center's Web site on the courts' intranet at <http://jnet.fjc.dcn>.

Some district courts review law clerk applications centrally, screening not only for general qualifications, but also for criteria of special interest to particular judges. If a court uses a coordinated selection process, candidates can avoid having to come to the court

more than once for interviews with different judges. The Administrative Office has established a Web site for federal law clerk information on the J-Net, which allows judges to disseminate information about available law clerk positions. It provides comprehensive and timely information for applicants and saves time for judges' staff.

c. *Judiciary equal employment opportunity and employment dispute resolution plans*

The Judiciary Fair Employment Practices Program calls for each court to adopt an Equal Employment Opportunity (EEO) plan (JCUS Report, Mar. 1980, at 5; revised, JCUS Report, Sept. 1986, at 57–58). The Judicial Conference's Model EEO Plan is a guide for courts in developing and implementing their own EEO plans. The Conference's Model Employment Dispute Resolution (EDR) Plan (JCUS Report, Mar. 1997, at 28) supersedes sections of the Model EEO Plan dealing with complaint procedures. In response to the Conference's recommendation, each court adopted and implemented a plan based on the Conference's Model EDR Plan.

The Model Plan assumes that each local plan will task the chief district judge with (1) submitting proposed modifications of the court's EDR plan, EEO plan, or combined plan; (2) reviewing, hearing, and deciding complaints or designating another judge to do so; and (3) submitting annual reports on EDR implementation and EEO achievements in the court. It also assumes that courts will provide EEO information to the public.

A court's EDR plan, however, not the Model EDR Plan, governs coverage, rights and responsibilities, and procedures for handling fair employment practices complaints in that court. Each court annually submits a report on the implementation of its plan to the Administrative Office, and a copy remains in the court.

The Federal Judicial Center's Court Education Division can provide technical assistance and limited funding for educational programs for court employees on diversity issues. The Employee Relations Office of the Administrative Office can assist courts with questions about policy or procedures. Also helpful are the Administrative Office's *Judiciary Fair Employment Practices Annual Report* and

its *Employment Dispute Resolution Bench Book for Judges* (2001), which are available—along with the Model EEO and EDR Plans—on the J-Net.

d. *Indemnification for improper employment practices*

Judicial Conference guidelines for the indemnification of judges and employees who are found liable for actions taken within the scope of their employment (such as wrongful employment practices resulting from such administrative acts as dismissing or demoting employees) are in volume 1, chapter 11, part D, section 5 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, situations in which judges are entitled to representation at the government's expense, and the procedures for requesting such representation. The memorandum emphasizes that a judge or judicial employee served with legal process should inform the Office of General Counsel immediately. Further information on this topic can be found in *The Risk of Personal Liability for Federal Judges* (1998), an Administrative Office publication available from the Article III Judges Division and on the J-Net.

e. *Temporary personnel for judges during emergencies*

A judge sometimes needs additional, temporary law clerks or secretaries during emergency situations. Judicial Conference policy requires that the judge's declaration of a "judicial emergency" and request for temporary 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 Conference has also approved the option of contracting with a temporary help service (JCUS Report, Sept. 1989, at 72).

3. Education and Training Programs and Other Assistance**a. *Orientation and continuing education***

Court managers should establish and maintain formal training programs. For example, 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 for court employees. Information on its programs and services for court personnel is available in its annual catalog called *The Purple Book*. The Center also operates the Federal Judicial Television Network (FJTN), which provides educational and informational broadcasts from the Center, the Administrative Office, and the U.S. Sentencing Commission to satellite downlinks in over 300 court locations. FJTN broadcast schedules, Center publications, Web- and computer-based training programs, and other educational materials can be found on the Center's site on the courts' intranet at <http://jnet.fjc.dcn>.

Using a variety of delivery systems, such as the FJTN, Web- and computer-based training, CD-ROMs, and instructor-led training, the Administrative Office provides training in administrative and operational duties delegated by the director of the Administrative Office to court personnel. Course topics include automation and other information technology training; employee benefits, retirement planning, and other human resources matters; financial management; statistical reporting; contracting and procurement; and facilities management. Information on Administrative Office training programs can be found on the J-Net.

The U.S. Sentencing Commission provides education and training to judges, judicial branch personnel, and practitioners in understanding and applying the Sentencing Guidelines. Some of its education and training activities are done in conjunction with Center training programs, such as sessions on the Sentencing Guidelines at the Center's orientation seminars for new district judges. Information about the Commission's training programs and educational ma-

terials on the guidelines are available on its Web site at <http://www.ussc.gov>.

Local training programs in the court, arranged primarily by court personnel, can complement national and regional programs. The Federal Judicial Center can provide advice and modest financial support for in-court programs when necessary. The Administrative Office also allots training funds to courts to conduct training programs at the local level to ensure proper performance by court personnel of the responsibilities delegated by the director of the Administrative Office. Training funds are also allotted for recurring operating expenses in compliance with guidelines for the Court Allocation Fund (see Guide vol. I, ch. III, pt. F).

Court training specialists are key elements in the court's 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 Federal Judicial Center and the Administrative Office. The Court Personnel System authorizes creating court training specialist positions. These positions may be appointed in the clerk's office, the probation office, the pretrial services office, and the bankruptcy court. In some courts, training specialists perform other duties as well as their training duties.

b. Law clerk orientation

Each year in September, shortly after new law clerks begin their service, the Federal Judicial Center broadcasts an orientation series on the FJTN to help introduce new law clerks to their roles and responsibilities, and complement local law clerk orientations. The series consists of presentations on ethics, legal writing and editing, and a general introduction to the courts and to the federal judicial system. Programs on subject matter jurisdiction and on the organization and jurisdiction of the bankruptcy courts are also broadcast in conjunction with the orientation series. In addition, the Center published *Maintaining the Public Trust: Ethics for Federal Judicial Law Clerks* (2002) in coordination with the Judicial Conference's Codes of Conduct Committee and the Administrative Office. This publication is available on the Center's Web site on the courts' intranet at <http://jnet.fjc.dcn>.

4. Outside Groups

a. The Public

The chief judge usually represents the court at various public events and official ceremonies, and often receives speaking invitations from bar groups and civic groups. The court should also have procedures in place for dealing with the public and with special groups that visit the courthouse.

Two Federal Judicial Center publications—a booklet, *Federal Courts and What They Do* (1997), and a brochure, *Welcome to the Federal Courts* (1996), help federal courts explain their function and introduce visitors to the courthouse. These publications are available on the Center's Web site on the court's intranet at <http://jnet.fjc.dcn>. Courts can order these publications from the Administrative Office to have available for court visitors. The Center also has a Web-based program called *Inside the Federal Courts*, which explains the role and organization of the federal courts, as well as the civil, criminal, appellate, and bankruptcy processes. It is available to the public on the Internet at <http://www.fjc.gov>.

The Administrative Office also publishes and distributes a booklet called *Understanding the Federal Courts* (1999). Electronic copies are available on the J-Net. In addition, the Office of Public Affairs of the Administrative Office operates a community and educational outreach program and makes available materials to assist courts that want to participate in outreach events (e.g., student Law Day programs).

b. The Bar

i. Admission

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

ii. Conduct and disciplinary action

Rules governing attorney conduct vary from district to district. Federal rules often vary from state rules, and at times conflict with them. Interpretations of even the same written text may differ. Federal courts realize that, traditionally, attorney licensing and discipline have been within the sphere of state authority (this can create

special problems in the case of federal prosecutors). Some districts simply incorporate the state rules of professional responsibility. Some districts adopt the American Bar Association (ABA) Model Rules or the ABA Model Code, and one district has adopted the ABA Canons of Ethics. Some districts have adopted their own stand-alone systems, which differ not only from the state rules but also from any other system anywhere. In multidistrict states, different districts may take different approaches.

The Judicial Conference approved the Model Federal Rules of Disciplinary Enforcement of the American Bar Association in 1978, and amendments in 1979 and 1984 (JCUS Report, Sept. 1984, at 52; JCUS Report, Mar. 1979, at 7; JCUS Report, Sept. 1978, at 42–43). These rules provide, *inter alia*, for courts to inform the ABA National Lawyer Regulatory 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. The Conference has urged all courts to adopt the Model Rules and emphasized the importance of reporting disciplinary actions to “all licensing authorities with jurisdiction over the attorney or attorneys disciplined” (JCUS Report, Mar. 1984, at 9–10).

iii. Services

The chief judge is typically the initial contact between the court and members of the bar with regard to court services provided to lawyers. The court may retain attorney admission fees that it collects in excess of the Judicial Conference minimum and use them “only for purposes which inure to the benefit of the members of the bench and the bar in the administration of justice” (Guide, vol. I, ch. VII, pt. M). Examples of such purposes are attorney admission proceedings, attorney discipline proceedings, periodicals and publications for court libraries for which appropriated funds are not available, lawyer lounge facilities, and charts and stands for courtroom use. Attorney admission fees may not be used to supplement appropriated funds and may not be used to pay for materials or supplies available from statutory appropriations. Under no circumstances should such funds be used to supplement the salary of, or provide any benefit to, a court officer or employee. (For policies and proce-

dures relating to attorney admission fees, see Guide, vol. I, ch. VII, pt. M.)

c. The Media

Courts can do several things to assist the media. Clerks typically handle routine contacts with the press. Some courts either have public information officers or have designated someone knowledgeable in court processes and policies—the clerk or a person on the clerk's staff—as the court's liaison between journalists and judges or other court officials. That person must be made aware of areas that the court views as inappropriate for comment. The Center's Web-based program *Inside the Federal Courts* can help journalists learn about the role and organization of the federal courts. It is available on the Internet at <http://www.fjc.gov>.

Some courts also prepare press announcements on non-case subjects, such as appointment of new personnel, elevation of the chief district judge, or institution of a new case-processing procedure. The Office of Public Affairs in the Administrative Office can provide advice and assistance on dealing with the media.

B. Budget and Fiscal Matters

1. Budget Formulation

Section 605 of Title 28 requires the director of the Administrative Office, under the supervision of the Judicial Conference, to submit budget estimates for the federal courts to the Office of Management and Budget for inclusion, without change, in the budget that the President sends to Congress in January. This process begins sixteen months in advance of the fiscal year being considered. First the program committees of the Judicial Conference review and approve budget estimates for their program areas. These estimates are based on caseload projections, formula calculations, inflationary factors, and other appropriate increases or decreases. Then the Judicial Conference Budget Committee considers the requests of the various program committees and forwards a recommended budget to the Conference. The Conference considers and approves the budget request at its September meeting, twelve months in advance of the fiscal year. The request is combined with requests of the Supreme

Court, other special courts, and judicial branch agencies and submitted in February, nine months before the fiscal year begins. Congress considers the judiciary's request along with the requests of other government agencies, and it ultimately passes an appropriation bill to provide funding for the fiscal year.

2. Budget Execution

Budget execution for the federal courts centers on the development and use of a "national financial plan." The plan, which includes separate appropriations for salaries and expenses of the federal trial and appellate courts, court security, defender services, and fees of jurors, guides and controls the expenditure of judiciary funds.

To help the Executive Committee of the Judicial Conference prepare a financial plan for the forthcoming fiscal year, approximately six months before the fiscal year begins, the Administrative Office estimates funding likely to be available. It also estimates the needs of both centrally managed programs and allotments provided to the individual courts on the basis of anticipated workload and staffing for the coming year, as well as support costs and project requirements. The Executive Committee of the Judicial Conference finalizes and approves the financial plan after Congress enacts the appropriations. In the event Congress does not enact the judicial branch appropriations by the October 1 start of the fiscal year (which typically requires the courts to operate with the same funding as in the just-ended fiscal year), the Executive Committee approves an "interim financial plan" to serve as a spending guide until appropriations are enacted.

Under the judiciary's budget decentralization system, the Administrative Office allots funds to each court with which to conduct operations. The courts generally have substantial authority to allocate resources as required, under the oversight of the chief judge. The courts provide quarterly spending reports to the Administrative Office.

Local budget decisions can be made differently in each district. Such decisions include review and approval of annual spending plans, projections and priorities (and changes during the fiscal year), specific funding requests from individual court units, and repro-

gramming of funds within and among court units. As chief judge, you have ultimate responsibility to oversee the process, but you can delegate specific decision-making authority to court budget committees, other individual judges, or court unit executives.

The Judicial Conference has conditioned decentralization of budgetary authority on the understanding that participating court units have adopted procedures governing their budget approval and reprogramming processes. Accordingly, each unit of a district court must have in place a “Budget Organization Plan.” This plan, approved by the chief judge and forwarded to the Administrative Office, documents each unit’s financial organization, planning, and decision-making structure, and it specifies the roles and responsibilities of court officials in handling budget matters. Model plans are available on the J-Net.

Understanding the Judiciary’s Budget Process, the Administrative Office’s fifteen-minute video and companion guide for chief judges, provides further information on the requirements and procedures for budget formulation and execution. Copies are available from the Budget Division of the Administrative Office.

3. Audit of Moneys in Custody of Court Personnel

The clerk of court, as the court’s financial officer, is accountable under 28 U.S.C. §§ 751(e), 2041–2044 for a wide range of financial activities:

- disbursing appropriated and other funds in the treasury for the district, bankruptcy, and appellate courts, and the federal public defender office, if applicable, for travel and normal operation and maintenance;
- collecting and accounting for funds received for court services, for court-imposed fines, penalties, and forfeitures, and for refunds to appropriations; and
- accounting for other deposited funds that pass through the court to individuals, corporations, and government agencies (*see* Guide, vol. I-C, ch. IX; vol. III, sec. A, ch. V, pt. B).

As noted in section V.A.4, *supra*, a bankruptcy clerk has special accountability for bankruptcy fees and costs.

The Administrative Office conducts financial audits of the courts by contracting with a national public accounting firm and through its own Office of Audit. The audit cycle is approximately every four years. The court audits include an attestation to the fairness of the accounting reports, evaluations of internal controls and compliance with financial management requirements, and tests of financial transactions. Chief district judges are entitled to receive all audit reports, should oversee necessary follow-up actions, and can request that the Office of Audit conduct special audits when there are personnel turnovers or if they have reason to suspect problems. The Office of Audit is also responsible for performing audits whenever a court changes its clerk of court.

The Administrative Office's *Management Oversight and Stewardship Handbook* (2001), pages 55–57, provides additional guidance on court fund management and audits. This publication is available on the J-Net.

4. Certifying Officer Program

Historically the clerks of the district courts have had exclusive responsibility for disbursing appropriated funds to pay for goods and services acquired by court units within their districts and by appellate court units and public defender offices for which their districts disburse funds. Clerks of district courts have also been responsible for certifying the correctness and legality of those payments. In performing the certifying function, they are accountable for, and thus face pecuniary liability for, any illegal, improper, or incorrect payments. As a result, most clerks require substantial amounts of supporting documentation from court units to substantiate payment requests.

The Federal Courts Improvement Act of 2000 authorizes additional certifying officer positions within the judiciary, to separate the certifying and disbursing function. In September 2001, the Judicial Conference approved a policy under which the director of the Administrative Office will designate certifying officers in appellate, district, and bankruptcy courts with the concurrence of the respective chief judges of those courts, and bankruptcy administrators and bankruptcy appellate panel clerks will be designated with the con-

currence of the chief circuit judge. Implementation of the program began in 2002. Education of prospective certifying officers and their support personnel in the principles of federal appropriations law and certifying officers' responsibility and liabilities is a key element of the program.

C. Buildings and Equipment

1. Space and Facilities Program

a. Administrative Office and the chief judge

The director of the Administrative Office has the statutory responsibility to “[p]rovide accommodations for the courts” (28 U.S.C. § 604(a)(12)), by providing for the acquisition, management, alteration, and construction of facilities. Primary responsibility for these programs rests with the Space and Facilities Division of the Office of Facilities and Security of the Administrative Office.

Chief judges should participate actively 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.

b. 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.

Administrative Office staff will assist district court representatives in long-range planning sessions. The chief district judge should appoint a team leader—typically the district court clerk—to meet with Administrative Office staff. The team leader should then select

a planning team consisting of representatives from the district and bankruptcy courts and the 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.

c. Space acquisition

When a court identifies a need for space, it should verify with the circuit executive whether a space request requires circuit judicial council approval. The court should forward the space request to the Administrative Office if it does not require council approval or, if it does, after the council has approved. The request will be reviewed for completeness and compliance with the U.S. Courts Design Guide.³⁶ If the Administrative Office finds the request satisfactory, it will prepare and submit to GSA a formal request form. GSA will analyze 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 of the Administrative Office's Space and Facilities Division.

d. Space alterations and construction

Space alteration projects fall into two categories: (1) projects that are less than an amount called the "prospectus level," and (2) projects that are equal to or greater than the prospectus level. (The prospectus level was \$2.13 million in FY 2002.) Under budget decentralization, funds are allocated to each circuit judicial council to fund projects throughout its circuit.

Courts generally have no authority to perform tenant alterations or other construction and must rely on GSA to make alterations through a process called a Reimbursable Work Authorization (RWA). For projects that are less than the prospectus level, circuit and court unit executives have authority to sign RWA requests to GSA for tenant alterations costing up to \$25,000. The circuit judi-

36. The Design Guide, which contains architectural specifications for all court facilities, is available to chief district judges through the clerk of court.

cial council must approve alterations costing more than \$25,000 but less than the prospectus level.

Prospectus-level projects must be approved by Congress through line items in GSA's annual budget. Requests for GSA funding are made only after a proposed project is reviewed within the judicial branch. RWAs for prospectus-level projects can be approved only by the Administrative Office's Space and Facilities Division. Some circuit judicial councils also want to review such projects. Prospectus-level projects involving construction of new courthouses or annexes are prioritized and ranked in the Five-Year Courthouse Project Plan approved by the Judicial Conference and provided to GSA, which seeks funding from Congress as part of the President's budget request.

Additional information on space alterations and related matters is available from the Space and Facilities Division or on the J-Net.

e. 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 clerk of court, the circuit executive, or the Planning and Analysis Branch of the Space and Facilities Division of the Administrative Office.

2. Court Security and Emergency Preparedness

a. Court security program

Under 28 U.S.C. § 566(a), the U.S. Marshals Service (USMS) is responsible for the security of the federal courts (*see supra* section V.E.2). The USMS investigates threats, protects judges and other participants in the judicial process, confines and transports prisoners, and secures facilities that house primarily court and court-related operations (or judicial areas in multitenant buildings). The USMS manages the judiciary-funded Judicial Facility Security Program (JFSP), which provides for the purchase and installation of security systems and equipment for court facilities and the procurement of contract court security officers (CSOs). The scope of work

under the CSO contract is to provide for the safety and security of judges, court personnel, jurors, witnesses, defendants, federal property, and the public.

The U.S. marshal is responsible for security-related services at the district level, under the general guidance of the district's court security committee. Establishing a court security committee for each district was a cornerstone recommendation of the Report of the Attorney General's Task Force on Court Security, which was endorsed by the Judicial Conference in 1982. The committee should include, at a minimum, the chief district judge (or a judge you designate); the U.S. marshal, who serves as the principal coordinator; the clerk of court; a U.S. magistrate judge; a representative of the bankruptcy court; a representative of the court of appeals if the appeals court has a presence within the district; the U.S. attorney; and a GSA representative. At the court's option, a representative from the district's probation and pretrial services office can also be a member.

The General Services Administration (GSA), as the federal government's property manager, is responsible for the security of all federal buildings within its inventory and for the safety of the employees who work in them (40 U.S.C. § 318). GSA's Federal Protective Service (FPS) provides a visible uniformed presence in major federal buildings, responds to criminal incidents and other emergencies, installs and monitors security devices and systems, investigates criminal incidents, and conducts physical security surveys. It also coordinates a comprehensive program for occupants' emergency programs; presents formal crime prevention and security awareness programs; and provides police emergency and special security services during natural disasters, such as earthquakes and hurricanes, and man-made disasters, such as bomb explosions and riots. These services are, for the most part, provided at multitenant federal facilities that may or may not house court space.

The Judicial Conference Committee on Security and Facilities, which oversees all security matters, has recommended 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. In preparing the court security appropriation request, the Administrative Office seeks information from each marshal, but asks that both the chief district judge and the marshal sign the summary appropriation form.

b. Emergency preparedness

The judiciary is largely dependent on the General Services Administration to provide and maintain its official workplaces, and on the U.S. Marshals Service to make those workplaces secure. Nevertheless, each court is responsible for establishing procedures, known as “occupant emergency plans,” to safeguard lives and property during emergencies affecting that court, and for planning to ensure continuity of court operations in the event of a natural or man-made disaster that extends more than a few days.

Under GSA regulations, the highest ranking official of the primary agency in each federal building is the “designated official” who oversees emergency planning to ensure that occupant emergency plans are made and employees are designated to undertake emergency response duties when the need arises. The district court’s security committee (discussed in the preceding section) or the building security committee in a given facility usually takes the lead in developing occupant emergency plans and may also assist in developing plans for continuity of operations.

Further information on emergency preparedness can be found on the J-Net or from the Judiciary Emergency Preparedness Office of the Administrative Office.

3. Equipment, Supplies, and Services

a. Procurement authority

The director of the Administrative Office has made general delegations of procurement authority, including conditions and dollar limitations for equipment, supplies, and services, to chief district judges and federal public defenders. In addition to these general delegations, the director has made special delegations of procurement authority, exceeding the dollar limitations of the general delegations, under specific programs (e.g., law books, court reporting services, courtroom technologies design and installation services,

offender treatment services and residential halfway house services, and copy center services). Each of these special delegation programs has specific mandatory procedures. Usually, a chief judge designates a procurement liaison officer, who must certify that he or she will comply with the procurement policies set out in volume I, chapter VIII of the Guide. Like other delegated management functions, however, the court's procurement and contracting activities are overseen by the chief judge.

b. Management of court property

All equipment and supplies purchased with appropriated funds and used by court employees, including desks, chairs, computers, and copiers, are the property of the government and are to be used only for official purposes and ultimately disposed of in accordance with established rules. The chief district judge separately appoints a "custodial officer" to oversee day-to-day management of the court's official property and a "disposal officer" to oversee disposal of official property no longer needed to conduct government business.

The Guide (vol. I, ch. V) provides detailed guidance on the appropriate management of judiciary property. For further information, contact the Space and Facilities Division of the Administrative Office.

c. Information technology

The Administrative Office provides a variety of computer equipment and specific software applications to the federal judiciary. These applications include the Case Management/Electronic Case Files (CM/ECF) system, a jury management system, a financial accounting system, a case-tracking system for probation and pretrial services, and electronic bankruptcy noticing. The Administrative Office also maintains the Data Communications Network (DCN), which provides electronic mail services for the courts and access to the judicial branch's intranet sites and the public Internet.

The various computer software applications available to the courts and their current and projected status are described in the most recent *Long Range Plan for Information Technology in the Federal Judiciary*. This plan is revised annually after review by the Judicial Conference Committee on Information Technology. The commit-

tee also sets priorities for implementation of information technology projects that may be funded from the Judiciary Information Technology Fund, which the Administrative Office administers under the committee's direction. Chief judges receive a copy of the plan with the Conference committee reports. In developing strategies for the implementation of information technology, the Administrative Office communicates with advisory groups of judges, clerks of court, and other court employees.

Local court technology staff implement and maintain nationally developed systems available from the Administrative Office, and also adapt or develop applications to meet their court's needs. Each clerk's office (district and bankruptcy) and each probation and pretrial services office is allocated information technology staffing and funding.

There are several approaches to managing a court's information technology structure. Some districts have separate systems managers and systems staff for the clerk's office, probation, and pretrial services. Some districts have developed formal arrangements for the offices to share technology resources and determine common goals and priorities. In other districts, collaboration may be less formal. Some districts have even consolidated their information technology resources under one umbrella, and a single systems manager coordinates the resources of all offices in the district. Often, only the district court offices consolidate technology resources, depending in part on whether they are located in the same building or in close proximity.

Various technologies can also be used in the courtroom to help manage cases, to reduce trial time and litigation costs, and to improve fact-finding, juror understanding, and access to court proceedings. To those ends, the Judicial Conference has endorsed the use of technologies in the courtroom and, subject to the availability of funds and priorities, urges that (1) courtroom technologies—including video evidence presentation systems, videoconferencing systems, and electronic methods of taking the record—be considered necessary and integral parts of courtrooms undergoing construction or major renovation; and (2) the same courtroom technologies be retrofitted into existing courtrooms or those under-

going tenant alterations as appropriate (JCUS Report, Mar. 1999, at 8).

The Administrative Office has contracts with several companies for the design of courtroom audiovisual systems and for their installation. An updated list of these vendors and a list of Administrative Office staff to whom questions should be directed can be found in the appendices to the *Procedures for Using the Courtroom Technologies Contracts*, which is available on the J-Net.

In addition, the Federal Judicial Center's *Effective Use of Courtroom Technology: A Judge's Guide to Pretrial and Trial* (2001) provides case management and legal guidance to judges in the use of courtroom technologies. This publication is available on the Center's Web site on the courts' intranet at <http://jnet.fjc.dcn>.

To help protect the security of the judiciary's electronic systems and information, the Judicial Conference has approved a national minimum standard defining appropriate personal use of government office equipment, including information technology, subject to the right of each court unit to impose or maintain more restrictive policies (JCUS Report, Sept. 2002, at 47–48). Individual courts have the responsibility to enforce appropriate use policies.

For more information about the judiciary's information technology programs, contact the Office of Information Technology of the Administrative Office.

d. Library service

The federal court library system makes library services available for all appellate, district, and bankruptcy personnel within the circuit. In addition to the libraries in each court of appeals headquarters, satellite libraries are in about 100 locations. A Virtual Law Library is also available on the J-Net. Although the Judicial Conference recognizes the clear need for law books and other legal research materials in hard copy, it has recently promoted on-line research as a cost-containment measure.

Advice or assistance on library, law book, and computer-assisted legal research matters is available from the circuit librarian and from the Appellate Court and Circuit Administration Division of the Administrative Office. In addition, the Federal Judicial Center's

Information Services Office maintains libraries of books and audio-visual programs for use by federal judicial employees.

D. Statistical Reporting

Each district court is responsible for sending a variety of statistical data on case filing, case operations, and other matters to the Administrative Office, primarily to the Office of Human Resources and Statistics (see Guide, vol. XI). Some data are also collected by the Employee Relations Office and by the Magistrate Judges Division. The data, which form the basis for extensive Administrative Office reports on caseloads and court operations (see *supra* sections III.C.2 and III.C.3), are prepared by the clerks of court (district and bankruptcy), probation offices, pretrial services offices, federal public defenders, and others, such as the EEO coordinators.

Although you are not required to approve or verify each report, you should strive to ensure that data sent to the Administrative Office are accurate and complete. The need for integrity and accuracy in data that describe the work of the federal judiciary nationally and in each district is obvious. The Administrative Office will notify a court if its reports are late or incomplete or are otherwise problematic—a notification that may eventually reach the chief district judge.

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

The chief judge plays a role in many decisions affecting the district court's disposition of cases, such as what type of case-assignment system to use, when to seek additional judicial assistance, and what procedures to use for such activities as juror selection and court reporting. Chief judges have also tried to ensure that the case-management systems used in their courts are effective, particularly in light of the Speedy Trial Act deadlines (18 U.S.C. §§ 3161–3174) and statutory reporting requirements for pending cases (28 U.S.C. § 476). In carrying out these case-management responsibilities, you may deal with both individual and systemic problems. Circuit judicial councils and chief circuit judges may also play a role in dealing with case-management problems.

A. Local Rules

1. 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 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 should proceed during litigation. 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. In adopting local rules, courts should consult with the bar, in addition to providing the statutorily required "appropriate public notice and opportunity for comment" (28 U.S.C. § 2071(b)).

Local rules are usually not a good vehicle for documenting administrative practices, inasmuch as the Rules Enabling Act directs courts to submit their local rules to public notice and comment, and most aspects of the court's internal administration are not appropri-

ate matters for public comment. A preferable alternative may be to publish descriptions of the court's administrative policies as internal operating procedures or general orders.

2. Authority, Public Comment, and Distribution

You should oversee local rule making. The Rules Enabling Act, as well as 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 that are not inconsistent with the federal rules. In 1996, the Judicial Conference adopted a numbering system for local rules that corresponds with the relevant Federal Rules of Practice and Procedure (JCUS Report, Mar. 1996, at 34–35).

Federal Rule of Civil Procedure 83 and Federal Rule of Criminal Procedure 57 both specify that the making and amending of local 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, 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)). Congress has also 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)).

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 required to review local rules periodically for consistency with the federal rules (28 U.S.C. § 332(d)(4)), and to modify or abrogate local rules that fail to comply.

Federal Rule of Civil Procedure 83 and Federal Rule of Criminal Procedure 57 direct that copies of local rules be furnished to the circuit judicial council and the Administrative Office and be made available to the public. The miscellaneous-fee schedules, promulgated pursuant to 28 U.S.C. §§ 1914 and 1930, allow the courts to charge fees for copies of the local rules, commensurate with the cost of providing either paper or electronic copies, or to distribute them

free of charge (JCUS Report, Mar. 2001, at 14). Local rules for many courts can be found on their Web sites, which can be accessed through the Internet at <http://www.uscourts.gov>. The Judicial Conference has encouraged courts to (1) post their local rules on Internet Web sites, (2) establish a Web site if they do not have one, if only to post the local rules, (3) make the local rules more accessible on their Web sites by creating a local rule icon or posting the rules in a prominent location, and (4) state the effective date of the rules (JCUS Report, Sept. 2000, at 46).

B. 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. Section 141 of Title 28 authorizes special sessions of court. Although Congress has told district courts not to hold “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 specify when they will be available at the various divisions. The court is to determine the times of holding court, and a court may pretermit a court session with circuit judicial council approval (28 U.S.C. §§ 139–140).

Occasional pressure to increase the number of places of holding court in a district, perhaps to benefit the local bar or enhance the prestige of a community, led the Judicial Conference to recommend that Congress 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). 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.

C. Jury Matters

1. Random Selection

Section 1863 of Title 28 requires each district court 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.” Sections 1861 and 1862 state the federal policies favoring randomness and opposing discrimination in jury selection. A circuit-level panel consisting of the circuit judicial council and the chief district judge or a designee must approve the jury selection plan before it can be put into operation. A copy of the jury selection plan should be filed with the Administrative Office and the Attorney General.

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) or the clerk, under the court’s supervision if the court’s plan so authorizes, to determine whether prospective jurors are qualified, disqualified, exempt, or to be excused from jury service (28 U.S.C. § 1865).

2. Reports and Analyses

Section 1863(a) of Title 28 calls on each court to submit to the Administrative Office “in such form and at such times as the Judicial Conference of the United States may specify” a report analyzing the district’s jury selection practices in light of its demographic composition. Pursuant to this authority, the Judicial Conference has relieved the courts of their 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 voting-age citizen population. The analysis must be completed each time the master jury wheel is refilled and any time the court changes its jury selection plan for juror qualification, exemption, or excuse. The reports should be kept on file in the clerk's office (Guide, vol. IV, ch. XXIII, sec. 23.11.b).

3. Juror Utilization

Judges are familiar with techniques for effective juror utilization—techniques to ensure that an adequate number of jurors are available and ready to serve when a trial begins while minimizing the number of jurors not selected to serve on a jury. But consistent 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 it. The Judicial Conference has established a national goal of limiting to 30% those jurors not selected, serving, or challenged on voir dire or orientation day (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. 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 thirty days in a two-year period (28 U.S.C. § 1866(e)).

Technical assistance in improving a court's juror utilization record is available from the District Court Administration Division of the Administrative Office. In addition, the Federal Judicial Center conducts jury utilization workshops, and its *Handbook on Jury Use in the Federal District Courts* (1989) discusses basic concepts related to administering federal juries and reviews various juror utilization procedures used in the district courts. Although it is intended primarily for staff, district judges may find the handbook useful. The Administrative Office's annual *Report on Juror Utilization*, which is available on the J-Net, may also prove helpful.

4. Juror Orientation

Citizens called to the court for jury service should receive an orientation to their roles and obligations. Chief district judges rarely greet new jury panels, but there may be some benefits to the court if you or another judge meets briefly with the jurors. Although the clerk of court or jury administrator can provide orientation, if jurors have exposure to a judge, their perceptions of the importance of their task are likely to be enhanced.

Additional resources the court can use with juror orientation are two media programs: *The Federal Grand Jury: The People's Panel* (1985) and *Called To Serve* (Federal Judicial Center 1995), a program on petit juries. Both of these programs are recommended by the Judicial Conference. Each district court received one copy of *Called To Serve*, and additional copies can be obtained from the Center's Information Services Office. Courts may also contact the Information Services Office for information on how to obtain *The Federal Grand Jury*.

The Administrative Office's *Handbook for Trial Jurors Serving in the United States District Courts* (1986) and *Handbook for Federal Grand Jurors* (1986) (Forms HB 100 and 101) can be downloaded from the J-Net. Most districts have developed information sheets or booklets containing local information, such as reporting instructions and travel directions. In addition to the more traditional paper methods of communication, nearly all federal district courts have juror information available on their Web sites, which can be accessed through the Internet at <http://www.uscourts.gov>.

5. Grand Juries

District courts should ensure that U.S. attorneys make effective use of grand juries. Consider asking 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 eighteen 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 *Benchbook for U.S. District Court Judges* (4th ed. Mar. 2000 rev.), section 7.04, includes grand jury instructions approved by the Judicial Conference (JCUS Report, Mar. 1986, at 33). The *Benchbook* is available on the Center's Web site on the courts' intranet at <http://jnet.fjc.dcn>.

D. *Statutory and Other Requirements***1. *Speedy Trial Act***

The Speedy Trial Act of 1974, as amended (18 U.S.C. §§ 3161–3174), requires each district court to prepare a plan describing the court's goals and performance under the Act. As part of the Act's implementation, each district appointed a planning group to prepare and update the district's speedy trial plan. The statute directs planning groups 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 person skilled in criminal justice research to act as reporter (18 U.S.C. § 3168(a)). The statute requires each district's plan to be approved by a review panel consisting of the circuit judicial council and the chief district judge or a designee. Upon approval, the plan is filed with the Administrative Office.

Give special attention to judicial emergencies and suspensions of the Act's time limits. Although used sparingly, 18 U.S.C. § 3174(a) authorizes you, "after seeking the recommendations of the planning group," to apply to the circuit judicial council for a suspen-

sion 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), you may also order a thirty-day suspension, but a request for a longer suspension pursuant to subsection (a) must be made by the chief judge to the council within ten days of the entry of such order.

2. Alternative Dispute Resolution Act

The Alternative Dispute Resolution Act of 1998 (28 U.S.C. §§ 651–658) requires each district court to "devise and implement its own alternative dispute resolution program, by local rule adopted under section 2071(a), to encourage and promote the use of alternative dispute resolution in its district." Under the Act, courts have a number of obligations, including providing litigants with at least one alternative dispute resolution (ADR) process, adopting procedures for making ADR neutrals available, establishing qualifications and training requirements for neutrals, adopting local rules on confidentiality and disqualification of neutrals, and designating an employee or judge to administer the ADR program. Courts that already have established ADR programs are required to evaluate and, if necessary, revise their programs to ensure that they comply with the Act. Judicial Conference policy requires courts to adopt a local rule or policy regarding compensation of neutrals (JCUS Report, Sept. 1999, at 53–54; Guide, vol. I, ch. III, pt. I).

As chief judge, you have no specific obligations under the Act, but you should ensure that its requirements are met. This responsibility could be delegated to another judge or to a committee of judges and bar members. Courts have found that an ADR program is more likely to meet the needs of judges and attorneys, and thus is more likely to be used, if both groups are involved in designing the program. The Judicial Conference's Committee on Court Administration and Case Management has prepared helpful guidelines on designing court ADR programs.³⁷ The Federal Judicial Center's

37. Committee on Court Administration and Case Management, Judicial Conference of the U.S., *Guidelines for Ensuring Fair and Effective Court-Annexed ADR: Attributes of a Well-Functioning ADR Program and Ethical Principles for ADR Neutrals* (Dec. 1997), reprinted in Robert J. Niemic et al., *Guide to Judicial Management of Cases in ADR* app. D at 152 (Federal Judicial Center 2001).

Guide to Judicial Management of Cases in ADR (2001) provides information on the costs and benefits of various ADR procedures. This publication is available on the Center's Web site on the courts' intranet at <http://jnet.fjc.dcn>.

3. Civil Justice Reform Act

Congress enacted the Civil Justice Reform Act of 1990 in response to a perception that civil litigation in federal district courts costs too much and takes too long. It required all ninety-four district courts to implement "civil justice expense and delay reduction plans"; established pilot and demonstration programs to test the efficacy of the case-management principles, guidelines, and techniques set out in the Act; and directed the Judicial Conference to study these pilot and demonstration programs and make recommendations based on the results obtained. The *Civil Litigation Management Manual* (2001) was produced in response to the CJRA. The manual is available on the Center's Web site on the courts' intranet at <http://jnet.fjc.dcn>.

Although most CJRA provisions expired in 1997, the Conference's May 1997 final report to Congress³⁸ recommended an alternative expense and delay reduction program that remains in place. The report included these recommendations to district courts:

- continue the use of attorney and other litigant representative advisory groups in the districts to assess the courts' dockets and propose methods for reducing cost and delay;
- encourage judges in complex civil cases to set early and firm trial dates and shorter discovery periods;
- encourage district courts to make effective use of magistrate judges;
- increase the chief district judge's role in case management;
- encourage use of intercircuit and intracircuit assignments of judges;
- extend education regarding efficient case management to the entire legal community; and

38. This report is available on the J-Net.

- encourage the use of electronic technologies in the district courts where appropriate.

(The report also endorsed the national statistical reporting requirements in the Civil Justice Reform Act.)

E. Case Assignments

Section 137 of Title 28 directs district courts to adopt rules or orders that specify how cases will be assigned to the individual district judges. You are “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.” The chief 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. Chief District Judge’s Caseload

You need to decide whether to take a reduced caseload. Some chief judges are reluctant to reduce their caseloads, either because they fear appearing to shirk responsibilities that will devolve on other busy judges or because they regard resolving 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, you need to give proper attention to a court’s systemic administrative needs. The conventional view, at least in larger courts, is that a chief judge should not carry a full caseload.

You can reduce your caseload in several ways. You can take only criminal cases or only civil cases, or take a reduced percentage of case assignments—civil, criminal, or both. You can take responsibility for only particular types of cases or matters, such as pre-indictment motions or grand jury instructions. Reassignment of current cases is inefficient and impedes an effective case-management system.

Congress has assigned one type of case to chief district judges: rendering judgments on settlements accepted by the Attorney General in veterans’ suits over life insurance (38 U.S.C. § 1984(i)).

2. Random Assignment

Most district courts use a random case-assignment system. There are various devices for randomly assigning cases, ranging from sealed envelopes to marbles in a bin. An automated system, available from the Administrative Office's Office of Information Technology, permits courts to use a variety of approaches to random assignment. For example, a court may decide simply to assign each new case randomly to the judges, or a court may decide to assign cases randomly within different divisions of the district or within categories of cases, such as civil and criminal or routine and complex.

3. Protracted, Difficult, or Unusual Cases

Most protracted, difficult, or unusual cases will be effectively handled by the judges to whom they are assigned, but at least two types of cases may require intervention by the chief judge: frivolous or repetitive litigation (frequently pro se) and assignments made by the Judicial Panel on Multidistrict Litigation.

A litigant who files repeated cases generally viewed as meritless is a court problem rather than simply a problem of the judges who happen to receive the cases. Courts also have specific obligations under the Prison Litigation Reform Act of 1996 (Pub. L. No. 104-134, 110 Stat. 1321) to screen cases filed by prisoners to determine whether the cases should be docketed or dismissed.

The burden on the court of repetitive litigation 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 might unduly burden 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 approval of the chief district judge or another designated judge, who may be assisted by a pro se law clerk in reviewing the complaints. This approach focuses responsibility and relieves most of the court of the burden of dealing with the problem. A danger with either approach is that continual meritless pleadings of "frequent filers" might obscure the infrequent meritorious claims that such litigants might file.

Transfer of a case to a district judge by the Judicial Panel on Multidistrict Litigation may also affect the ability of a district judge or a district court to manage its caseload. The statute authorizing MDL transfers (28 U.S.C. § 1407(b)) calls for the consent of the district court before making such an assignment. If faced with a request for the court's consent to such a transfer, you may wish to discuss with the district judge the anticipated impact of the transfer. The two of you might explore, for example, any foreseeable need to modify future case assignments or redistribute the district judge's current caseload. If the magnitude of the proposed transfer is large, you may see a need to involve other members of the district court in deciding whether to consent to the transfer.

Random case-assignment systems can create unequal workloads if a judge gets an especially burdensome case along with a normal distribution. In 1999, the Judicial Conference, while rejecting screening and assignment of difficult cases to judges on a nonrandom basis, recommended (1) that districts with multicategory case-assignment systems consider establishing one or more categories for protracted or complex cases and (2) that districts consider establishing a procedure for voluntary transfer of an already-assigned case back to random assignment, incorporating into the procedure the need for an agreement between the chief judge and the judge originally assigned the case (JCUS Report, Mar. 1999, at 12–13).

4. Cases Under Civil Priority Statutes

Some of the so-called civil priority statutes impose special case-assignment duties on you. 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-6(b) (employment discrimination;

in some districts, magistrate judges often hear these “expedited EEO cases”.)

The chief district judge is to order expedited treatment as well for civil RICO cases that are certified by the Attorney General to be of “general public importance” (18 U.S.C. § 1966). It is also your responsibility 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)).

F. Backlogs and Delays

1. 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 district and magistrate judges to help deal with cases on a regular or special basis. Assistance is usually available from the district court’s own senior judges. In addition, as noted in section III.B.2.a, *supra*, Congress has authorized temporary intracircuit and intercircuit assignments of Article III judges to relieve backlogs or to assist courts whose resources are strained by recusal, vacancies, or judicial illness or disability (28 U.S.C. §§ 291, 292). There is also a statutory provision for emergency assignment of magistrate judges (28 U.S.C. § 636(f)).

a. Chief district judge’s role

Requests for assistance from visiting Article III judges are usually initiated by the chief district judge and are made to the chief circuit judge. Once the request is made, procedures differ depending on whether the visiting judge comes from inside or outside the circuit. For intracircuit assignments, 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, judicial council committees or the circuit executive, with oversight by the chief circuit judge, may manage the intracircuit assignment process. Intercircuit assignments require the consent of the Chief Justice, who is authorized by statute to assign

active circuit and district judges and judges of the Court of International Trade to serve temporarily on a district or appellate court of another circuit upon a chief circuit judge's presentation of a certificate of necessity (28 U.S.C. §§ 291(a), 292(d), 293).

b. Standards for temporary assignments

i. Intracircuit assignments

Chief circuit judges vary in their willingness to authorize intracircuit assignments. In general, the extent to which a district court uses intracircuit assignments depends on its specific needs and the availability of judges outside the district but within the circuit.

ii. Intercircuit assignments

The Judicial Conference Committee on Intercircuit Assignments assists the Chief Justice in making temporary assignments of Article III judges. The committee develops guidelines in consultation with the Chief Justice to provide direction to the committee and courts seeking temporary help. The most recent version of these guidelines can be found on the J-Net.

Circuits lending active judges cannot borrow judges from other circuits, and those borrowing active judges cannot lend judges. However, this "lender/borrower rule" does not apply to senior judges or in situations in which all judges of the borrowing court have been disqualified in the case in question. With respect to active judges, the lender/borrower rule may also be relaxed in appropriate situations provided the chief district judge of the lending court is consulted to ensure that the needs of that court 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 that circuit, but senior judges can consent to their own assignment.

The Judicial Conference has also approved guidelines for intracircuit and intercircuit assignments of magistrate judges under 28 U.S.C. § 636(f) (JCUS Report, Mar. 1998, at 24), and intercircuit assignments of bankruptcy judges under 28 U.S.C. § 155(a) (JCUS Report, Sept. 1988, at 59; JCUS Report, Mar. 1995, at 11; JCUS

Report, Sept. 1998, at 45). These guidelines, which are similar to those applicable to intercircuit assignments of Article III judges, can be found on the J-Net.

c. Host court's responsibilities to visiting judges

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

Visiting judges and their staff should be provided with 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. Further suggestions regarding visiting judges are presented in *The Use of Visiting Judges in the Federal District Courts: A Guide for Judges and Court Personnel* (Federal Judicial Center 2001), which is available on the Center's Web site on the courts' intranet at <http://jnet.fjc.dcn>.

2. Chief District Judges and Case Delay³⁹

Many chief district judges regard dealing with delayed civil cases as one of their responsibilities, although there are no statutory provisions directing them to do so⁴⁰ and no agreed-upon definition of “case delay.” Working with the clerk of court, you—or a judge you designate—should routinely examine the court’s caseload statistics and the reports described in section F.3 of this chapter.

Reducing case delay can be one of your more difficult responsibilities, particularly when the delay appears to be due to a judge’s inability to manage his or her caseload. Some courts have established “calendar committees” to relieve the chief judge of the day-to-day responsibility for monitoring caseloads and resolving problems of case delay.

Whether case delay is pervasive throughout the court or limited to certain judges, the first step in reducing it is to identify the extent and causes 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 and to plan a court-wide effort to reduce delay.

When case delay is a problem of a specific judge, you (or your designee) can meet informally with that judge to try to understand the cause and determine what help might be needed. The circuit judicial council can assist you. A letter or telephone call from the chief circuit judge requesting an inquiry about a judge’s delinquent cases can provide you with an opportunity to raise the issue with that judge. One possible remedy in this situation is to shift cases from the judge with the backlog to other judges, although that may penalize judges who manage their caseloads more efficiently.

Delay in civil litigation is sometimes beyond the court’s control. Some delay is a natural consequence of the particular litigation; for example, discovery in complex cases is often unavoidably time-

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

40. The Speedy Trial Act (18 U.S.C. §§ 3161–3174) seeks to prevent delay in criminal cases.

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

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

- giving judges time off from criminal cases to concentrate on delayed civil cases;
- adjusting the civil assignment system to temporarily suspend or reduce case assignments to a judge who has fallen behind;
- assigning cases by type or complexity to provide greater balance in judges' workloads (*see section E of this chapter*);
- ensuring that new judges do not receive a disproportionate number of old cases or cases other judges simply do not want to handle;
- making greater use of magistrate judges (including encouraging parties to consent to trials by magistrate judges);
- making greater use of ADR processes;
- placing limits on trial length and discovery;
- making better use of Federal Rules of Civil Procedure 42 (concerning consolidation and bifurcation) and 56 (concerning summary judgment);
- requesting help from visiting judges;
- encouraging senior judges to assist by taking cases;
- using creative adaptations of calendaring systems as alternatives to the individual calendar system, including joint trial

- calendars⁴¹ and pairing of judges to assume trial assignments; and
- loaning to judges with case delays the extra personnel to which chief district judges are entitled.

A useful tool for dealing with case delay is the *Civil Litigation Management Manual* (2001), which was required by the Civil Justice Reform Act and approved by the Judicial Conference in March 2001 (JCUS Report, Mar. 2001, at 15). The manual is available on the Federal Judicial Center's Web site on the courts' intranet at <http://jnet.fjc.dcn>, and a limited number of hard copies are available from the Information Services Office of the Center or the Court Administration Policy Staff of the Administrative Office.

In addition to all these measures to help alleviate delay, it is important to establish an expectation that judges will take case management seriously and be committed to furthering the just, speedy, and inexpensive resolution of their cases. You can bolster this expectation greatly by setting a good example of effective case management.

3. Circuit Judicial Councils and Case-Flow Management

Statutory provisions authorize the circuit judicial council's 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, as noted, 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 circuit judicial councils are to be provided with statistical data involving district court dockets. Administrative Office statisti-

41. See, e.g., Donna Stienstra, The Joint Trial Calendars in the Western District of Missouri (Federal Judicial Center 1985).

cal reports are first received by the chief circuit judge, who is then required by 28 U.S.C. § 332(c) to submit the reports to the council for “such action thereon as may be necessary.” 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 *Judicial Business of the United States Courts*. 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)).

A semiannual public report, which 28 U.S.C. § 476 directs the Administrative Office to prepare, contains, for each district 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. Additional reports, required by the Judicial Conference, show Social Security cases and bankruptcy appeals that are pending beyond acceptable time frames. The Judicial Conference has adopted uniform standards for determining when cases and motions are subject to the reporting requirements (JCUS Report, Sept. 1991, at 45–46; JCUS Report, Mar. 1998, at 11; JCUS Report, Sept. 1998, at 63; JCUS Report, Sept. 1999, at 57–58). Any questions regarding reporting requirements should be addressed to the Administrative Office’s Statistics Division in the Office of Human Resources and Statistics.

Bankruptcy judges also submit quarterly information on their cases and motions (including adversary proceedings) under advisement for more than sixty 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.

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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 seven judges elected by the Judicial Conference.

The Director's Office is responsible for the Center's overall management and its relations with other organizations. Its Systems Innovation & Development Office provides technical support for Center education and research. Communications Policy & Design edits, produces, and distributes all Center print and electronic publications, operates the Federal Judicial Television Network, and through the Information Services Office maintains a specialized library collection of materials on judicial administration.

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