

Report on Federal–State Court Cooperation: A Survey of Federal Chief District Judges

*Prepared for the Judicial Conference Committee on
Federal–State Jurisdiction*

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Executive Summary

At the request of the Judicial Conference Committee on Federal–State Jurisdiction, a survey was sent to all chief federal district judges ($N=94$) asking about cooperation with their state judge counterparts. Fifty-nine chief district judges provided at least partial responses. Fully 63% of the chief district judges responding reported no state–federal judicial council or functional equivalent in their state. Some chief district judges who did not report a council or equivalent still cited cooperation with the state court later in the survey. The 37% of chief district judges who did report a council or equivalent were then asked additional questions regarding the administration of such councils.

The chief district judges were then asked to respond to four different categories of topics and activities that could benefit from federal–state court cooperation, providing both whether they collaborated with their state judge counterparts on the topics and whether they were interested in additional cooperation.

In terms of topics regarding easing tensions between state and federal courts, the most commonly cited topics of cooperation were certification of issues of state law by federal courts and state court access to federal court records. Of these topics, respondents expressed most interest in additional cooperation in creating directories of state and federal judges.

In terms of shared resources topics, the most commonly cited topics of cooperation were shared facilities and libraries. Respondents expressed most interest in additional cooperation on court interpreters.

In terms of topics related to common concerns, the most commonly cited topic for cooperation was attorney discipline and misconduct, which was also the topic on which the most respondents expressed interest in additional cooperation.

In terms of educational programs, the most commonly cited topic for cooperation was for programs for the bar, which was also the topic on which respondents expressed most interest in additional cooperation.

Across the survey, the chief district judges most commonly reported current collaboration with state counterparts regarding attorney discipline and misconduct and educational programs for the bar. Additionally, the topic on which the chief judges expressed the most interest in additional collaboration was attorney discipline and misconduct.

Background

In June 2016, the Judicial Conference Committee on Federal–State Jurisdiction asked the Federal Judicial Center (FJC) to conduct a study to examine how federal and state courts work together to address issues of mutual concern. We were requested to survey federal chief district judges about the types of activities in which they cooperate with their state court counterparts, as well as which areas could benefit from additional cooperation. The survey also addressed local state–federal judicial councils, asking briefly about their existence and administration.

Survey Implementation and Administration

On September 26, 2016, the FJC distributed the survey electronically. The survey was sent to all 94 federal chief district judges, with a two-week deadline. The cover e-mail encouraged each chief district judge to complete the survey, even if there is more than one district in the state, as each district might work with the state differently.

Fifty-nine federal chief district judges (63%) completed at least a portion of the survey. The judges were split across 11 circuits, with the most from the Ninth Circuit (12, or 20% of the responding judges) and Fourth Circuit (8, or 10%). The Seventh Circuit had the fewest responding chief district judges (2, or 3%). The 59 federal chief district judges represented 42 states and territories, with an especially strong representation from federal chief district judges in territorial courts.

The first questions on the survey asked chief district judges if their state had a state–federal judicial council and, if yes, three questions regarding the administration of the council. The chief district judges were then asked about different topics that could benefit from cooperation between state and federal judges, split into four categories (easing tensions between state and federal court systems; sharing resources; common concerns; educational programs). The chief district judges were first asked whether their district court cooperates with the state court on the topic and then asked whether additional cooperation on that topic would be beneficial. Finally, the chief district judges were asked a series of questions regarding other potential areas for cooperation. The analysis of results, below, proceeds through these questions in order.

Results

The chief district judges first reported whether their state had a state–federal judicial council that meets to discuss issues of mutual concern. As shown in Table 1, almost two-thirds of the judges stated that they did not. The judges who provided an “other” response noted that their court either (1) had a district judge as a member of the state bar association board as a federal liaison, (2) was a member of the Pacific Judicial Council, (3) participated in a “consortium of federal and state courts with the law schools and state bar,” (4) had a similar mechanism but “did not characterize it as

such,” or (5) had federal judges meet with the justices of the state supreme court twice a year.

Table 1. Existence of State–Federal Judicial Council

Response	Frequency (% of total)
Yes, and it meets at least once a year	10 (18%)
Yes, but it does not meet at least once a year	5 (9%)
Yes, but it is currently inactive	1 (2%)
No	35 (63%)
Other	5 (9%)

The 21 chief district judges who noted either the existence of a state–federal judicial council (even if currently inactive) or provided an “other” response then responded to three additional questions.

Regarding how frequently the state–federal judicial council in their state met, eight of the judges (38%) said semi-annually, six (29%) provided an “other” response, four (19%) said quarterly, and three (14%) said annually. Four of the six judges responding with “other” provided additional input, noting that the council either meets when requested or that the federal liaison attends a quarterly state bar board meeting; the other two judges said that they did not know.

The chief district judges were then asked, in an open-ended response, who provides administrative staffing support to the state–federal judicial council. Of the 18 chief district judges who responded, four (22%) said there was no administrative support. The two different responses provided by three judges (17%) each were that either the federal court provides administrative support, or that both the federal and state courts provided support. The three different responses provided by two judges each (11%) were that the state court provides administrative support, that such support comes from the state bar association, or that they did not know enough to respond. Additionally, one judge (6%) said the circuit executives’ office provided support, and one judge (6%) said the Ninth Circuit’s Pacific Islands Committee provided such support.

Finally, the chief district judges were asked if they had ever served on their state–federal judicial council. About half (10, or 48%) said they were currently serving, with the remaining split between having served in the past (5, or 24%) and having never served on the council (6, or 29%).

All chief district judges were then asked whether their federal courts had collaborated with the state courts on the four sets of topics and activities presented below.

Easing tensions between state and federal courts

The chief district judges were first asked whether their federal district court cooperated with the state court system on eight selected topics focused on easing tensions between state and federal courts. As seen in Table 2, judges were most likely to note cooperation regarding certification of issues of state law by federal courts, and state court access to federal court records, with 41% and 36% of judges, respectively. There was not much variation between the number of yes responses for the remaining seven items (ranging from 15% for bankruptcy issues to 23% for contact directories between state and federal judges). Seven judges (13%) said that they cooperated in the past, but not currently, regarding coordinating joint proceedings in related cases. Relatively few judges said they were considering cooperation on any of the topics.

Table 2. Topics Regarding Easing Tensions Between State and Federal Courts

Topic	Does your federal district court cooperate with the state court system on any of the below topics?				Total
	Yes	We have in the past but not currently	We are considering doing so in the future	No	
Calendaring and scheduling conflicts for unrelated matters	12 (22%)	4 (7%)	0 (0%)	38 (70%)	54
Coordinating joint proceedings in related cases	11 (20%)	7 (13%)	0 (0%)	36 (67%)	54
Collateral attack on state proceedings in federal court (e.g., habeas corpus)	10 (19%)	3 (6%)	1 (2%)	40 (74%)	54
Bankruptcy issues (e.g., stays)	8 (15%)	5 (9%)	0 (0%)	41 (76%)	54
Certification of issues of state law by federal courts	22 (41%)	3 (6%)	2 (4%)	27 (50%)	54
Dual prosecution of state and federal criminal offenses	11 (21%)	5 (9%)	1 (2%)	36 (68%)	53
State court access to federal court records	19 (36%)	4 (8%)	1 (2%)	29 (55%)	53
Contact directories between state and federal judges	12 (23%)	2 (4%)	2 (4%)	36 (69%)	52

The chief district judges were then asked if additional cooperation between state and federal judges on the above topics would be useful to ease tensions between state and federal court systems. The list below presents whether such additional cooperation would be useful, in order of how often the judges said yes (in parentheses):

- Contact directories between state and federal judges (39%)
- State court access to federal court records (36%)
- Certification of issues of state law by federal courts (34%)
- Coordinating joint proceedings in related cases (31%)
- Dual prosecution of state and federal criminal offenses (25%)
- Calendaring and scheduling conflicts for unrelated matters (22%)
- Collateral attacks on state proceedings in federal court (e.g., habeas corpus) (17%)
- Bankruptcy issues (e.g., stays) (12%)

Shared resources

The next section included nine topics involving shared resources. The chief district judges were again asked whether their federal district collaborated with the state court on any of the provided shared resources topics and, then, if any additional cooperation would be useful. As shown in Table 3, about one-third of judges noted cooperation regarding facilities/buildings (18, or 34%) and courtrooms (17, or 33%). The next most common shared resources topic to receive a yes response was libraries (7, or 14%). Few judges noted that their district court collaborated on any of the topics in the past but not currently or that they are considering doing so in the future. However, 12% of judges (6) noted past cooperation regarding sharing courtrooms. Ninety percent or more of the judges noted no cooperation with the state courts for four of the provided topics (juror information, ADR neutral lists, pro bono attorney lists, and court-appointed experts).

Table 3. Topics Regarding Shared Resources

Topic	Does your federal district court cooperate with the state court system on any of the below topics?				Total
	Yes	We have in the past but not currently	We are considering doing so in the future	No	
Facilities/buildings	18 (34%)	3 (6%)	2 (4%)	30 (57%)	53
Courtrooms	17 (33%)	6 (12%)	1 (2%)	28 (54%)	52
Libraries	7 (14%)	1 (2%)	1 (2%)	43 (83%)	52
Juror information (shared jury pool)	2 (4%)	1 (2%)	0 (0%)	48 (94%)	51
ADR neutral lists	5 (10%)	0 (0%)	0 (0%)	46 (90%)	51
ADR programs	5 (10%)	1 (2%)	0 (0%)	45 (88%)	51
Pro bono attorney lists	2 (4%)	0 (0%)	3 (6%)	46 (90%)	51
Court-appointed experts	1 (2%)	0 (0%)	1 (2%)	48 (96%)	50
Court interpreters	6 (12%)	3 (6%)	1 (2%)	41 (80%)	51

The chief district judges were then asked if additional cooperation on the above shared resources topics would be useful. The list below presents whether such additional cooperation would be useful, in order of how often the judges said yes (in parentheses):

- Court interpreters (34%)
- Pro bono attorney lists (29%)
- ADR neutral lists (20%)
- ADR programs (20%)
- Facilities/buildings (17%)
- Court-appointed experts (17%)
- Courtrooms (15%)
- Libraries (12%)
- Juror information (shared jury pool) (9%)

Common Concerns

The next section included 20 common concerns between state and federal courts. The chief district judges were again asked whether their federal district collaborated with the state court on any of the provided common concerns and, then, if any additional cooperation would be useful.

As shown in Table 4, judges were most likely to identify cooperation between the federal and state courts for attorney discipline and misconduct (by 34, or 64%, of the judges). The next most common topics to get a yes response were technology in the courtroom (e.g., video teleconferencing for prisoners; cameras), with 11 (21%) judges noting cooperation, and emergency preparedness (COOP) plans, with 10 (19%) judges noting cooperation. Five additional topics received a yes response from more than 10% of the judges: security concerns (15%), media relations (13%), access to justice issues (11%), and federal legislation that could affect the court (10%). Again, few judges noted that they had collaborated in the past but not currently on any of the topics with the exception of complex litigation (12%). The only topic that more than 10% of judges said they were considering collaborating on in the future was security concerns (12%).

Table 4. Topics Regarding Common Concerns

Topic	Does your federal district court collaborate with the state court system on any of the below topics?				Total
	Yes	We have in the past but not currently	We are considering doing so in the future	No	
Attorney discipline and misconduct	34 (64%)	0 (0%)	1 (2%)	18 (34%)	53
Technology in the courtroom (e.g., video teleconferencing for prisoners; cameras)	11 (21%)	1 (2%)	5 (9%)	36 (68%)	53
Media relations	7 (13%)	0 (0%)	1 (2%)	45 (85%)	53
Funding and judicial budgeting	2 (4%)	1 (2%)	0 (0%)	50 (94%)	53
Immigration issues (e.g., status of criminal defendants)	0 (0%)	1 (2%)	1 (2%)	51 (96%)	53
Complex litigation	5 (10%)	6 (12%)	1 (2%)	40 (77%)	52

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Does your federal district court collaborate with the state court system on any of the below topics?

Topic	Yes	We have in the past but not currently	We are considering doing so in the future	No	Total
Tribal court issues	3 (6%)	0 (0%)	1 (2%)	47 (92%)	51
Security concerns	8 (15%)	4 (8%)	6 (12%)	34 (65%)	52
Access to justice issues (e.g., self-represented litigants)	6 (11%)	2 (4%)	4 (8%)	41 (77%)	53
Discovery disputes	2 (4%)	1 (2%)	3 (6%)	47 (89%)	53
Electronic discovery issues	3 (6%)	2 (4%)	2 (4%)	46 (87%)	53
Emergency preparedness (Continuity of Operations (COOP) plans)	10 (19%)	0 (0%)	4 (8%)	39 (74%)	53
Eliminating racial and gender bias	5 (9%)	1 (2%)	4 (8%)	43 (81%)	53
State legislation that could affect the court	5 (9%)	3 (6%)	2 (4%)	43 (81%)	53
Federal legislation that could affect the court	5 (10%)	1 (2%)	1 (2%)	45 (87%)	52
Litigation against state and local governments	4 (8%)	0 (0%)	1 (2%)	48 (91%)	53
Changes to the Federal Rules	4 (8%)	0 (0%)	1 (2%)	48 (91%)	53
Legal decisions that could affect the court	4 (8%)	2 (4%)	1 (2%)	46 (87%)	53
Diversity jurisdiction (e.g., removal; fraudulent joinder)	4 (8%)	2 (4%)	1 (2%)	46 (87%)	53
Repeat filers (frivolous cases)	2 (4%)	1 (2%)	2 (4%)	48 (91%)	53

The chief district judges were then asked if additional cooperation on the above common concerns would be useful. The below presents whether such additional cooperation would be useful, in order of how often the judges said yes (in parentheses):

- Attorney discipline and misconduct (51%)
- Security concerns (39%)
- Emergency preparedness (COOP plans) (34%)
- Repeat filers (frivolous cases) (34%)
- Access to justice issues (e.g., self-represented litigants) (31%)
- Eliminating racial and gender bias (27%)
- Federal legislation that could affect the court (24%)
- Legal decisions that could affect the court (24%)
- Complex litigation (22%)
- State legislation that could affect the court (20%)
- Diversity jurisdiction (e.g., removal; fraudulent joinder) (19%)
- Media relations (19%)
- Technology in the courtroom (e.g., video teleconferencing for prisoners; cameras) (19%)
- Immigration issues (e.g., status of criminal defendants) (15%)
- Discovery disputes (14%)
- Electronic discovery issues (12%)
- Changes to the Federal Rules (10%)
- Tribal court issues (10%)
- Funding and judicial budgeting (9%)
- Litigation against state and local governments (7%)

Educational Programs

The final section included five educational program topics. The chief district judges were again asked whether their federal district collaborated with the state court on any of the provided educational programs and, then, if any additional cooperation would be useful. As shown in Table 5, there was great variation in whether the judges noted cooperation on the types of educational programs. While about two-thirds of judges noted cooperation on programs for the bar (64%), about one-third noted cooperation on programs for students held at the school (36%) and programs for the general public (31%). Very few judges noted cooperation on programs for the press or for video/recordings to be used for educational outreach (6% each). Additionally, five judges noted additional educational programs that have benefitted from cooperation: a federal–state collaborative program for visiting foreign judges and court administrators on how the state courts operate, judicial trainings (two judges), and a program where students are taken to a local university for an educational program by the local bar association.

Table 5. Topics Regarding Educational Programs

Topic	Does your federal district court collaborate with the state court system on any of the below topics?				Total
	Yes	We have in the past but not currently	We are considering doing so in the future	No	
Programs for the bar	34 (64%)	3 (6%)	1 (2%)	15 (28%)	53
Programs for the general public	16 (31%)	4 (8%)	3 (6%)	29 (56%)	52
Programs for students (held at the school)	19 (36%)	3 (6%)	3(6%)	28 (53%)	53
Programs for the press	3 (6%)	1 (2%)	2 (4%)	45 (88%)	51
Videos/recordings to be used for educational outreach	3 (6%)	0 (0%)	5 (10%)	44 (85%)	52

The chief district judges were then asked if additional cooperation on the above educational programs would be useful. The list below presents whether such additional cooperation would be useful, in order of how often the judges said yes (in parentheses):

- Programs for the bar (44%)
- Programs for the general public (29%)
- Programs for students (held at the school) (22%)
- Videos/recordings to be used for educational outreach (15%)
- Programs for the press (9%)

Additional Cooperation Opportunities

After reading through and providing responses to the provided topics for potential cooperation, the chief district judges were asked a series of questions regarding any other opportunities for potential cooperation between federal and state courts.

The chief district judges were first asked if there were any other topics or activities where they have collaborated with the state court. The additional topics or activities included: CLE programs, judicial education programs, access by state court judges to defendants in federal custody for state court criminal proceedings, joint swearing in

for attorneys to both state and federal bar, creation of a new bench book for Hague Convention child custody cases, best practices programs for new judges (to include discussion of biases and ethics), space and resources for the reentry program, and joint educational programs where state and federal judges can present topics to new legislators.

The chief district judges were then asked if there are any means other than state–federal judicial councils that could be used to spur cooperation. Of the nine judges (16%) who said yes, seven provided examples. Five of the seven judges noted that close cooperation and informal communications between the chief district judge and state chief justice are helpful. The other two judges noted that the state bar association offers opportunities for cooperation.

The chief district judges were then asked if there are any issues associated with judicial independence that are amenable to federal–state cooperation. Fourteen (26%) of the judges said yes, and seven further explained. Of the seven, four judges commented that civic education and outreach is important for people to understand judicial independence, especially regarding federalism and for criminal matters. One judge recommended meeting with the media to explain what judicial independence really means. Another judge recommended that organizations such as the state bar and American College of Trial Lawyers could be sought out when a judge’s impartiality is publicly called into question. One judge noted that all issues associated with judicial independence should be discussed jointly between federal and state judges.

Finally, the chief district judges were asked about joint attendance at meetings. About one-quarter of judges (12, or 23%) noted that their federal court invites state judges to annual meetings. An additional six judges (11%) noted other events where the federal court invites state judges: the winter party, educational programs at the court, a biennial meeting, or monthly luncheons to discuss issues of common concern. One judge noted that the state judges are not invited to annual meetings but are a part of groups and committees that meet separately.

More than one quarter of judges (15, or 29%) noted that the state court invites federal judges to an annual meeting. An additional seven judges (14%) noted other events where the state court invites federal judges: educational programs and training events at the court or an annual holiday dinner. One judge each noted that federal judges can meet with state judges if they are a member of the state bar association or if they worked for the state court prior to federal service. One judge noted that federal and state judges meet frequently outside of the annual meeting.

The chief district judges were then provided with an opportunity to comment generally about cooperation between federal and state courts. Those comments are provided in the Appendix, edited only for grammar or to maintain confidentiality.

Appendix: Judges’ Comments

At the end of the survey, the chief district judges were given the opportunity to provide any additional comments regarding cooperation between federal and state courts. The below are the judges’ responses, edited only for grammar or to maintain confidentiality.

1. We form friendly relationships with state judges and interact with them at bar programs (some of which are held in a courthouse), law clubs, Inns of Court, and similar settings. We have contacted state court administrative judges or Clerks, and they have contacted us, to deal with a particular problem sometimes involving sharing space or dealing with a security or weather-related issue. We recently have begun providing access to electronic court records, including bankruptcy court records, for the state courts. I would describe our federal–state cooperation as good but informal. I do not know whether more formal cooperation such as a state–federal judicial council would be useful in our District.
2. We have so many meetings to attend on top of our workload (or maybe that's my view as chief) that adding additional meetings would be difficult. I can't get my colleagues to go with me to the holiday dinner with the state judges! Perhaps the best way to facilitate more formal cooperation would be to hold federal–state judge meetings either at the same time or before/after the state bar meeting and/or local bar retreats so as to minimize additional time away from work demands.
3. We have a pretty good system of informal cooperation with our state court colleagues and more formal cooperation on educational programs for judges.
4. It is mostly between judges as between “Court” as administrative body. Judges will call each other when possible conflict of settings arise. Example: Last minute motion to remove case from state court, when jury has been called might result in a very rapid hearing and decision.
5. In my small district with a small pool of legal practitioners, it's imperative that cooperation is fostered when it comes to the administration of justice. At the same time, to maintain the federal judicial independence, there are times when restraint is prudent and mutual respect is maintained when so exercised because of the cooperation.
6. Again, I think it probably ends up being a deeply personal matter. I find it odd that I, a former state judge, was never asked to be on the federal–state judicial council in my circuit, and so I haven't a clue about what it does (it is invisible if it is doing anything). Chief Judge and I hope to do some things together. We are both very new in our roles.
7. This survey has presented many ideas. We do cooperate with the State Bar, and that cooperation is outside the wording of your questions.
8. currently/locally seems to be working well.

9. Some cooperation is facilitated by the Bar Association Programs which involve educational programs for lawyers and outreach programs to the schools for example.

10. We have excellent overall cooperation in the District/State, starting at the top levels and the administrative levels, and including the counties' presiding judges.

11. I think that our State Federal Judicial Council is working largely because it allows us to nurture relationships between federal and state judges. In addition to the Council, the Chief of the Supreme Judicial Court and I are called upon to attend meetings and various functions, which helps solidify our relationship. We continue the work of relationship-building with periodic brown bag lunches attended by the federal court and the members of the Supreme Judicial Court held either at our courthouse or the state courthouse. When the State Courts went electronic, we offered our assistance. There is a state media committee that we were invited to sit on. There is an access to justice committee (JAG) run by the State, and two of our judges participate in that. A number of the federal judges in our District have previously served on the state courts, and there are many good connections there. On balance, I think we have developed relationships to the point that should we need to meet and confer on a substantive issue, it would be very easy for us to pick up the phone and call one another. We do this from time to time to discuss attorney discipline, IT issues, getting more women lawyers into the courtroom, etc. Because our courthouses are right next to each other, I would like to coordinate more about security issues in the future.

12. I have a great relationship with the State Court. I was just thinking that since we don't have a joint federal and territorial judicial council, I should have included the Pacific Judicial Council in the survey. This Council serves to assist our federal and local courts and the other Pacific islands on many of the same topics noted in the survey.