

Federal Judicial Center
pocket guide series

Enhancing
Cooperation
Through
State–Federal
Judicial
Councils

*FEDERAL JUDICIAL CENTER
POCKET GUIDE SERIES*

Enhancing Cooperation Through State–Federal Judicial Councils

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Preface

As far as the public is concerned, courts are courts. Judges may be conscious of distinctions between state and federal courts, but those distinctions don't matter very much to most citizens. Because courts depend on public respect for both acceptance of their decisions and the resources to operate, it serves the best interests of all judges to improve the performance and the reputation of all courts. The common interests far exceed the differences.

There are things that state and federal judges can do to help each other and themselves. Regular communication with one another on matters of mutual concern can foster cooperation and joint solutions to common problems. Cooperation can help iron out scheduling conflicts, facilitate access to records held by another court, coordinate litigation of common issues pending before different judges, encourage the sharing of scarce resources, and avoid unnecessary duplication. One way to build good working relationships and provide a forum for regular communication is through a state–federal judicial council.

State–federal judicial councils can take many forms, and rightly so, since each state faces unique circumstances. Whatever the form of a council, its establishment provides more formal organization and enables regular discussion of recurring issues and matters that might otherwise not be addressed systemically. Councils can also provide a framework for coordinating activities, and they can be the impetus for other joint activities with mutual benefits, including public outreach and civic education.

This guide is intended to help state and federal judges organize and maintain an active state–federal judicial council. It identifies various topics that can be considered and activities that can be coordinated through a council. The Judicial Con-

ference Committee on Federal–State Jurisdiction hopes that this guide helps you to better understand the value of such councils. Where they exist, these councils have demonstrated that they improve relationships across the court systems and encourage cooperation that benefits both the courts and the public we serve.

—*The Judicial Conference Committee on Federal–
State Jurisdiction*

Introduction

Federalism envisions state and federal courts operating independently, but their paths inevitably cross and may occasionally collide. The courts serve the same people, so they regularly engage with the same parties and lawyers and often grapple with the same legal issues and practical problems. Enhanced cooperation can help the courts more efficiently resolve scheduling conflicts, facilitate access to records, share limited resources, and resolve similar claims pending in different courts.

For more than fifty years, some states have used state–federal judicial councils as a forum for cooperation, allowing judges to discuss these issues in an organized manner and providing opportunities for judges to air diverse views and seek consensus to more effectively promote the administration of justice. State and federal judges can also productively use state–federal judicial councils (hereinafter councils) to develop joint strategies for addressing complicated problems and for planning activities, including civics education programs.

As this guide will demonstrate, councils offer numerous benefits and can help state and federal judges do the following:

- Build relationships across court systems
- Improve communication and prevent misunderstandings
- Examine diverse perspectives on common issues
- Take action to address concerns (e.g., by creating manuals on complex topics like certification of state law questions)
- Establish mutually beneficial activities (e.g., educational programs for the bar, bench, or general public)
- Quickly address new issues when a formal mechanism for discussion is already in place

This guide further provides examples of the work of past councils that has proven valuable to state and federal courts, identifying topics frequently addressed and activities successfully undertaken. Most of these topics and activities are still relevant today and could form the basis of an agenda for a new or renewed council. There is also guidance on how to establish or renew a council, with sample documents in the appendices.¹

As noted by one judge after the first regional state–federal conference in 1993, federal and state judges “are all in the same boat and [have] more in common than differences; we can and should cooperate in achieving common goals and in defending [and] preserving the judicial system.”²

1. This guide updates and draws heavily on the 1993 Federal Judicial Center publication *Organizing and Using a Council of State and Federal Judges*, later revised for the 1997 *Manual for Cooperation Between State and Federal Courts*, coauthored by the Federal Judicial Center, the National Center for State Courts, and the State Justice Institute. See *Organizing and Using a Council of State and Federal Judges* 1 (Federal Judicial Center 1993); James G. Apple, Paula L. Hannaford & G. Thomas Munsterman, *Manual for Cooperation Between State and Federal Courts* (Federal Judicial Center, National Center for State Courts & State Justice Institute 1997).

2. Federal Judicial Center, *Evaluation of Western Regional Conference on State–Federal Judicial Relationships* 9 (1993) (on file with author).

Topics for Council Discussions

Councils offer state and federal judges an opportunity to meet and discuss topics relevant to both judicial systems. Such discussions can prevent unnecessary misunderstandings and resolve potential conflict, as well as promote joint resolutions to shared concerns. Successful discussions demonstrate to the bar and the community that state and federal judges can work collaboratively to promote efficiency in the courts.

To better understand the wide scope of topics that councils discuss, in 2016 researchers at the Federal Judicial Center (FJC) performed an archival analysis of discussion topics on past agendas and council meeting summaries provided to the FJC throughout the past thirty years. The forty-three topics most often discussed by councils are included in Appendix A. Judges considering what to include on the agenda for their first or an upcoming council meeting are encouraged to use this list while brainstorming what topics might be relevant. These topics can be generally organized into three main categories:

1. *Aiding Cooperation Where Courts Intersect or Overlap.* This category includes such topics as calendar/scheduling conflicts, collateral attacks on state proceedings in federal courts (e.g., habeas corpus), bankruptcy conflicts, and certification of issues of state law by federal courts.
2. *Sharing Resources.* With limited funding, resource allocation is a prime area for discussion. These topics include sharing facilities (including courtrooms and libraries), information (juror information; records and reports), and human resources (interpreters; ADR neutral and pro bono attorney lists; shared jury pools), as well as cosponsoring civics education events for the bar or general public.

3. *Addressing Common Concerns.* State and federal judges often share many of the same concerns. While these vary, they include access-to-justice issues, coordination of joint proceedings in parallel cases, regulation of the bar and attorney discipline, court technology and electronic records, special legal topics (e.g., complex litigation, tribal court issues), security and emergency preparedness, and state or federal legislation affecting courts and/or judges.

Over the years, judges have found discussion of many topics in these categories to be valuable. For example, the Subcommittee on State–Federal Relations considered legislative priorities, federal rules proposals, and habeas corpus reform when it met for the first time in December 1982. The first state–federal regional conference in 1993 featured discussions on overlapping and conflicting state–federal jurisdiction, certification and abstention, coordinated case management, federal habeas review, court funding and resource allocation, complex litigation, and public confidence in the judiciary. State and federal courts have also long been concerned about resource allocation and how to meet budget demands. More than twenty years ago, Judge William Schwarzer wrote that “perhaps the most serious long-term issue confronting both state and federal courts concerns resources” and that state–federal judicial councils offer a unique opportunity for judges to assess their needs and work collaboratively to address resource-allocation issues. Additional history is provided in Appendix E.

More recent council agendas include discussions on such issues as certified questions of state law, judicial health and age-related issues, the effect of state plea practices and drug laws on federal criminal sentencing, and continuity of operations (COOP) plans for emergency situations affecting the courts and the community.

To get a better sense of the current practices of state–federal judicial councils regarding areas of mutual concern on which they collaborate, the FJC surveyed all federal chief district judges on a wide range of topics and activities that could be addressed cooperatively by state and federal courts to the benefit of both. These judges were presented with forty-two different topics and activities that originated from the 2016 archival research and from examination of current council agendas.

The fifty-nine federal chief district judges who completed the survey represented forty-two different states and territories. The following were the five most common topics of active collaboration with the state courts:

- Attorney discipline and misconduct
- Certification of state law issues by federal courts
- Shared resources: courtrooms
- Shared resources: facilities/buildings
- State court access to federal court records

The federal chief district judges also identified the topics they believed would benefit most from future cooperation with the state court. Most often noted were the following:

- Access-to-justice issues (e.g., pro se litigants)
- Attorney discipline and misconduct
- Certification of state law issues by federal courts
- Contact directories for state and federal judges
- Coordinating joint proceedings in related cases
- Court interpreters
- Educational programs for the bar
- Emergency preparedness (COOP plans)
- Repeat filers (frivolous cases)
- Security concerns
- State court access to federal court records

Judges interested in establishing a federal–state judicial council may want to consider these initial topics, or the entire list in Appendix A, for potential topics at the first meeting. State–federal judicial councils can, and already have, addressed most of these topics and activities, and existing councils could provide an organizational framework on which judges seeking to start or renew a council can build.

As noted in *Coordinating Multijurisdiction Litigation: A Pocket Guide for Judges*, mutual respect, two-way communication, and a respect for the principles of federalism are required for successful state–federal cooperation.³ Council discussions allow judges to hear and explore diverse perspectives, prevent misunderstandings and potential conflict, encourage attentive listening to views across federal and state judiciaries, help develop new appreciation for differences between state and federal courts, help judges gain skills to address those differences, and increase the understanding of issues of mutual concern and the desire to take action.

There is great value in meeting face to face and establishing relationships, which can create a more cooperative environment for judges to raise issues and, when necessary, craft effective solutions to complex problems or plan activities for the improvement of both judicial systems. Successful discussions also have the potential to show the bar and the community that state and federal judges can collaborate to achieve important goals. For example, as resource allocation-based concerns arise, thoughtful collaboration might lead to innovative approaches in sharing resources and establishing continuity of operations

3. *Coordinating Multijurisdiction Litigation: A Pocket Guide for Judges* (Federal Judicial Center 2013). The creation of that pocket guide (a joint effort from the FJC, the National Center for State Courts, and the United States Judicial Panel on Multidistrict Litigation) started with a Conference of Chief Justices (CCJ) resolution in 2011, which led to a working group of state and federal judges.

plans (COOP) that prepare both the federal and state courts, as well as the respective legal communities, for emergency situations.

Stronger communication also allows different stakeholders to have a voice in the process. When addressing complex topics, it may be important to weigh not only the views of the federal and state bench but also the opinions of the bar and court personnel affected by the issue or decision. This is especially true if a council seeks to go beyond discussing a relevant issue of concern to take collaborative action, addressing it through a council-sponsored activity.

Council Activities

Many times what starts as an informative discussion can lead to a coordinated activity to address the concern. This section outlines a selection of recent activities by state–federal judicial councils that can serve as examples for other councils to emulate.

Council activities are usually developed in response to a known need for action. These activities do not need to be complex, and some activities can be performed more informally outside of a council meeting. One straightforward example comes from Colorado’s council, which created a well-received contact directory for the federal and state courts in Colorado (the Pick-Up-the-Phone Program) to encourage direct conversations to resolve scheduling conflicts. Removing the roadblocks that can prevent open communication between state and federal judges is an essential task before judges can begin to work together on areas of mutual concern. Although such a contact list requires regular updating, it is extremely useful as judges move from discussing issues to planning collaborative activities, with or without the assistance of a formal council.

Recently, Colorado’s council implemented a program that allows state court access to the federal courts’ electronic case management system (CM/ECF), after the state court expressed concerns about the burden of getting access to relevant federal records. In another recent example, Connecticut’s council responded to the federal district court’s concerns about delays in the handling of state prisoner habeas cases, and council members worked together to improve the process.

New York has had one of the more active councils in recent years. Some of their most recent products are highlighted here and in the Other Resources section (p. 23, *infra*). In 2010, the New York council released a report on federal and state concerns about the prelitigation obligation to preserve electronically stored information. In 2015, the New York council approved a report on recommended best practices for interpreters in New York federal and state courts. In 2016, the advisory group to the New York council completed the third edition of a practice handbook on certification of state law questions, as well as a report on the coordination of discovery between New York state and federal courts. The council has also established procedures to facilitate federal prisoner attendance in family court, coordinated pro se efforts in federal and state courts, promoted international arbitration, and drafted a uniform rule on removal of civil cases. Each of these concerns are relevant to courts beyond New York, and the New York council’s activities could be readily adapted to fit the needs identified by another jurisdiction’s council.

Educational Activities

The most common council activity is educational programming. In the 2016 FJC survey of federal chief district judges, about two-thirds of the responding judges noted cooperation with the state court on educational programs for the bar, and

about one-third noted cooperation on educational programs for students held at a school or programs for the general public. While a council is not necessary for state and federal courts to collaborate with each other or with an educational entity, councils provide a formalized structure that can streamline planning for these activities and can maintain continuity as these programs continue into the future.

The state–federal judicial councils in Maine, California, Colorado, and New York have all recently advanced civics education efforts. For example, Maine’s council collaborated with Colby College, creating a video to help teachers explain the judicial system. The video features interviews with Maine federal and state judges and comes with a study guide. Teachers can ask a judge to attend the classroom presentation of the video and engage in discussion with the students. The Maine council also coordinates judicial educational programs, such as a scenario-based program on how to deal with attorney misconduct presented in October 2015.

In 2015, California’s council invited a Ninth Circuit appellate judge to discuss civics education, specifically the Court Works program the judge started in 2004, which welcomes Arizona children to participate in mock trials and learn more about the judicial system. Colorado’s council recently collaborated with law schools and public schools to promote understanding of the legal profession and the courts. New York coordinated education programs for attorneys and judges on issues such as mortgage foreclosure actions, attorney–client privilege and work-product protections, ethics, matrimonial/bankruptcy issues, use of affidavits in lieu of direct testimony at trial, proper forum selection, plea bargaining, and habeas corpus proceedings. New York also created a program to train pro bono attorneys in negotiating loan modifications in bankruptcy proceedings and foreclosures.

Organizing a Council

When organizing a council, there are many factors to consider. Because the authority to create a council is not prescribed by statute, the organizers are allowed great flexibility when establishing a council that meets the state’s specific needs.

Some councils might hold semiannual meetings and employ elaborate subcommittee structures to assist in many council activities. Other councils might only meet informally during bar meetings, when state and federal judges are already present, or might only meet when necessary to collaborate on joint events, such as educational programs. However, a more structured, well-organized council may be less likely to fall idle. Institutionalization of the council allows the initial energy behind its creation to be harnessed so that the council can maintain its vitality through changes in leadership, administrative staff, or available resources. Judges should consider formalizing the council from inception, when interest in it is high, because a strong foundation can position the council for many years of success.

There are nine key elements to consider when organizing a council. It would be valuable to examine these along with the appropriate forms in the appendices. Thoughtful consideration of these elements will facilitate more efficient organizational meetings in preparation for an inaugural state–federal judicial council meeting.

1. Size

The number of judges on a council can differ—from as few as three to as many as twenty. A council should include an equal number of state and federal judges to maximize involvement from both courts and to make sure that views from both benches are adequately presented at council meetings. The number of judges should be large enough to promote diverse viewpoints,

but not too large to be unwieldy for involved discussion. Most active councils have between eight and fourteen members.

2. Membership

When deciding on council membership, one should consider all judges whose work has implications for state–federal relations. This includes federal appellate, district, bankruptcy, and magistrate judges. State judiciary members will generally be from that state’s highest court, though state trial judges involved with federal–state issues should also be considered. Some councils, including New York’s, also include administrative members (e.g., clerks of the circuit court and the state court of appeals).

Membership should generally be for a period of three to five years. Councils should invite new members to continue the council’s mission, which can also expand awareness of the council across the respective courts, though a council may also wish to retain the ability to renew actively engaged members for successive terms.

3. Leadership

The council should elect a chair at the first meeting of the council. It is also recommended that the council elect a vice-chair. If the chair is a federal judge, the vice-chair should be a state judge, and vice versa. The chair should alternate between state and federal judges. While many councils (e.g., Colorado, New York) employ this leadership structure, other councils differ. The Connecticut council is co-chaired by the chief judge of the District Court for the District of Connecticut and a Connecticut supreme court justice. The Maine council is currently chaired by a federal judge.

4. Staffing

The council will require administrative support to perform such tasks as sending out meeting notices and agendas, coordinat-

ing the location of the meeting, and other administrative tasks involving travel arrangements, taking official minutes, and presenting those minutes to members and interested parties. Administrative support may be provided by the office of the state court administrator and/or the offices of the clerk of the U.S. district court, subject to the approval of the chief judge of the district court. The council may also wish to have an official reporter who would not be a voting member of the council.

Effectively staffing a council can be difficult, because resources are limited, and the individuals best suited to staff a council might already have heavy workloads at their courts. When organizing a council, such staffing and resource discussions should be considered broadly and presented to all relevant stakeholders to ensure that staffing resources match up realistically with the council's goals.

5. Meetings

Generally, councils meet twice a year, though there is some variation among successful councils. New York's council met every two months in the early 1980s, but it now meets quarterly. North Carolina's council, revived in 2016, plans to meet annually. It may be beneficial to hold meetings in conjunction with a state bar meeting or judicial meeting, especially when some members might travel a great distance to the meeting location. For example, the New York council holds its January meeting each year in conjunction with meetings of the New York Bar Association. The geographic location of the courthouses might also affect meeting schedules. In states where the federal district courthouse and highest state court are in the same location, meetings might be more frequent than in states where meetings involve more expensive travel.

In the 2016 FJC survey of federal chief district judges, most judges who noted that their state had an active state–federal judicial council indicated that meetings were held at least

once a year. As technology improves, virtual meetings could become more prevalent as a less expensive option.

6. Agenda

A clear agenda shared in advance will allow members to contemplate issues before the meeting and focus their discussion. The amount of time allotted for each topic should include ample room for discussion. It might be most efficient to delegate topics to individual council members who would then be responsible for leading the discussion for their assigned item. Agendas might also include time for a nonmember to clarify agenda items that warrant outside expertise (e.g., the creation of information systems to streamline case-management procedures).

7. Committees and Subcommittees

Some councils establish subcommittees to facilitate their work. For example, California’s state–federal judicial council has one of the more elaborate structures, which includes subcommittees on education, tribal court relations, civil and prisoner prose litigation, complex cases, public confidence in the judiciary, jury improvements, and capital habeas. Other committees or subcommittees might be warranted depending on the planned activities of the council.

8. Advisory Group

When resources permit, a council might consider having an advisory group to offer guidance and provide additional views from stakeholders in their respective judicial systems. The New York council, for example, uses a thirty-seven-member advisory group composed of attorneys and retired judges across the state. The advisory group is co-chaired by both an upstate and a downstate attorney.

9. Outreach

The council should consider outreach efforts early. Possible outreach efforts could include making meetings public, allowing time for nonmembers to present pressing concerns about state–federal judicial relations, fostering a relationship with the media to present activities and respond to inquiries, and creating educational efforts to inform the community of the work of the council. Outreach efforts could also involve cooperation with universities or legal organizations to take on substantive assignments in areas of interest or to promote educational endeavors, like the educational collaboration in Maine.

It is not necessary to reach final decisions on these topics immediately. Still, the state should form a group of interested judges and schedule a meeting to address these organizational topics, as well as the types of issues the council will consider, the activities in which it will be involved, and the resources necessary to establish and maintain the council.

An initial planning meeting can be held via a teleconference or in person, and must include both federal and state judges so that both benches have a role in the organization of the council. At the inaugural council meeting, the committee members should draft an organizing document (Appendix B provides a sample charter) and a concise statement of purpose. In addition, setting short-term goals will increase the likelihood that the council remains active over time. After initial logistical work is completed and goals are established, the council can begin long-term planning to address the areas of mutual concern or activities of joint interest. Appendices C and D includes sample notices to use in preparation for organizational and regular meetings.

Maintaining a Council

State–federal judicial councils can prove to be valuable, but they must be maintained to consistently achieve their objectives. As noted in Appendix E, the number of active councils has varied in the more than forty years since their emergence. Some have remained active through the years, while others have fallen dormant. Still others have been recently reenergized, such as the council in North Carolina.

There is no known systematic research on why some councils remain active while others go dormant. Anecdotally, shifts in judicial leadership from the enthusiastic judges who helped start the council to less proactive judges, and changes in administrative support that make logistics more burdensome, can result in councils becoming inactive. Members of the council should also maintain realistic expectations of what a council can achieve, come prepared to council meetings, and consider long-term goals (such as when important topics can form the basis of council activities or educational efforts).

Those seeking to form a council should consider the challenges of maintaining it before the inaugural council meeting and should reflect on the following considerations.

Active Involvement. Councils unfortunately do not run themselves. It takes active involvement from all the members and the administrative staff to maintain a council and obtain its greatest benefit: the discovery of mutual areas of concern and the creation of a plan to remedy them. Additional involvement between meetings can take the form of subcommittees, progress reports on follow-up actions, and involvement in the community through education initiatives. The council is encouraged to consider current technology to maintain involvement, including the use of LISTSERVs or a council website (private to members only or publicly available). In 2017, the

FJC began work on an online resource page for judges interested in learning more about councils.

Strong Administrative Support. Coordinated support from both federal and state administrators is necessary to maintain an effectively run council. Strong support allows for the efficient planning of meetings, facilitates coordination of activities across both state and federal systems, and reinforces joint ownership of the council by the state and federal judiciaries. Both federal and state courts should commit to maintained administrative support.

Focus on Cooperation and Reducing Conflict. Council leadership should promote a collaborative environment, though areas of tension might be indicative of topics needing further discussion. Diverse opinions on complex topics should be encouraged. A cooperative environment is also productive in committees, subcommittees, and advisory groups, and at educational programming.

Agenda Management. Ideally, agendas should be concisely written and provided in advance, and should address current issues of mutual concern. The agendas should also be written to encourage discussion and cooperative action and should take the time constraints of the meeting into account. Meeting simply for the sake of meeting is unproductive and would likely lead to members' lack of interest in the council. Each meeting should be approached as a finite time for discussion and action, and the agendas should efficiently seize that opportunity.

Advantage of Continuity. A successful, long-standing council needs committed, energetic members to continually address important issues in innovative ways. This is true even when there is no immediate concern to address. Councils should pivot to focus on such activities as continuing education, public outreach, court responsiveness to emergencies, and other projects, as needed. The opportunities are numerous.

Regional Conferences

Councils can expand outside of their states, working alongside other states to establish regional state–federal judicial conferences. Though less common than councils, conferences offer a unique, broader approach to resolve issues facing both court systems.

Several regional conferences were held in the early 1990s, starting in 1992 with the first National Conference on State–Federal Judicial Relationships, sponsored by the FJC, the National Center for State Courts (National Center), and the State Justice Institute (SJI). More recently, in September 2016, the Southern Region Inter-Court Conference was held in Asheville, North Carolina. The conference planning committee was chaired by North Carolina Supreme Court Chief Justice Mark Martin and included state and federal judges, as well as the National Center president and the FJC director. The three-day conference focused on the future of the courts, emphasizing avenues of cooperation between federal and state courts in the southern region of the United States. Panels covered topics often seen on state–federal judicial council agendas, including access to the courts, public law, diversity, and restoring public trust and confidence in the court system. The attending judges provided positive feedback and hoped for a reinvigoration of interest in future regional conferences.

Regional conferences often involve more complicated planning committees and funding mechanisms than state–federal judicial councils. However, they also allow a more expansive opportunity for state and federal judges within a geographic region to come together and discuss pressing issues affecting all of their courts. Those interested in the organizational process for such a conference are encouraged to examine the State Justice Institute’s *Regional Conferences Cookbook* (see the Other Resources section, *infra*).

Conclusion

State–federal judicial councils can be very useful to both state and federal courts, providing a forum for communication. There judges can build relationships, discuss topics of mutual interest, and collaboratively work on activities to better the judicial system.

As an institution, the council also offers continuity that will allow cooperation to continue long after it is first established and its initial members have moved on. However, state–federal judicial councils cannot run themselves. A strong organizational structure, continued administrative support, and maintained participation by judges are all necessary components to a thriving and effective council.

With a strong council in place, state and federal judges can work together to address issues as they arise, plan meaningful activities, and craft collaborative solutions to improve the administration of justice in both the state and federal judicial systems.

Other Resources

One aim of this pocket guide is to remedy the dearth of current research on the topic and promote the need for more resources on state–federal judicial councils.

Advisory Group to the New York State–Federal Judicial Council, Harmonizing the Pre-Litigation Obligation to Preserve Electronically Stored Information in New York State and Federal Courts (2010), *available at* <http://www.courts.state.ny.us/CTAPPS/news/PreLitReport.PDF>

Advisory Group to the New York State–Federal Judicial Council, Interpreters in Federal and New York State Courts: Recommended Best Practices, New York State–Federal Judicial Council 2015 Report (2015), *in* *Equal Before the Law?: Civil Rights and Access to Justice*, Access to Justice for Vulnerable Populations Panel (New York Law School 2016), *available at* <http://www.nyls.edu/impact-center-for-public-interest-law/wp-content/uploads/sites/140/2013/07/Vulnerable-Populations-Panel.pdf>

Advisory Group to the New York State–Federal Judicial Council, Practice Handbook on Certification of State Law Questions by the United States Court of Appeals for the Second Circuit to the New York State Court of Appeals (3d ed. 2016), *available at* <https://www.nycourts.gov/ctapps/forms/certhandbk.pdf>

Coordinating Multijurisdiction Litigation: A Pocket Guide for Judges (Federal Judicial Center & National Center for State Courts 2013)

Organizing and Using a Council of State and Federal Judges (Federal Judicial Center 1993)

Goldfarb Center & the Maine Federal–State Judicial Council, Teaching about the Maine Judiciary: Conversations with

- Maine Judges, <http://www.colby.edu/goldfarb/teaching-about-the-maine-judiciary-conversations-with-maine-judges> (last visited Apr. 24, 2017)
- Jack B. Weinstein, *Coordination of State and Federal Judicial Systems*, 57 St. John's L. Rev. 1 (1982)
- James G. Apple, Paula L. Hannaford & G. Thomas Munsterman, *Manual for Cooperation Between State and Federal Courts* (Federal Judicial Center, National Center for State Courts & State Justice Institute 1997)
- Jason A. Cantone, Federal Judicial Center, *Report on Federal–State Court Cooperation: A Survey of Federal Chief District Judges* (2016), available at <https://www.fjc.gov/content/321583/report-federal%E2%80%93state-court-cooperation-survey-federal-chief-district-judges>
- Robert J. Giuffra, Jr., Matthew A. Schwartz, Shane R. Yeargan & Justin Lo, *Report on the Coordination of Discovery Between New York Federal and State Courts* (New York State–Federal Judicial Council 2016), available at http://www.ca2.uscourts.gov/state_federal_judicial_councils.html
- State Justice Institute, *Regional Conference Cookbook: A Practical Guide for Planning and Presenting a Regional Conference on State–Federal Judicial Relationships* (1994)
- Victor E. Flango & Maria Gibson, *Administrative Cooperation Between State and Federal Courts*, 34 No. 2 Judges' J. 2 (1995).
- William W. Schwarzer, Nancy E. Weiss & Alan Hirsch, *Judicial Federalism in Action: Coordination of Litigation in State and Federal Courts*, 78 Va. L. Rev. 1689 (1992)

Appendix A

Topics Most Often Discussed at State–Federal Judicial Council Meetings

The following list of topics stems from research performed by the Federal Judicial Center in 2016 that examined the meeting agendas and notes of state–federal judicial councils. The topics are presented in alphabetical order below:

- Alternative dispute resolution (ADR) programs
- Attorney discipline and conduct
- Bankruptcy conflicts (e.g., impact of stays on state court proceedings)
- Calendar and scheduling conflicts
- Capital cases (death penalty appeals; habeas corpus; exhaustion)
- Case management
- Case tracking systems
- Case workloads of judges
- Certification of state law questions
- Complex litigation
- Court interpreters
- Court security
- Criminal cases (dual prosecution of state and federal offenses)
- Discovery disputes and concerns
- Diversity jurisdiction (including removal)
- Drug enforcement cases
- Eliminating racial and gender bias
- Ethics/professional conduct of judges (including recusal)
- Evaluations of judicial performance

- Frivolous or improper litigation (how to address)
- Funding and judicial budgeting
- Immigration cases and jurisdiction
- Joint education or CLE programs
- Judicial immunity
- Juries (jury management; selection of jurors)
- Legislation affecting the judiciary (pending or recently enacted)
- Long-range/strategic planning initiatives
- Plea-bargaining procedures
- Post-conviction relief
- Prison-grievance procedures
- Pro se litigation
- Public access to the courts/public perception
- Reducing delays in the judicial process
- Relationships with the bar (admission to practice; surveys of attorneys; pro bono lists)
- Resource allocation/potential sharing of resources (including facilities)
- RICO (civil actions)
- Rules changes for civil, evidence, and/or local rules (pending or enacted)
- Sentencing guidelines
- Significant court opinions (and their impact on both the state and federal courts)
- Standards for appointing counsel
- Technology in the courtroom (video teleconferencing for prisoner appearances; use of cameras; media coverage)
- Transportation of prisoners to court
- Tribal court issues

Appendix B

Sample Charter for a State–Federal Judicial Council

CHARTER OF THE STATE–FEDERAL JUDICIAL COUNCIL OF
_____ (state)

1. Name

The Council shall be known as the State–Federal Judicial Council of _____.

2. Purpose

The purpose of the Council is to improve and expedite the administration of justice by the state and federal courts of the state through cooperative efforts; to promote and encourage collaborative judicial relationships between the state and federal judicial systems in the state; to promote discussions between state and federal judges on issues of mutual interest; to share materials and information that could benefit both systems; and to provide a forum where state and federal courts can work together to explore and solve problems of mutual concern.

3. Composition

The Council shall consist of at least ____ representatives from the state judiciary and ____ representatives from the federal judiciary.

State Representation. Representatives of the state judiciary shall consist of justices of the state supreme court, one of whom shall be the chief justice, judges of the state court of appeals, and circuit judges. The state court representatives shall be appointed by the chief justice of the state.

Federal Representation. Representatives of the federal judiciary shall consist of U.S. circuit court of appeals judges who

are residents of the state and U.S. district judges, U.S. bankruptcy judges, and U.S. magistrate judges. The federal court representatives shall be appointed by the chief judge of the district court in the state.

Administrative Support. Administrative support for the Council shall be provided, when necessary and appropriate, by the office of the state court administrator and/or the offices of the Court Clerks of the U.S. District Court, subject to approval of their supervisory judicial officers. Administrative support staff are nonvoting members of the Council.

A judge who is member of the Council by virtue of office shall remain a member of the Council while holding that office. A judge who is a member of the Council by virtue of designation shall remain a member of the Council for the period designated or until the designating judge shall appoint a successor.

4. Meetings

The Council shall meet ___ time(s) each year, at a place within the state at a time designated by the chair or by majority vote of the Council. The chair may call special meetings of the Council to consider only matters specified in a written notice of the special meeting, provided to the Council members at least seven days in advance of the meeting.

5. Officers

Chair. The chief justice of the state shall preside at the inaugural meeting of the Council. At that inaugural meeting, the members shall elect a chair, who shall serve a term of two years. The chair of the Council shall rotate every term between members of the state and federal judiciary. The chair shall set the date of the meetings, preside over meetings, establish agendas for the meetings, oversee any subcommittees, and speak for

the Council. The chair may also call special meetings as noted above.

Vice-Chair. The council shall elect a vice-chair to serve in the absence of the chair and perform such other duties as may be assigned by the Council. The vice-chair and chair should not both be federal judges or state judges.

Executive Secretary. The council shall appoint a representative from the office of the state court administrator or the offices of the Court Clerks of the U.S. District Court as an executive secretary to the Council. The executive secretary shall provide administrative assistance to the chair and shall take minutes of council meetings, provide notice for and arrange meetings, and perform other such duties as may be assigned by the chair, vice-chair, or Council. The executive secretary may also be asked to perform these duties at subcommittee or special meetings.

6. Voting

All motions, resolutions, and other actions of the Council shall be adopted by majority vote of the Council taken among the duly appointed members in attendance at the meeting where the action is considered, providing a quorum is present. A quorum shall consist of at least two-thirds each of federal and state judge members.

7. Committees

There shall be a standing executive committee, consisting of the chair, the vice-chair, and four other voting members of the Council appointed by the chair to serve for the duration of the chair's term of office. Three members of the executive committee shall be federal judges and three members shall be state judges.

The executive committee or Council may authorize and appoint additional standing or special committees.

8. Amendments

This charter may be amended at any time by a two-thirds majority of the members of the Council.

ADOPTED this _____ day of _____, 20____.

APPROVED

For the state judiciary:

For the federal judiciary:

Appendix C

Sample Notice of Organizational Meeting of a State–Federal Judicial Council

NOTICE OF ORGANIZATIONAL MEETING FOR STATE–FEDERAL
JUDICIAL COUNCIL OF _____ (state)

To: _____ (name and email address of
judge)

Subject: State–Federal Judicial Council of _____ (state)
Organizational Meeting

You are cordially invited to attend a meeting of members
of the state and federal judiciary in _____ (state)
to discuss the formation of a state–federal judicial council in
the state.

The meeting will be held at _____ (time
of meeting) on _____ (date of meeting) at
_____ (location of meeting).

The agenda for the meeting will include the following:

1. Purpose of the Council
2. Composition of the Council
3. Officers of the Council
4. Frequency and location for the meetings
5. Organizational information include setting the agenda for the meeting, administrative support for the meeting and travel arrangements, providing for written materials prior to each meeting, meeting minutes, and reports.

Enhancing Cooperation Through State–Federal Judicial Councils

We hope you will join us for this initial meeting.

Chief Justice of _____ (state)

Chief Judge, United States District Court for _____ (region/state)

Appendix D

Sample Notice of Regular Meeting of a State–Federal Judicial Council

NOTICE OF MEETING FOR STATE–FEDERAL JUDICIAL COUNCIL
OF _____ (state)

To: _____ (name and email address
of judge)

Subject: State–Federal Judicial Council of _____
(state) Meeting

A meeting of members of the State–Federal Judicial
Council of _____ (state) will be held on _____
(date of meeting) at _____ (time of meeting) at
_____ (location of meeting).

The agenda for the meeting will include the following
items:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

We hope you will join us for this meeting.

Chair, State–Federal Judicial Council of _____ (state)

Appendix E

History of State–Federal Judicial Councils

Most state–federal judicial councils emerged as a result of Chief Justice Warren E. Burger’s 1970 State of the Judiciary address to the American Bar Association. In his address, Chief Justice Burger encouraged the use of state–federal judicial councils as the first of eight “major steps for the future . . . that in each state there be created a state–federal judicial council to maintain continuing communication on all joint problems.” Chief Justice Burger noted that such councils may help alleviate tensions spurred by federalism concerns and instead foster cooperation, while also restoring public trust in the judiciary.⁴ He also recommended that councils should not become dormant; maintained, continuous communication is necessary to address problems as they arise and evolve. This lesson remains true today.

State–federal judicial councils emerged in the 1960s in connection with judicial administration reform,⁵ but it was Chief Justice Burger’s comments in 1970 that led to their expansion. Only two years later, thirty-five states had established state–

4. Jack B. Weinstein, *Coordination of State and Federal Judicial Systems*, 57 St. John’s L. Rev. 1 n.32 (1982); see generally James M. Fischer, *Institutional Competency: Some Reflections on Judicial Activism in the Realm of Forum Allocation Between State and Federal Courts*, 34 U. Miami L. Rev. 175, 215–16 (1980). In 1971, Chief Justice Burger proposed the National Center for State Courts as a venue for discussions among state judges on how to improve their courts.

5. See John W. Winkle, *Toward Intersystem Harmony: State–Federal Judicial Councils*, 6 Just. Sys. J. 240 (1981). They also stem from a “longer tradition” of councils including state judicial councils that “flourished in the 1920s and 1930s” and circuit judicial councils that began in 1939. *Organizing and Using a Council of State and Federal Judges* 1 (Federal Judicial Center 1993).

federal judicial councils, with some more active than others. In 1978, Chief Justice Burger announced at the National Conference on the Judiciary that there were thirty-seven councils in place. However, the courts' interest in forming and maintaining councils was short-lived. By 1980, a survey from the National Center for State Courts revealed only nine still-active councils, with eleven councils considered "virtually inactive."⁶

In the 1980s and 1990s, efforts to promote state–federal judicial cooperation shifted from a push toward forming councils to opening new avenues for state–federal cooperation. In 1982, at the suggestion of Chief Justice Burger, the Judicial Conference Committee on Court Administration created a subcommittee on state–federal relations to broaden communication and cooperation between the state and federal judicial systems. In 1987, the Subcommittee on State–Federal Relations and the Subcommittee on Federal Jurisdiction merged to establish the Judicial Conference Committee on Federal–State Jurisdiction, which continues to provide a forum for discussion between federal and state judges on important issues affecting both judicial systems; supports cooperative efforts and activities; and oversaw the creation of this pocket guide. The increase in potential venues for state–federal discussions did not correspond with an increase in active state–federal judicial councils, but cooperation and collaborative activities could now occur through more informal mechanisms.

In 1992, Chief Justice Rehnquist, in his opening remarks of the National Conference on State–Federal Judicial Relationships, urged for the "revitalizing" of state–federal judicial councils "to facilitate judicial and administrative cooperation."⁷

6. Memorandum from the Nat'l Ctr. for State Courts on State/Federal Judicial Councils (June 10, 1991) (on file with author).

7. Chief Justice William H. Rehnquist, *Welcoming Remarks: National Conference on State–Federal Judicial Relationships*, 78 Va. L. Rev. 1657 (1992).

The same year, the Federal Judicial Center created the Interjudicial Affairs Office to monitor state–federal judicial councils, assist in the organizing or revival of councils, and publish the *State–Federal Judicial Observer*, which reported on state–federal issues throughout the country. Shortly thereafter, in 1993, the FJC issued *Organizing and Using a Council of State and Federal Judges*, a guide intended as a “starter kit” for states and federal courts seeking to create a council, or for those seeking to either reactivate a council that had lapsed into inactivity or seek out ways to improve their active council. In 1997, this FJC guide was revised and adapted into a chapter of the *Manual for Cooperation Between State and Federal Courts*,⁸ a joint product of the FJC, the National Center for State Courts, and the State Justice Institute. These activities corresponded with a proliferation of active councils, with the number rising to thirty-four in the mid-1990s, approaching the earlier high in the 1970s.

Yet interest in state–federal judicial councils again faded, and the FJC’s *State–Federal Judicial Observer* ceased publication in 1999. The FJC has undertaken numerous surveys to identify states with active state–federal judicial councils and has found that the number decreased from about twenty-four in June 2000 to about twelve in 2008. In 2014, the Judicial Conference Committee on Federal–State Jurisdiction determined that the number had slightly increased, though a follow-up in May 2016 put the number back to about twelve active councils, while also noting such highlights as the revival of the North Carolina council after a nineteen-year hiatus and the flurry of activity from councils such as the one in New York.

The 2016 FJC survey of federal chief district judges raised new questions about counting the number of active judicial

8. James G. Apple, Paula L. Hannaford & G. Thomas Munsterman, *Manual for Cooperation Between State and Federal Courts* (Federal Judicial Center, National Center for State Courts & State Justice Institute 1997).

councils. For example, while only about one-third of the federal chief district judges said they had an active council, as many as two-thirds noted cooperation with the state court. Thus, much cooperation likely occurs through more informal means. Previous research on the number of active councils might not be a sufficient approach to determining how much cooperation is actually occurring. It may be that rather than states either having an active council or not, the existence of a council falls more on a spectrum.

The Federal Judicial Center

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About the Federal Judicial Center

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

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

The organization of the Center reflects its primary statutory mandates. The Education Division plans and produces education and training for judges and court staff, including in-person programs, video programs, publications, curriculum packages for in-district training, and Web-based programs and resources. The Research Division examines and evaluates current and alternative federal court practices and policies. This research assists Judicial Conference committees, who request most Center research, in developing policy recommendations. The Center's research also contributes substantially to its educational programs. The Federal Judicial History Office helps courts and others study and preserve federal judicial history. The International Judicial Relations Office provides information to judicial and legal officials from foreign countries and informs federal judicial personnel of developments in international law and other court systems that may affect their work. Two units of the Director's Office—the Information Technology Office and the Editorial & Information Services Office—support Center missions through technology, editorial and design assistance, and organization and dissemination of Center resources.