

Organizing and Using a Council of State and Federal Judges

Interjudicial Affairs Office
Federal Judicial Center

The Federal Judicial Center

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This publication was produced in furtherance of the Federal Judicial Center's statutory mandate to conduct and stimulate development in matters of judicial administration. This work has been reviewed by Center staff, and publication indicates that it is regarded as responsible and valuable. It should be emphasized, however, that on matters of policy, the Center speaks only through its Board.

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*A Message to Judges and Administrators of
State and Federal Courts from Judge William W
Schwarzer, director of the Federal Judicial Center*

THIS PAMPHLET IS DESIGNED TO HELP JUDGES AND ADMINISTRATORS organize and maintain councils of state and federal judges. It is something of a "starter kit" for use in states or in metropolitan areas where there has never been a council, or where a council was created but has since lapsed into inactivity, or where a council is in place but its members are looking for suggestions to make it more effective.

The Evolution of State-Federal Judicial Councils

State-federal judicial councils date from the early 1970s, but they build on a longer tradition. In court systems, councils are a favored form of administrative organization. Courts and judges guard their independence and autonomy. Councils operate by seeking consensus and providing an opportunity for different views to be heard and considered. They allow the formulation of mutually accepted strategies. State judicial councils flourished in the 1920s and 1930s, and circuit judicial councils have operated in the federal system since Congress created them in 1939.

The term "state-federal judicial council" entered the lexicon in 1970, when Chief Justice Warren E. Burger, in his first "state of the judiciary address" to the American Bar Association, listed 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." As a judge on the Court of Appeals for the D.C. Circuit, Chief Justice Burger had in 1956 called attention to the unfulfilled potential of the federal circuit judicial councils, and urged them to "assume and discharge the statutory duties, which Congress gave them . . . in 1939." As Chief Justice, he proposed using non-statutory councils to try to mitigate the "friction in relations between state and federal courts" that had become especially troublesome in the 1960s.

The state–federal council movement has been episodic. State and federal judges responded quickly to the Chief Justice’s call, creating more than thirty state–federal judicial councils between 1970 and 1972. By 1978, Chief Justice Burger told the second National Conference on the Judiciary that thirty-seven states had councils. How many of those were active is unclear, but the councils were soon clearly in decline. A 1980 survey revealed only nine active councils. Later in the decade, however, some state and federal judges undertook to revitalize the movement, and current canvasses report as many as twenty-six active state–federal councils. Although most “state–federal councils” have been state-level bodies, a few have been formed in metropolitan areas and directed their attention to judicial federalism issues involving state and federal courts in the area. In addition, the Judicial Conference of the United States and the Conference of Chief Justices in 1990 carried out a recommendation of the Federal Courts Study Committee by creating the National Judicial Council of State and Federal Courts. The National Judicial Council has placed the nurturing of state–federal councils at the top of its agenda. State–federal councils were a topic at the April 1992 National Conference on State–Federal Judicial Relationships in Orlando, Florida, sponsored by the State Justice Institute and the Federal Judicial Center. Indeed, Chief Justice Rehnquist, in his opening remarks, urged the “revitalizing” of state–federal judicial councils “to facilitate judicial and administrative cooperation.”

*The Federal Judicial Center
and State–Federal Judicial Councils*

The Federal Judicial Center, created by Congress in 1967 as the federal courts’ agency for education, research, and planning, has monitored state–federal councils since Chief Justice Burger’s initial proposal, and, within the limits of its budget, has provided modest funding to federal judges to participate in council activities. This interest is one aspect of the Center’s work in the area of judicial federalism, work encouraged in part by its statutory mandate “to cooperate with the State Justice Institute in the

establishment and coordination of research and programs concerning the administration of justice." In 1992, in the wake of the National Conference on State–Federal Judicial Relationships, the Center created a small Interjudicial Affairs Office.

The Office has prepared this "starter kit" to help judges and administrators to create, revitalize, and maintain councils. The following section, by listing specific council accomplishments and a roster of the issues that have been on their agendas, indicates the range of potential council activities. Tips and suggestions for creating and maintaining a council appear on p. 10. The appendix material includes a bibliography and sample forms and other documents as a way of illustrating alternative ways of creating a council (including a metropolitan area council).

To help the Center maintain a clearinghouse of council activities, please keep us posted on your council's activities. The information reporting form on p. 34 is one means to that end.

A Word of Caution

The history of the last twenty years makes clear that state–federal councils are not self-sustaining. Two reasons may help explain the uneven history of state federal councils.

The first factor that has contributed to some councils' demise is that more attention has been devoted to form than substance. The final test of an effective council is not the quality of its charter or bylaws. The forms in this starter kit are at best templates on which to shape the organization. The effective operation of a council depends on a realistic appraisal of the major issues and opportunities facing state and federal courts in a particular jurisdiction and on deciding which of them are plausible objects for a voluntary council that meets only periodically and has few resources.

The second reason councils have declined is disillusionment following unrealistic expectations of what they can accomplish. Some issues are beyond a council's capacity. Identifying issues appropriate for a council's consideration, and making a sustained

effort to use it effectively within its limited sphere, will be challenging enough for any group, but these are necessary if a council is to yield concrete benefits.

The Center stands ready to assist you. In turn, we hope you will assist us by reporting council activities and offering suggestions for how we may better serve state and federal courts. I invite you to call James G. Apple, chief of the Center's Interjudicial Affairs Office, with inquiries or requests for assistance.

William W. Schwarzer

The Business of Councils—A Range of Options*

The collective roster of state–federal council business is extensive, revealing not only various ways in which councils have identified, and often taken action on, causes of state–federal friction but also opportunities for joint endeavors peculiarly suited for state and federal judges working together. Councils have also provided an opportunity to learn from one another about solutions to problems that judges face as judges, problems that may not have any peculiar federalism dimension. Finally, councils can allow judges from different systems to serve as sounding boards for one another.

This section includes a roster of topics that councils have explored and actions they have taken. Pervading all these particular items, however, is a broader council function, harder to quantify but clearly important. As one judge put it, participating in a council “makes it easier to pick up the telephone and call the other judge if some problem does surface.”

Easing Strain Between State and Federal Court Systems

Easing strain between state and federal court systems is the major purpose for which state–federal councils were first created, and councils have taken various steps to achieve the purpose. Specific issues they have addressed include:

- *Calendar conflict problems in state and federal courts.* Vermont and Mississippi councils developed specific solutions by establishing priorities to avoid calendar conflicts.
- *Collateral attack on state proceedings in federal courts.* The various tensions caused by habeas corpus proceedings have been a constant on council agendas, and the reinstatement of the

* The items in this section come mainly from the articles in the bibliography, supplemented by telephone interviews between James G. Apple, chief of the Interjudicial Affairs Office of the Federal Judicial Center, and various state and federal judges and administrative personnel, including Chief Judge Gerald B. Tjoflat (11th Circuit) (August 26, 1992), Robert L. Doss, director of the Administrative Office of Georgia Courts (August 25, 1992), and Assistant Circuit Executive Mark Mendenhall (9th Cir.) (August 31, 1992).

death penalty has added to the salience of the issue. The California council sponsored a symposium on capital cases to provide state and federal judges a better understanding of the handling of death penalty cases and to reduce the friction among state and federal judges created by them. Other councils have discussed early warning systems for capital cases in state courts. Council members have also commented that the camaraderie developed at council meetings can assist in diffusing tension between state and federal judges arising when federal judges overturn state convictions in habeas proceedings.

- *Litigation against state institutions in federal court.* The Missouri council organized grievance forums at state prisons to reduce the number of frivolous filings of lawsuits by inmates.

Councils have also discussed

- Establishing procedures to allow federal courts to certify state law questions to state courts for authoritative decision (and one judge has suggested that a goal, or at least a topic for discussion, at council meetings could be establishing "a reverse procedure permitting state tribunals to call upon federal courts for advice" in cases pending in the state courts).
- Diversity jurisdiction issues, such as disposition of pendent claims.
- Bankruptcy issues, such as the impact of stay orders and the effects when bankruptcy courts must interpret state laws.
- State and federal legislation affecting the courts.

Sharing Resources

Councils have taken various steps to pool resources and exchange information to the benefit of both systems. For example:

- Oregon, Kentucky, and New Jersey councils created plans for the sharing of courtrooms and library facilities.

- Virginia and Maryland councils established a program for state and federal probation and pretrial services officers to exchange presentence reports.
- The Alabama council identified problems and issues common to both state and federal judges, such as ADR and selection of juries, and then planned joint educational seminars on those topics.

Councils have also discussed

- Sharing jury information, including
 - jury lists
 - databases of prospective jurors and for recording recent service by jurors
- Sharing records and reports on
 - multiple cases involving a single individual
 - cases handled by a particular attorney
 - sentencing history of a particular individual
 - databases of expert witnesses
 - collateral attacks on convictions of the same defendant
 - transcripts of hearings and trials
- Sharing facilities
 - courtrooms and equipment
 - libraries and other research resources
 - jail facilities for persons awaiting trial
- Sharing personnel
 - using retired federal judges for temporary appointments in state courts
 - pooling of arbitrators, mediators, and neutral evaluators
- Coordinating interview and hiring schedules for law clerks
- Establishing joint seminars and other education programs, as well as bench books and trial manuals for trial judges
- Education of administrative staff
- Exchange of unpublished and slip opinions
- Common citizen education and public information activities, including special events (e.g., Law Day) and regular

educational activities.

- Assisting a state historical society by collecting and preserving historical papers and memorabilia.

Coordinating and Standardizing Procedures in State and Federal Courts

Councils have also sought ways to eliminate unnecessary differences in court rules and procedures that make practice more difficult for attorneys without corresponding benefit. Some differences are legally mandated, but councils can be a forum for considering and promoting changes. For example, councils have discussed

- Coordination of proceedings in state and federal courts, including
 - calendar coordination
 - coordinated discovery
 - joint settlement efforts
 - joint motion hearings and rulings
- Coordinating regulation of and services for the bar, including
 - attorney admission standards and procedures
 - disciplinary actions and unified procedures for bar discipline
 - joint programs of continuing legal education for judges and lawyers
 - judicial liaison with state and federal bar organizations
 - state and federal court codes of professional responsibility
- Case management techniques and developments; implications for state courts of federal court case management reforms, and vice versa
- Standards for juror excuses
- Formats for legal documents
- Uniform local rules
- Compatibility of automated information systems

Other Issues

State–federal councils have discussed a range of issues that have no particular federalism connotation but that can benefit from fresh ideas and different perspectives on standard practices. Agendas of council meetings have included

- Alternative dispute resolution—appropriate uses, advantages and disadvantages
- Security for judges, courtrooms, and court personnel
- Court reporters and transcript delays
- Certification process for court interpreters; interpreter equipment
- Juror welfare and convenience
- Records management and storage
- Victim/witness protection matters
- Standards for appointment of counsel to ensure effective representation
- Plea bargaining procedures in state and federal courts
- Problems and procedures in pro se cases
- Inmate grievance procedures; “conditions of confinement” litigation
- Pro bono panels and indigent defense compensation
- The impact of decisions by the U.S. Supreme Court or other appellate courts that may affect interjudicial relations
- Use of FAX for filing and correspondence
- Judicial salaries, pension, and annuities
- Canons of ethics and codes of conduct for judges; restrictions on extrajudicial activity
- Judicial immunity
- State and federal judicial bar polls; judicial performance evaluations
- Racial bias and gender bias
- Financial disclosure requirements

- Media and the courts TV coverage; accuracy in reporting
- Cameras in the courtroom
- Frivolous and improper litigation

Tips for Organizing and Sustaining a State–Federal Judicial Council

These suggestions are included to assist judges or administrators in forming a council of state and federal judges. The emphasis is on a state-level council, but the suggestions are also applicable to councils for metropolitan areas or other non-state units.

Keys to organizing and maintaining councils

Enough councils have been created, lapsed, and been reactivated to yield clues about getting them organized and keeping them going. Four clues stand out:

- Appreciating the range of potential benefits.* Councils often flourish when there are specific areas of tension, friction, or lack of coordination between state and federal courts. In states where councils have not existed, or where they have lapsed, judges often explain that there are “no problems of state–federal friction,” or that state and federal judges “know each other well enough to handle problems that arise.” Both can be true but still not obviate the desirability of a council. As the lists on p. 9 make clear, a council can also identify joint projects even where there is little state–federal friction, and it can provide a forum for judges to discuss common problems.
- Sustained and active involvement by the leadership of the state and federal court systems in the jurisdiction.* This factor is perhaps most often mentioned. Councils have persisted, for example, where state chief justices and circuit chief judges have personally, or through surrogates, provided leadership in the organization of councils, monitored council activity, attended and encouraged attendance at meetings, and received reports on follow-up actions.

- c. *Council agendas that are assembled with specific attention to stimulating topics for discussion and opportunities for cooperative action.* An extensive roster of possible agenda items begins on p. 9. It is suggestive rather than exhaustive. Meeting simply for the sake of meeting is obviously unproductive, but so is letting opportunities for discussion and effective action slip by.
- d. *Staff support from court administrators in one or both of the systems.* When state court administrators and federal court executives or clerks coordinate their support for the council, judges from both systems feel more ownership of council business, and the coordination promotes interchange among the staffs.

Council size, meeting times, and other organizational considerations

- a. *Size*—The number of judges in councils has varied greatly, from as low as three to as high as twenty or more. Most active councils have memberships of between seven and fourteen. Although federal judges often outnumbered state judges in the early councils, equal membership seems preferable.
- b. *Membership*—Consider extending the membership beyond the obvious categories of appellate and general jurisdiction trial judges to federal bankruptcy judges and magistrate judges, for example, whose work often has implications for state–federal judicial relations.
- c. *Presiding and staffing*—Provide for a secretary or reporter for each meeting and require preparation of minutes and a summary report of each meeting to be sent to members and other interested parties and organizations.
Consider rotating the officers of the council among state and federal judges, i.e., provide for a state judge to serve as chair of the council for a term, followed by a federal judge as chair for a term.

- d. Meeting times and sites—Most councils meet twice a year, including once at the time of a state bar meeting or state judicial meeting. Avoid having council meetings at a courthouse, where meetings are prone to interruptions. Consider limiting a council meeting to no longer than one day. Many councils meet in the morning or afternoon, or both, followed by a dinner.
- e. Agenda—Have a definite agenda for each meeting with specific topics for discussion. A limit of six agenda items would probably allow ample time for discussion of each item
- Consider inviting to a council meeting an outside expert or resource person, such as an academic specialist, or technical court personnel, or persons with a specific interest in state–federal judicial and court relations, to make presentations or provide commentary on a specific topic scheduled for discussion. Such persons could also be invited to meetings as observers.
- f. Outreach
- Consider having one or more open meetings, which lawyers and other interested parties could attend. This option is especially attractive when councils meet at the same time as other legal groups in the state, such as the state bar association and state judges organizations. The council could work with those groups on specific programs, activities, or projects.
 - Consider appropriate methods for making and maintaining contact with media organizations, and the advisability of issuing press releases on specific actions or activities of the council.
 - Ask committees of other interested organizations to take on projects or work with the council or its committees on specific assignments.

- Encourage the formation of state–federal judicial councils in metropolitan areas or specific regions of the state, and support and maintain contact with such councils.

Organizing a Council

The discussion below contains practical and procedural suggestions for organizing or revitalizing a council, some of which will be obvious. We include them here simply as a checklist or outline. They assume that communications between state and federal judges have been established for the purpose of considering the desirability of having a council. (Appendix 2 on p. 24 includes forms and templates for various instruments of organization, form letters, and so forth.)

- a. Set a specific date, time, and place for an initial or organizational meeting for a limited number of state and federal judges. Consider inviting an equal number of judges from each system.
- b. Include as participants:
 - From the state—the chief justice or chief judge of the system and the chief judge of the intermediate court of appeals, or equivalent.
 - From the federal courts—a resident judge from the U.S. court of appeals for the circuit in which the state is located and the chief judge(s) of the U.S. district court(s) in the state.
- c. Include in the agenda for the initial meeting a discussion of the following topics:
 - The need for a council and its benefits
 - A concise statement of purpose
 - Composition and officers
 - Frequency and place of meeting
 - Method of operations, including setting the agenda for each meeting, making meeting arrangements,

- providing for meeting minutes and reports, and providing written materials before each meeting.
- d. At the initial meeting appoint a small committee to draft an organizing document for the council. (Samples of different kinds of such documents are found on p. 24.)
 - e. At the initial meeting, set a date for a follow-up meeting to approve an organizing document and establish operating procedures. Such a meeting should be held soon after the first meeting to provide momentum for the organizing efforts.

Appendix 1: Bibliography of Articles and Other Materials on State-Federal Judicial Councils

Titles identified by an asterisk are available from the Interjudicial Affairs Office of the Federal Judicial Center.

History and Evolution of State-Federal Judicial Councils

Warren E. Burger, *The State of the Judiciary—1970*, 56 A.B.A. J. 929 (1970).

* Sol Wachtler, *National State-Federal Judicial Council* (unpublished paper).

John W. Winkle, *Toward Intersystem Harmony: State-Federal Judicial Council*, 6 Justice Sys. J. 240 (1981).

Establishing or Revitalizing State-Federal Judicial Councils

Steven Flanders, *A New Approach Revitalizes State-Federal Council*, N.Y.L.J., October 4, 1984.

George C. Pratt, *The State of New York's State-Federal Judicial Council*, 3 Touro L. Rev. 1 (1986).

Nanette S. Strunk, *The Potential of Intersystem Communication: State-Federal Judicial Councils*, Utah Jud. Briefs, vol. 7, no. 3, at 5 (Sept. 1982).

J. Clifford Wallace, *State-Federal Judicial Councils: The Ninth Circuit Experience*, Judges J., vol. 24, no. 4, at 36 (Fall 1985).

Jack Weinstein, *Coordination of State and Federal Judicial Systems*, 57 St. John's L. Rev. 10 (1982).

The Business of Councils: What They Have Done and Might Do

* Gordon Bermant, *Long-Range Planning and State-Federal Judicial Relations* (unpublished paper) (address given to Conference of U.S. Chief District Judges, Denver, Colorado, May 1992)

* Victor E. Flango & Maria F. Gibson, *Administrative Cooperation*

Between State and Federal Courts (National Center for State Courts 1992).

* Edward B. McConnell, *Planning for the State and Federal Courts*, 78 Va. L. Rev. 1849 (1992).

The Third Branch, a newsletter of the federal courts, first published by the Federal Judicial Center and now published by the Administrative Office of the U.S. Courts, carries articles and reports of state-federal council activity. Some of the more informative articles are:

- *State-Federal Judicial Councils Explore Broad Range of Issues*, vol 16, no. 2, at 7-8 (Feb. 1984).
- *State-Federal*, vol. 14, no. 12, at 4-5 (Dec. 1982).
- *Interest in Activities of State-Federal Judicial Councils Increases*, vol 17, no. 5, at 1 (May 1985).
- *State-Federal Judicial Council Meetings Discuss Sanctions, Calendars, Habeas Corpus*, vol 18, no. 1, at 3 (Jan. 1986).

Appendix 2: Sample Provisions for Organizing Documents for a State–Federal Judicial Council

This appendix includes sample provisions for various documents with which to organize a council, and forms for such documents. These suggested provisions have been taken from organizational documents of actual councils or have been drawn from forms typically used for the formation of similar organizations. They can be used in conjunction with the different forms of organizational documents found on p. 25.

Sample provisions are provided for:

- purpose
- composition
- meetings
- officers
- voting
- administrative support
- quorum
- committees
- amendments

A. Purpose

Sample 1

The purpose of the council is to seek improvement in the administration of justice in the state and federal courts of the state through cooperative efforts; to promote and encourage judicial relationships between the two court systems; to share materials and information that may have application or impact on the two systems; to develop methods to improve the operation of the two systems, including methods to use scarce judicial assets to benefit both systems; to eliminate any conflicts or misunderstandings that have developed or could develop among the judges of the two systems; and to suggest legislation to the state legislature and the Congress of the United States as well as court rules that the council believes will improve the administration of justice.

Sample 2

The purpose of the council is to improve and expedite the administration of justice by state and federal courts in the state; to promote and encourage harmonious judicial relationships between the state and federal judicial systems within the state; to promote discussions between state and federal judges on issues of mutual interest; and to provide a means whereby state and federal courts working together can explore and solve problems of mutual concern.

B. Composition

Sample 1

The council shall consist of at least ___ representatives from the state judiciary and ___ representatives of the federal judiciary.

State representation. Representatives of the state judiciary shall consist of ___ justices of the supreme court, one of whom shall be the chief justice, ___ judges of the court of appeals, and ___ (circuit, superior) court judges.

Federal representation. Representatives of the federal judiciary shall consist of all U.S. court of appeals judges who are residents of the state and ___ U.S. district judges, ___ U.S. bankruptcy judges, and ___ U.S. magistrate judges.

Appointments. The state court representatives shall be appointed by the chief justice of the state. The federal court representatives shall be appointed by the (chief judge of the ___ court of appeals) (chief judge(s) of the district court(s)) in the state.

Administrative members. The chief administrator of the [name of state] court system and the (circuit executive) (chief clerk(s)) of the federal district court(s) in the state shall serve as ex officio non-voting members of the council who shall supply administrative support for the council.

A judge who is a member of the council by virtue of his or her office shall remain a member of the council while he or she holds

that office. A judge who is a member of the council by virtue of his or her designation by another judge shall remain a member of the council for the period of his or her designation, or until the designating judge shall designate a successor.

Sample 2

The council shall consist of the following state and federal judges:

- (1) The chief justice of the supreme court of [name of state] and ___ other justices to be selected by members of that court.
- (2) ___ judges from the court of appeals of the state to be selected by members of that court.
- (3) ___ (circuit court) (superior court) judges from the state to be named by the (circuit judges association) (superior court judges association).
- (4) A judge from the U.S. court of appeals for the [name of circuit] to be selected by members of that court.
- (5) The chief U.S. district judge(s) in the state, and ___ additional U.S. district judges to be selected by the judges of (that) (those) courts.
- (6) ___ U.S. bankruptcy and magistrate judges in the state to be selected by the chief U.S. district judge(s) in the state.
- (7) The chief administrator of the state court system.
- (8) The chief clerk(s) of the federal district court(s) in the state.

A judge who is a member of the council by virtue of his or her office shall remain a member of the council while he or she holds that office. A judge who is a member of the council by virtue of his or her designation by another judge shall remain a member of the council for the period of his or her designation, or until the designating judge shall designate a successor.

Sample 3

The members of the council shall consist of all residents of the state of [name of state] who are justices of the supreme court, judges of the court of appeals, U.S. court of appeals judges, judges

of U.S. district courts, U.S. bankruptcy and magistrate judges, and one administrative official each from the state and federal courts to be designated by the representatives of each system to provide administrative support for the council, and such other members as the council may from time to time designate.

C. Meetings

Sample 1

Regular semi-annual meetings of the council shall be held in the spring and fall of each year, at a place within the state at a time designated by the chair or executive committee. The chair, with the concurrence of the executive committee, may call special meetings of the council to consider matters specified in a written notice of such meeting mailed to the members at least ten days before the meeting.

Sample 2

Members of the council shall meet (at such times and on such occasions as necessary to meet the objectives for which the council has been established) (at least twice a year) (at least once a year) at such times and places as may be designated by the chair of the council. The initial meeting of the council shall be called by the chief justice of the supreme court.

Sample 3

The council shall meet at least twice each year at a time and place to be decided by the council, provided that one meeting shall be held during the annual meeting of the state bar association.

Sample 4

The council shall meet at least four times each year at such times and places as the designated by the chair of the council. The council may from time to time designate other meetings as may be required or desirable.

D. Officers

Sample 1

The officers of the council shall be as follows:

- (a) *Chair.* The chief justice of the state shall preside at the initial meeting of the council. At the first meeting of the council 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 fix the date of meetings, preside over meetings, establish agendas for the meetings, and speak for the council.
- (b) *Vice-chair.* The vice-chair shall serve in the absence of the chair, and shall perform such other duties as may be assigned by the council.
- (c) *Executive secretary.* The (state court administrator/clerk of the federal court of appeals/federal district court) shall serve as 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 such other duties as may be assigned by the chair or the council.

Sample 2

At the first meeting of the council the members shall elect a chair, who will serve in such capacity for two years. The chair of the council shall rotate each term between state and the federal judges who are members of the council. There shall be other such officers as the council may from time to time require, selected in a manner provided by the council.

E. 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 (except for amendments to the (charter) (articles)

(agreement)), providing a quorum is present.

F. Administrative Support

Sample 1

Administrative support for the council shall be furnished by the state court administrator and staff and the chief clerk(s) and staff of the U.S. district court(s) in the state.

Sample 2

Administrative support for the council shall be furnished by the director and staff of the administrative office of the courts of the state.

Sample 3

Administrative support for the council shall be furnished by the clerk(s) and staff of the U.S. district courts in the state.

G. Quorum

Sample 1

A quorum shall consist of a majority of the members of the council.

Sample 2

(Number) members of the council shall constitute a quorum, at least ____ of whom shall be state judges and ____ of whom shall be federal judges.

H. Committees

Sample 1

(1) There shall be a standing executive committee, consisting of the chair, the vice-chair, and four other 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 state judges and three members shall be federal judges. The

executive committee shall, except at times when the council is in session, represent the council in all matters except as otherwise directed by the council. The executive committee may conduct its business by mail or telephone or at meetings called by the chair.

(2) The council or executive committee may, from time to time, authorize and appoint additional standing committees. The council, standing executive committee, or chair may also, from time to time, authorize and appoint special committees.

Sample 2

There shall be a standing executive committee consisting of the officers of the council, which shall represent the council except at times when the council is in session. There shall also be a standing committee on agenda and arrangements, which shall have responsibility for meetings of the council and agenda for the meetings, the members of which shall be appointed by the chair. The council may provide for other committees as needed or desirable.

I. Amendments

Sample 1

This [name of document] may be amended at any time by a two-thirds majority of the members of the council.

Sample 2

This [name of document] may be amended by majority vote at any regular or special meeting provided that, except by unanimous consent, no amendment may be considered unless ten days or more before such meeting the members have been notified by mail, by the secretary or the proponent of the amendment, that the subject matter of the amendment will be considered at such meeting.

Appendix 3: Sample Document Forms for Organizing of a State–Federal Judicial Council

This section contains outlines of various instruments that might be used to create and organize state–federal councils. They are based on documents used in various states. These forms are outlines. Sample substantive provisions are on p. 17.

Sample forms include

- charter of a state–federal judicial council
- agreement establishing a state–federal judicial council
- articles of a state–federal judicial council
- bylaws of a state–federal judicial council
- order establishing a state–federal council
- charter of a *metropolitan* state–federal judicial council
- notice of organizational meeting
- notice of regular meeting

Item A

Charter of the State–Federal Judicial Council of [name of state]

1. Name

The council shall be known as the State–Federal Judicial Council of [name of state].

2. Purpose

The purpose of the council is [see sample provisions, p. 17].

3. Composition

The council shall consist of [see sample provisions, p. 18].

4. Meetings

The council shall meet [see sample provisions, p. 20].

5. Officers

The officers of the council shall be [see sample provisions, p. 21].

6. Voting

All motions, resolutions and other actions of the council shall [see sample provisions, p. 21].

7. Administrative Support

Administrative support for the council shall be furnished [see sample provisions, p. 22].

8. Quorum

A quorum shall consist of [see sample provisions, p. 22].

9. Committees

There shall be [see sample provisions, p. 22].

10. Amendments

This charter may be amended [see sample provisions, p. 23].

Adopted this ___ day of ___, 199_.

APPROVED:

Item B

Agreement Establishing A State–Federal Judicial Council of [name of state]

There is hereby established a State–Federal Judicial Council of [name of state].

The purpose of the council is [see sample provisions, p. 17].

The council shall consist of [see sample provisions, p. 18].

The council shall meet [see sample provisions, p. 20].

The first meeting of the council shall be called by the chief justice of the supreme court.

At the first meeting of the council the members shall elect officers of the council which shall consist of [see sample provisions, p. 21].

The council is authorized to formulate and adopt from time to time rules and regulations or bylaws, which will govern the operations and business of the council [suggested bylaws are found on p. 27].

Done at ___ on the ___ day of ___, 199_.

APPROVED:

Item C

Articles of State–Federal Judicial Council of [name of state]

ARTICLE I—Name

The council shall be known as the State–Federal Judicial Council of [name of state].

ARTICLE II—Purpose

The purpose of the council is [see sample provisions, p. 17].

ARTICLE III—Membership

The council shall consist of [see sample provisions, p. 18].

ARTICLE IV—Meetings

The council shall meet [see sample provisions, p. 20].

ARTICLE V—Officers

The officers of the council shall be [see sample provisions, p. 21].

ARTICLE VI—Bylaws

The council may adopt bylaws providing for the further organization of the council.

Done this ___ day of ___, 199_.

APPROVED:

Item D
Bylaws of the State–Federal Judicial Council of
[name of state]

SECTION I—Voting

All motions, resolutions and other actions of the council shall [see sample provisions, p. 17].

SECTION II—Administrative Support

Administrative support for the council shall be furnished [see sample provisions, p. 22].

SECTION III—Quorum

A quorum shall consist of [see sample provisions, p. 22].

SECTION IV—Committees

There shall be [see sample provisions, p. 22].

SECTION V—Amendments

These bylaws may be amended [see sample provisions, p. 23].

Adopted by the council this ___ day of ___, 199_.

Item E
Order of Supreme Court Establishing a
State–Federal Judicial Council

In The Supreme Court of [name of state]

ORDER

IN RE: STATE–FEDERAL JUDICIAL COUNCIL OF [name of state]

PER CURIAM BY THE COURT

The Supreme Court of [name of state], having consulted with the (Judicial Council of the U.S. Court of Appeals for the [name of

circuit)) (chief judge(s) of the U.S. district courts in the state) agrees to the establishment of a State-Federal Judicial Council of [name of state].

The purpose of the council is [see sample provisions, p. 17].

It is further ORDERED that the membership of the council shall consist of [see sample provisions, p. 18].

It is further ORDERED that the council shall meet [see sample provisions, p. 20].

IT IS FURTHER ORDERED that during the organizational period of the council, the chief justice of the supreme court will serve as the chair and presiding officer. Thereafter, the presiding officer shall be selected in accordance with the bylaws of the council. [see sample provisions, p. 21, for suggestions regarding officers of a council.]

IT IS FURTHER ORDERED that the council is authorized to formulate and adopt bylaws which will govern the operations and business of the council and its procedural guidance [see p. 27 for suggestions regarding bylaws of a council].

IT IS FURTHER ORDERED that during the organizational period the chief justice of the supreme court shall appoint a committee of member judges whose duty shall be to develop bylaws for the council.

Done and ordered this ___ day of ___, 199__.

All judges concur.

Item F

Charter of the State-Federal Judicial Council of [name of metropolitan area or region]

1. Name

The council shall be known as the State-Federal Council of [name of metropolitan area or region].

2. Purpose (*sample*)

The purpose and objectives of the council shall be to improve and expedite the administration of justice by the state and federal

trial courts in [name of metropolitan area or region] by promoting and encouraging relationships between the two court systems; to share materials and information that may have application or impact on the two systems; to develop methods to improve the operation of the two systems, including methods to use scarce judicial assets to benefit the systems; to eliminate conflicts or misunderstandings that have developed or could develop among the judges of the systems; to suggest legislation to state and local lawmaking bodies and to the Congress of the United States and to suggest court rules that the council believes will improve the administration of justice in [name of metropolitan area or region]; and generally to strive for the improvement of justice in both systems within this area.

3. Composition (*sample*)

The council shall consist of at least ___ representatives from the state judiciary and ___ representatives of the federal judiciary within [name of metropolitan area or region].

State representation. Representatives of the state judiciary shall consist of the chief judge of the [general jurisdiction trial court], and ___ other judges of that court, plus ___ judges from [limited jurisdiction courts] in [name of metropolitan area or region].

Federal representation. Representatives of the federal judiciary shall consist of the chief judge of the U.S. District Court for the District of ___ or his/her designee and ___ other district judges; the chief bankruptcy judge of the District of ___; and a magistrate judge selected by the magistrate judges of the District of ___.

Administrative members. The chief executive officer [or clerk of court] of the general jurisdiction trial court and the clerk of court of the U.S. District Court for the District of ___ shall serve as ex officio non-voting members of the council and shall supply administrative and staff support for it.

5. Meetings (*sample*)

The council shall meet at least twice a year at such times and places as designated by the chair of the council. The council may from time to time designate other meetings as may be required or desirable.

6. Officers (*sample*)

(a) *Chair.* The chief judge of the [general jurisdiction trial court] shall preside at the initial meeting of the council. At the first meeting of the council 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 fix the date of meetings, preside over meetings, establish agendas for the meetings, and speak for the council.

(b) *Vice-chair.* The vice-chair shall serve in the absence of the chair, and shall perform such other duties as may be assigned by the council. The vice-chair shall be elected in the same manner and for the same term as the chair.

(c) *Executive secretary.* The chief executive officer [or clerk of the court] of the [name of state trial court] shall serve as executive secretary to the council. The executive secretary, with the assistance of the clerk of court of the U.S. District Court for the District of ___ shall provide administrative and staff assistance to the chair and shall take minutes of council meetings, provide notice for and arrange meetings, and perform such other duties as may be assigned by the chair or the council.

7. Voting (*sample*)

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 (except for amendments to the charter), providing a quorum is present. A quorum shall consist of a majority of the members of the council.

8. Amendments (*sample*)

This charter may be amended from time to time by a two-thirds majority of the members of the council.

Adopted this _____ day of _____, 199__.

APPROVED:

Item G

Notice of Organizational Meeting for State–Federal
Judicial Council of [name of state]

To: Name and address of judge

You are cordially invited to attend a meeting of members of the state and federal judiciary in [name of 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 place of meeting;
5. Method of operations, including setting the agenda for each meeting, making meeting arrangements, providing for meeting minutes and reports, and providing written materials prior to each meeting;
6. Other.

We hope you will join us for this initial meeting.

Chief Justice of [state]

Chief Judge, United States District Court for [district]

Item H
Notice of Regular Meeting for State–Federal
Judicial Council of [name of state]

To: Name and address of judge

A regular meeting of members of the State–Federal Judicial Council of [Name of State] will be held from 8:00 AM until noon, on Saturday, June 3, in the Metropolitan Room of the City Hotel, during the time of the annual conference of the state bar association.

The council will meet for breakfast until 9:00 AM. At 9:00, we will open the meeting to any members of the bar who wish to attend as observers.

The agenda for the meeting will include the following *(sample)*:

1. Report of subcommittee to plan joint state–federal seminar on handling capital cases;
2. Report by Judge Jones on test of sharing juror lists in Capital City;
3. Report by District Judge Smith on recent activities of the U.S. Judicial Conference and Judicial Council for the ____ Circuit;
4. Report by Chief Justice Green on state judicial conference;
5. Comments from members of the bar.

We hope you will join us for this initial meeting.

Chief Justice of [state]

Chief Judge, United States District Court for [district]

Appendix 4: Federal Judicial Center Policy for Reimbursement of Expenses for Federal Judges Attending State–Federal Judicial Council Meetings

August 1992

The Federal Judicial Center has, upon request, reimbursed federal judges for travel expenses incurred in attending state–federal judicial council meetings. Due to limited funds and the increase in number of requests from federal judges for reimbursement of such expenses, the Center has had to change its policy regarding reimbursement.

Reimbursement for federal judges to attend state–federal judicial council meetings is (1) dependent on available funds and (2) limited to actual travel expenses, one night's lodging, and actual meal expenses for one day (reasonable—no per diem), with the total reimbursement not to exceed in any event \$500.

The only condition placed on reimbursement of expenses for attendance at state–federal council meetings is that the federal judges attending must send a report of the meeting within a month of the meeting to the Interjudicial Affairs Office of the Federal Judicial Center, preferably on the form that appears on the following page.

Travel authorization forms can be obtained from:

Interjudicial Affairs Office
Federal Judicial Center
One Columbus Circle, N.E.
Washington, D.C. 20002
tel. (202) 273-4161
FAX (202) 273-4019

State-Federal Judicial Council Meeting Report Form

(please print or type; photocopy this form for use)

Name of council:

Location of meeting:

Date of meeting:

Topics discussed at meeting:

1.

2.

3.

4.

5.

6.

Summary of discussions and actions taken:

Date set for next council meeting:

Signed: _____

*Please return this form to Interjudicial Affairs Office, Federal Judicial Center,
One Columbus Circle, N.E., Washington, DC. 20002*

About the Federal Judicial Center

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

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

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

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

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

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

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

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

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

**Federal Judicial Center
One Columbus Circle, N.E.
Washington, DC 20002**