THE THIRD BRANCH

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FEATURE

Judicial Conference Approves Plan to Improve Civil Case Management

The Judicial Conference of the United States has approved a 14-point program to address the problems of cost and delay in civil litigation through improved case management in the trial courts. The Conference approved the program by ballot instead of waiting until it convenes in September, in an effort to respond to a congressional drive to see enhanced civil case management.

The program provides for each district court to form an advisory group to study and recommend improvements in case management for implementation by the court. The plan also calls for evaluation of case management techniques by the Judicial Conference and its new Committee on Case Management and Dispute Resolution.

The goals of the 14-part program are consistent with Rule 1 of the Federal Rules of Civil Procedure, which states that it should be the purpose of the federal system of civil justice "to secure the just, speedy and inexpensive determination of every action." Congress will be notified of the Conference's action in this area.

At its March 1990 session, the Judicial Conference unanimously voted to oppose S. 2027, the Civil Justice Reform Act of 1990, and its House counterpart, H.R. 3898, as introduced. Also approved was an analysis of the bill and a policy statement on case management. The documents were distributed to all federal judicial officers. Over the following weeks the district judge representatives to the Conference gathered the views of other trial judges in their circuit, and have concluded that there is overwhelming support for the Conference's position on case management.

In the meantime, Sen. Joseph Biden (D-Del.), the primary sponsor of the legislation, has indicated that he intends to move some form of the bill no later than June. The special subcommittee of the Executive Committee that has been studying this issue continues to monitor developments.

The following was approved late last month by the Conference:

1. The Chief Judge of each district court, after consulting the other judges of the district, shall appoint an advisory group of lawyers and representative clients that shall help the court assess current docket conditions and consider different measures that might be implemented to reduce cost and delay and to improve case management practices.

2. Working with guidelines that shall be established by the Judicial Conference, each advisory group shall promptly complete a thorough assessment of the civil and criminal dockets in its court, describing not only current conditions, but also trends in filings and in demands on the court's resources.

3. Each advisory group shall attempt to identify the principal sources of cost and delay in civil litigation, focusing not only on court procedures, but also on how lawyers and clients approach and handle the litigation process.

4. Having assessed current conditions and identified principal sources of cost and delay, each advisory group shall recommend measures which it feels, given the particular

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character of needs and circumstances in its district, hold some promise of reducing cost and delay and of improving the delivery of case management services. These packages of recommendations should be balanced to include significant contributions not only by the court, but also by lawyers and clients.

5. Each district court shall carefully consider the report of its advisory group and shall implement the recommendations that the court concludes would be feasible and constructive and that are authorized under 28 U.S.C. § 2071.

6. The reports and recommendations of each advisory group, and a copy of the measures implemented by each district court, shall be forwarded to the Judicial Conference, the council of the circuit in which the district court is located, and to a circuit-wide committee composed of the chief district judges of the circuit (or a judge designated by them). The committee of chief district judges shall review the reports and recommendations, and shall consider the measures implemented, then may suggest for the district court's consideration additional measures or modifications in procedures or programs that have been adopted.

7. If the Judicial Conference is not satisfied with the way a district court has responded to current conditions or to the report and recommendations of its advisory group, the Conference may request the court to take further action.

8. The responsibilities that have been the province of the Conference's Judicial Improvements Committee will be divided between two new committees, one on Automation and Technology and the other on Case Management and Dispute Resolution. The Committee on Case Management and Dispute Resolution will oversee development of the criteria (guides) that will aid the district court advisory groups in assessing current conditions.

In addition, this committee will oversee the preparation of a document that describes and explains a wide range of different measures that courts might consider adopting in response to cost and delay problems, including different approaches to case management, cost containment, and alternative dispute resolution programs. As part of this process, the committee will develop two or more model civil expense and delay reduction plans.

After the reports and recommendations from all the district advisory groups have been submitted, and the courts have decided which measures to implement, this committee will oversee the preparation of a comprehensive report that describes current conditions and trends in the district courts, the range of ideas that have been generated for responding to those conditions, and the measures that have been adopted. This committee will have continuing responsibility to study and recommend ways to improve case management and dispute resolution services in the district courts.

9. The Judicial Conference will conduct a demonstration program in up to five volunteer districts of different sizes and case mixes to experiment with different methods of reducing cost and delay (including ADR programs) and different case management techniques.

10. The Judicial Conference will arrange to have careful evaluations done of as many of the measures adopted by district courts as possible. It also will evaluate the results of the demonstration programs. Building from these sources, the Conference will arrange to have published (and periodically updated) a Manual for Litigation Management and Cost and Delay Reduction, describing and analyzing the most effective techniques and programs.

11. Every three years, each district court shall reconvene its advisory group, which shall evaluate the impact of measures previously adopted, reassess current conditions, and recommend adjustments or additions to existing practices, rules, or programs. These reports and recommendations shall be given due consideration by the district courts, shall be reviewed by the circuit-wide committees of chief district judges, and shall be forwarded to the Judicial Conference, for review by its Committee on Case Management and Dispute Resolution.

12. The Judicial Conference, working through the Federal Judicial Center and the Administrative Office of the U.S. Courts, will add substantial new training programs for judicial officers and appropriate court staff in case management techniques and in other measures that courts could implement to reduce the cost and to expedite the processing of civil litigation. These training programs will be updated regularly to reflect the most current learning from the various measures implemented by the district courts and from the Conference's demonstration programs. The Director of the Federal Judicial Center, or his designee, shall serve as an ex officio member of the Conference's Committee on Case Management and Dispute Resolution.

13. The Administrative Office of the U.S. Courts shall ensure that the district court's automated dockets provide ready access to complete data about the status of each case

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COURTS STUDY COMMITTEE PRESENTS FINAL REPORT

The final report of the Federal Courts Study Committee has been transmitted to Chief Justice William H. Rehnquist, the President, Congress, the State Justice Institute and the Conference of Chief Justices.

Upon receiving the report at an April 2 ceremony at the Supreme Court, Rehnquist praised the Committee for beginning a process that "will enable us to meet the future with the promise of a fair and efficient system of federal courts continuing to perform in accordance with the high standards of yesterday and today."

The report represents the work of a 15-member committee of judges, members of Congress and lawyers, who spent the past 15 months studying the administration and operation of the federal courts.

U.S. Circuit Judge Joseph F. Weis, Jr. (3rd Cir.), chairman of the Committee, called the report "a springboard for vital and beneficial change in the federal court system." The nearly 200 page-long study contains more than 100 recommendations. The focus of the report is to "prevent the system from being overwhelmed by a rapidly growing and already enormous caseload and . . . preserve access to the system for those who need it."

Rep. Robert W. Kastenmeier (D-WI), a member of the Committee, said that the group's recommendations fall into two categories: the short-term, more easily-accomplished proposals that could be accomplished later this year, and the more complex ones that are likely to be considered by future Congresses.

Rep. Robert W. Kastenmeier, Judge Joseph F. Weis, and Rep. Carlos J. Moorhead brief the press following release of the Federal Courts Study Committee report.

"The report and recommendations are good. A number of technical matters, such as proposals relating to judicial branch personnel and authorized experiments, could possibly be processed quite rapidly," said Kastenmeier, who is chairman of the House Judiciary Subcommittee on Courts. "The more substantial proposals, such as the creation of new courts, reallocation of jurisdiction and criminal law proposals would probably not be acted on before next year." Also serving on the Committee were Senators Howell Heflin (D-AL) and Charles E. Grassley (R-IA), and Rep. Carlos J. Moorhead (R-CA).

The Committee's recommendations have been referred to the various committees of the Judicial Conference. The committees will present their recommendations to the Executive Committee for Judicial Conference action later this spring.

Copies of the report may be obtained by calling (215) 597-3320, or by writing:

Federal Courts Study Committee
22716 U.S. Courthouse
Independence Mall West
601 Market Street
Philadelphia, PA 19106-1722

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and the kinds of demands it has made on court resources.

14. The Conference's Committee on Case Management and Dispute Resolution should regularly communicate its findings and recommendations about programs, procedures and practices to the Conference's Advisory Committee on Civil Rules. The Committee on Case Management may suggest possible amendments of the civil rules for consideration by the Advisory Committee.

For these two committees to work together most effectively, a member of the Advisory Committee on Civil Rules should also serve as a member of the Committee on Case Management and Dispute Resolution.

SALARY STUDY INITIATED FOR COURT EMPLOYEES

A study is underway to determine what, if any, changes are needed to ensure that the Judiciary pays employees fairly according to their job responsibilities. The study also will determine whether the salaries are market-competitive as budget realities permit, and what classification and compensation systems will best attract, retain and motivate a quality work force.

To do this, the Administrative Office recently contracted with the Hay Group, a widely respected management consulting firm, to study all positions covered by the Judiciary Salary Plan (JSP). The JSP, which was installed in 1960, has not had a comprehensive evaluation since 1976.

A study of this magnitude requires the Hay Group to gather comprehensive job duty information from every employee through the use of written questionnaires. The consultants also will gather information about how the current classification and compensation systems function in 24 selected courts, both by written questionnaires and by personal interviews with key court managers at those sites. Site selection will be based on court size, court type, population density of the city, and designation of the locality as a standard metropolitan statistical area. Selection also will depend on the presence or absence of specific programs, such as automation, court interpreters, district court executives, an automation training center, a preargument program, separate pretrial services office, an electronic monitoring program, and JSP special pay rates. A representative sample of sites from all circuits also will be included. Courts will be selected with the help of court advisory committees, and after concurrence by chief judges.

The study will take approximately one year to complete. The Judicial Resources Committee will consider recommendations made by the Hay Group . The Committee, in turn, will make recommendations to the Judicial Conference.

EXECUTIVE COMMITTEE APPOINTMENTS MADE

Chief Justice William H. Rehnquist has appointed Chief Judges Sam J. Ervin III (4th Cir.), Earl E. O'Connor (D. Kan.) and Edward D. Re (C.I.T.) to the Executive Committee of the Judicial Conference, effective April 19. The Committee plays a vital role in acting on behalf of the Conference between its biannual sessions.

Released with appreciation for their service on the Executive Committee were Chief Judge Levin H. Campbell (1st Cir.), who concluded his term as chief judge last month, Judge Robert F. Peckham (N.D. Cal.), who served since 1987, and Chief Judge Aubrey E. Robinson, Jr. (D. D.C.), who served since 1985. Peckham will continue to chair, and Robinson will continue to serve on the special Conference committee working on the Biden Civil Justice Reform Bill.

The Chief Justice praised the departing members for their "diligence and hard work." Over the past two and a half years the Committee, which acts as the senior executive arm of the Conference, met 35 times either in person or by teleconference.

In addition to its three newly-named members, also serving on the Executive Committee are Judges Sarah Evans Barker (S.D. Ind.) and John F. Nangle (E.D. Mo.). Chief Judge Charles Clark (5th Cir.) is Chairman, and Administrative Office Director L. Ralph Mecham is an ex-officio member of the Committee.

GOOD NEWS FOR JUDICIARY BUDGET

The Judiciary's funding for the current fiscal year (FY 1990) has taken a decided turn for the better--although there is no money in the bank yet. The Courts asked Congress for supplemental appropriations for this year when the Judiciary came up short of money. The House Committee has acted, and appears ready to grant a request for $28 million. The Senate has reported $23 million. A final supplemental appropriation somewhere in between the two figures is anticipated very soon. This should allow the Judiciary to fund some of the shortages it is experiencing without having to wait for next year.

The House Budget Committee resolution included language specifically endorsing full funding for the Judiciary for FY 1991, an unprecedented act.

GROUNDBREAKING FOR NEW JUDICIARY BUILDING

A groundbreaking ceremony was held April 4 in Washington D.C. at the site of the new Judiciary Office Building, which will bring together under one roof the agencies that provide administrative support to the federal Judiciary. The event occurred six years after the Judicial Conference passed a resolution urging Congress to consider a proposal to design and construct a new judiciary building.

The noon ceremony included remarks by Chief Justice William H. Rehnquist and Sen. Daniel P. Moynihan (D-NY), Chairman of the Judiciary Office Building Commission.

In addition to the the Administrative Office of the U.S. Courts, the Federal Judicial Center, the U.S. Sentencing Commision, and the Panel on Multidistrict Litigation will occupy the building. Space also will be available for the chambers of retired Supreme Court justices. Currently, the more than 800 employees of the four judicial branch agencies are housed in eight different locations around Washington, an arrangement that has proven inefficient and expensive.

The new building will be adjacent to Union Station and near the Capitol. The seven-floor structure will require no advance appropriations. Rental payment that would otherwise be required will be used to pay for the building, and after no more than 30 years, all debt on the building will be paid.

The structure is being built by the developer/architect team of Boston Properties and Edward Larrabee Barnes Associates/John M.Y. Lee & Partners. Construction is expected to be completed in the fall of 1992.

Chief Justice Rehnquist and Senator Moynihan participate in groundbreaking ceremony.

BAR GROUPS OPPOSE BIDEN BILL

After lengthy debate, on April 20 the American Bar Association's Board of Governors adopted a resolution opposing S. 2027, the Civil Justice Reform Act, as written. The Board also authorized the ABA's president to appoint a committee to study and report to the Board by June 1 on elements of the bill that the association should oppose and those that it should support for implementation by the Judiciary, with or without legislation.

The Federal Bar Association's National Council, at its April 6 meeting, approved a similar resolution, stating that while it commends the intent of the legislation, it opposes it as written. The resolution said that the bill ". . . is in derogation of the Rules Enabling Act in that it unilaterally mandates a case management system for the United States district courts; and fails to address a method for establishing criteria for identifying courts that actually need an additional case management system and fails to take into consideration the impact of the federal criminal docket or the recommendations of the Federal Courts Study Committee."

The Council went on to support a study of case management, pursuant to the procedures established in the Rules Enabling Act, to assess the impact of the court study committee's recommendations, the Brookings Institution report (which formed the basis for the legislation), the position of the Judicial Conference on case management and the demands of the criminal docket.

Last month the Association of the Bar of the City of New York was joined by three other lawyers' groups in issuing a statement expressing their concerns over the civil reform bill. "We believe that the act has meritorious goals, and that some of its methods may be helpful in achieving those goals," the statement said. "At this time, however, we believe that nationwide imposition of the Act would be premature, and we urge that the Act be limited to a pilot program in the first instance."

Joining the City Bar in the statement were the Federal Bar Council, the New York County Lawyers Association and the New York State Bar Association.

A number of other state and local bars are studying the civil reform bill. *(See front page for related story).*

NEWSLETTER FOUNDER DEPARTS

Alice L. O'Donnell, Director of the Inter-Judicial Affairs and Information Services Division at the Federal Judicial Center, left her position on April 30. O'Donnell was the first editor of ***The Third Branch***, a position she held for 21 years.

At her request, the Center did not hold a farewell event. However, Judge William W Schwarzer, Director of the FJC, presented O'Donnell with a certificate of appreciation at a ceremony attended by senior staff. It was signed by Chief Justice William H. Rehnquist on behalf of the Center's Board, and by Schwarzer on behalf of the Center's staff.

Judge William W Schwarzer, Alice L. O'Donnell, and Judge John C. Godbold, former Director of the FJC.

The certificate recognized O'Donnell's service to the FJC and to other institutions of justice. Arriving with the Center's first director, Justice Tom Clark, she had worked for the Center for 22 years. Her public service tenure spans 53 years, including work with the Justice Department and with Clark at the Supreme Court.

O'Donnell's career also has been marked by extensive participation in bar activities focusing on the courts. She has been involved for many years with American Bar Association programs, including a term as chair of its Judicial Administration Division.

FIRST CIRCUIT INDUCTS NEW CHIEF JUDGE

Last month, the Judges of the First Circuit gathered to mark the induction of new Chief Judge Stephen G. Breyer, who succeeded Chief Judge Levin H. Campbell. Pictured from left: Senior Judge Hugh H. Bownes, Senior Judge Frank M. Coffin, Judge Campbell, Chief Judge Breyer, and Judge Juan R. Torruella. Not pictured: Judge Conrad K. Cyr, and Judge Bruce M. Selya.

Note to Our Readers

The Third Branch is committed to keeping its readers informed about the courts' activities, issues, problems, needs and priorities. Judges and staff throughout the federal court system are invited and encouraged to make contributions. If you have an idea for an article you think would be of interest to our readership, please call David Sellers or Rosemary Gacnik at (FTS) 633-6040 to discuss the topic of the story. Or if you prefer, send your ideas to: *The Third Branch, Administrative Office of the U.S. Courts, Office of Legislative and Public Affairs, 811 Vermont Avenue, Room 655, Washington, D.C. 20544.* Please do not send articles before they have been discussed with the newsletter staff.

With contributions from all the courts, we will be better able to report on the Judicial Branch.

JUDICIAL MILESTONES

ELECTED. Judge **Diana E. Murphy** (D. Minn.), to the **Board of the Federal Judicial Center**, by the Judicial Conference, for a 4-year term, succeeding Judge Jose Cabranes, effective March 28.

APPOINTED. Judge **Levin H. Campbell** (1st Cir.), as **Chairman** of the **Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders**, by Chief Justice Rehnquist, succeeding Judge Clement F. Haynsworth, effective March 30.

APPOINTED. Judge **Thomas M. Reavley** (5th Cir.), as **Chairman** of the **Judicial Conference Committee on Federal-State Jurisdiction**, by Chief Justice Rehnquist, succeeding Judge William W Schwarzer, effective March 30.

APPOINTED. Chief Judge **John F. Nangle**, (E.D. Mo.), as **Chairman** of the **Judicial Panel on Multidistrict Litigation**, by Chief Justice Rehnquist, succeeding Judge Andrew Caffrey, effective June 1.

APPOINTED. Judge **Deanell R. Tacha** (10th Cir.), as **Chairman** of the **Committee on the Judicial Branch**, by Chief Justice Rehnquist, succeeding Judge Frank Coffin, effective June 19.

APPOINTED. Judge **Joyce Hens Green** (D. D.C.), as **Presiding Judge** of the **Foreign Intelligence Surveillance Court**, by Chief Justice Rehnquist, succeeding Judge James E. Noland, effective May 18.

DECEASED. Judge **Ralph M. Freeman**, U.S. **District Court** for the **E.D.** of **Michigan**, March 29.

DECEASED. Judge **Russell E. Smith**, U.S. **District Court** for the **D.** of **Montana**, March 29.

DECEASED. Senior Judge **Harrison L. Winter**, U.S. **Court of Appeals** for the **Fourth Circuit**, April 10.

DECEASED. Senior Judge **R. Dixon Herman**, U.S. **District Court** for the **M.D.** of **Pennsylvania**, April 5.

DECEASED. Senior Judge **Girard E. Kalbfleisch**, U.S. **District Court** for the **N.D.** of **Ohio**, April 1.

APPOINTED. Rhesa H. Barksdale, to the U. S. **Court of Appeals** for the **Fifth Circuit**, effective April 1.

APPOINTED. Alan D. Lourie, to the U.S. **Court of Appeals** for the **Federal Circuit**, effective April 11.

APPOINTED. Donald J. Lee, to the U.S. **District Court** for the **W.D.** of **Pennsylvania**, effective April 6.

SENIOR STATUS. Judge **David O. Belew, Jr.**, U.S. **District Court** for the **N.D.** of **Texas**, effective May 7.

SENIOR STATUS. Chief Judge **John F. Nangle**, U.S. **District Court** for the **E. D.** of **Missouri**, effective May 10.

SENIOR STATUS. Judge **Sol Blatt, Jr.**, U.S. **District Court** for the **D.** of **South Carolina**, effective May 7.

ELEVATED. Judge **Robert M. Parker**, to become **Chief Judge** of the U.S. **District Court** for the **E.D.** of **Texas**, succeeding Chief Judge **William W. Justice**, effective February 25.

ELEVATED. Sidney M. Weaver, to become **Chief Judge** of the U.S. **Bankruptcy Court** for the **S.D.** of **Florida**, effective March 15.

APPOINTED. U.S. Magistrate **Karen Kennedy Brown**, to the U.S. **Bankruptcy Court** for the **S.D.** of **Texas**, effective April 29.

ELEVATED. Steven W. Rhodes, to become **Chief Judge** of the U.S. **Bankruptcy Court** for the **E.D.** of **Michigan**, effective April 1.

APPOINTED. Jim D. Pappas, to the U.S. **Bankruptcy Court** for the **D.** of **Idaho**, effective March 23.

APPOINTED. Redfield T. Baum, Sr., to the U.S. **Bankruptcy Court** for the **D.** of **Arizona**, effective March 26.

APPOINTED. William S. Howard, to the U.S. **Bankruptcy Court** for the **E.D.** of **Kentucky**, effective March 19.

APPOINTED. Lance M. Africk, as U.S. **Magistrate** for the **E.D.** of **Louisiana**, effective April 11.

APPOINTED. Edward A. Infante, as U.S. **Magistrate** for the **N.D.** of **California**, effective March 30.

APPOINTED. James R. Melinson, as U.S. **Magistrate** for the **E.D.** of **Pennsylvania**, effective March 27.

APPOINTED. Ronald C. Newman, as U.S. **Magistrate** for the **D.** of **Kansas**, effective March 26.

JUDICIAL BOXSCORE

As of April 30, 1990

Courts of Appeals Vacancies	15
Nominees Pending	2
District Courts Vacancies	38
Nominees Pending	11
Courts with "judicial emergencies"	12

FUNDING AVAILABLE FOR DEATH PENALTY CASES

While the costs of death penalty representation are usually substantially higher than those of typical Criminal Justice Act appointments, there are enough funds in the Defender Services appropriation for Fiscal Year 1990 to satisfy current cost-per-case estimates.

A recent study, conducted by the Spangenberg Group on behalf of the American Bar Association Post-Conviction Death Penalty Representation Project, suggests that many judges are not fully aware of statutory provisions effecting the appointment and compensation of counsel in death penalty cases.

The Anti-Drug Abuse Act of 1988 repealed the Criminal Justice Act's (CJA) hourly compensation rates and case compensation maximums that otherwise would apply in death penalty federal habeas corpus cases and federal capital prosecutions. In these cases, compensation for appointed counsel and for persons providing other services under the CJA is set by the court without regard to the CJA authorized rate and maximums. (Current CJA rates are $40 per hour for out-of-court time and $60 per hour for in-court time, and up to $75 per hour for in or out-of-court time for those districts or court locations for which alternative rates have been established.) In addition, the chief judge of the court of appeals, or the chief judge's designate, no longer is responsible for reviewing and approving "excess compensation" vouchers in death penalty cases.

The provisions of the 1988 law apply with respect to work performed on or after November 18, 1988.

To guide presiding judicial officers and to minimize the potential for wide disparity in compensation determinations, the Judicial Conference, last September, established a guideline attorney compensation range of $75 to $125 per hour for in-court and out-of-court time in death penalty federal habeas corpus proceedings and federal capital prosecutions. Under the Anti-Drug Abuse Act of 1988, however, the presiding judicial officer has complete authority to fix compensation for appointed attorneys and others providing services in death penalty cases.

Habeas corpus litigation involving the death penalty is often complex and lengthy, and substantial CJA fee awards can be expected. An earlier study by the Spangenberg Group concluded: (1) that the median total attorney time necessary to litigate a death penalty habeas corpus case at the federal post-conviction level is 805 hours, and (2) that it is not unusual for the hours required to exceed that number by as much as 50 percent. Using the 805 figure, and assuming a $90 per hour compensation rate, average attorney compensation for a death penalty federal habeas corpus case would be approximately $72,500. The attorney compensation cost may be substantially higher in cases involving new or particularly difficult issues.

In fact, the Northern District of California recently adopted a "presumptive compensation rate" in death penalty cases of $150 per hour. Given that larger case records in that state will result in an average attorney committing approximately 1,375 hours per case, the cost of a death penalty habeas corpus petition to the Defender Services appropriation, excluding the cost of expert services, could exceed $205,000.

The Judicial Conference's Defender Services Committee, which has jurisdiction over CJA matters, has found that sufficient funds are available in the Defender Services appropriation for FY 1990, and that steps are being taken to ensure the availability of enough funds for future years.

The Anti-Drug Abuse Act of 1988 also provides that a financially eligible person charged with a capital crime or pursuing federal post-conviction relief from a death sentence is entitled to the appointment of one or more qualified attorneys. To be qualified for appointment in death penalty cases, attorneys are required under the Act to meet specific minimum qualifications standards, which are set forth in new paragraph 6.02 of the Guidelines for the Administration of the Criminal Justice Act, set forth as Volume VII of the Guide to Judiciary Policies and Procedures. For good cause, however, the court is authorized to waive the minimum qualifications and appoint attorneys who otherwise demonstrate the necessary expertise in death penalty representation.

GEORGE CARR SCHOLARSHIP FUND

A scholarship fund has been set up in the name of the late Chief Judge George C. Carr of the U.S. District Court for the Middle District of Florida. It has been established at the University of Florida Law School, the judge's alma mater.

Anyone wishing to contribute to the fund should make checks payable to the University of Florida Law Center Association Scholarship Fund, indicating on the check and the cover letter that the check is intended for the Carr fund.

Checks should be mailed to: Mr. Randy Talbot, Assistant Dean for Development and Alumni Affairs, University of Florida, College of Law, P.O. Box 14412, Gainesville, Florida 32604.

Questions about the fund may be addressed to attorney Robert L. Trohn, (813) 688-7944.

SOFTWARE COPYRIGHT LAWS IN FORCE

As automation of the federal courts surges ahead, more and more Judicial Branch employees will find computers on their desks replacing the typewriters of yesterday. Every computer needs some form of software to operate, and users should be aware of software "dos and don'ts" under copyright laws. Government agencies are required by the Copyright Security Act of 1987 to provide education and training to their employees on copyright infringement.

In 1980, the Computer Software Copyright Act was passed. It prohibits the unauthorized copying of computer programs. Such copying results in loss of revenue for producers of software, who expect to be paid for each copy used. If the copyright notice shows up when the program executes, it is copyrighted, clear evidence the author intended the work be protected. Even without a copyright notice, a newly distributed product can have full copyright protection. This is possible under the Berne Convention Implementation Act of 1988 (BCIA), which eliminated mandatory copyright notice.

Today there exists liability for damages and criminal penalties for copyright infringers. When an infringement occurs, the copyright owner can recover actual damages plus costs, including attorney's fees, from the infringer. Actual damages may amount to the value of the infringed product, added to the value of the loss of revenue that resulted. In addition, in most cases, the law allows statutory damages in the range of $250 to $10,000 under the Copyright Act of 1976, and $500 to $20,000 under BCIA, for each instance of infringement.

Criminal penalties also may apply. If the act is willful, then the penalty can be a fine not to exceed $25,000 and/or incarceration for not more than one year. Moreover, civil and criminal liability can extend to persons contributing to the infringement even though another person committed the actual infringement.

Copying computer software is a risky and sometimes illegal business. The short term gain is never worth the risk.

ETHICS REFORM AMENDMENTS PASS

On April 24, the House passed H.J. Res. 553, technical amendments to the Ethics Reform Act of 1989. The Senate passed it April 26.

The bill reinstates the authority of the Judicial Conference to require the filing of financial disclosure forms by various individuals, including judges. This authority was inadvertently deleted when the Ethics Reform Act was passed last November. In addition, the bill allows the Judicial Conference to delegate its authority under the Act.

The Act calls for judges and other high level officials to receive a cost-of-living adjustment (COLA) and a 25 percent raise in January. The President has submitted a budget calling for a 3.5 percent COLA. The House of Representatives' budget calls for a 4.1 COLA. Whatever the final amount, that COLA will be added to the current salary as of December 31, 1990. Then, the 25 percent will be added to that figure. At present, there has been no movement in Congress to roll back the January pay raise.

PUBLICATION EXAMINES ROLE OF STAFF ATTORNEYS IN NON-ARGUMENT DECISIONMAKING

The Federal Judicial Center has published The Role of Staff Attorneys and Face-to-Face Conferencing in Non-Argument Decisionmaking: A View from the Tenth Circuit Court of Appeals, by Donna Stienstra and Joe Cecil of the Center's Research Division.

In this 67-page monograph, the authors discuss the procedure used in the Tenth Circuit to select and decide cases suitable for disposition without argument. The Tenth Circuit was chosen for their study because of the unusual role the Circuit's staff attorneys play in the non-argument process. Like staff attorneys in most of the courts of appeals, those in the Tenth Circuit prepare written materials for the judges' use in selecting and deciding non-argument cases. But, unlike most staff attorneys, the Tenth Circuit's attend the conference at which the judicial panel makes the final merits decisions in the non-argument cases.

Using materials obtained through interviews with Tenth Circuit judges, the court's staff attorneys, and six visiting judges, the authors describe the procedure, the court's reasoning in adopting it, and the judges' and staff attorneys' evaluations of it. The authors conclude that the attendance of staff attorneys at the decisionmaking conference and the face-to-face discussion among the judges have provided substantial benefits for the judges, the staff attorneys, and the efficiency and quality of the non-argument decisionmaking process.

To receive a copy, write *Information Services, Federal Judicial Center, 1520 H Street, N.W., Washington, D.C. 20005*. Please enclose a self-addressed mailing label, preferably franked (6 oz). Do not send an envelope.

JUDGE EDWARD BECKER: Criminal Courts Experience Record Growth

Judge Edward R. Becker, Chairman of the Committee on Criminal Law and Probation Administration, was appointed to the U.S. District Court for the Eastern District of Pennsylvania in 1970, and was elevated to the U.S. Court of Appeals for the Third Circuit in 1981. He was interviewed for ***The Third Branch*** *at a time when the criminal courts are experiencing record growth.*

TTB: You have been chairman of the Committee on Criminal Law and Probation Administration since November 1987. What do you see as the major issues facing the Federal Probation System?

JUDGE BECKER: The list is quite long, but foremost is the issue of proper staffing. The war on drugs and the sentencing guidelines combine to place greater demands than ever on the system. The Committee and the courts are calling on probation officers to provide timely and complete guidelines oriented pre-sentence reports to the courts, while at the same time to perform competent and sophisticated supervision of offenders. This is a virtually impossible mission.

Increased use of pretrial detention also has placed greater burdens on pretrial services personnel. The demands have never been of this scope or more immediate. As chairman I have made it a priority to urge Congress to appropriate sufficient funds to staff our offices to meet this workload. With the support and assistance of the Conference's Budget Committee, under the able guidance of Judge Richard Arnold, we have made significant progress in getting Congress to listen, but we still have more to accomplish.

Automation of probation and pretrial services offices is an important and emerging need. The Probation Automated Case Tracking System, PACTS, is a step toward full automation for our offices, but is only a pilot program at present. When this is integrated with the Criminal Fine Collection Center, and we have a communications network that links our offices electronically, we will begin to see some real progress. Much credit is due to the Committee on Judicial Improvements, chaired by Judge Richard Bilby. But here, too, much remains to be done.

The Substance Abuse Treatment Program is another key area. The system can take great pride in its operation of a successful drug and alcohol abuse treatment program. The treatment intervention is aimed at helping offenders maintain a drug and alcohol free life in the community. Our current expenditures will come to nearly $20 million this year, for 17,000 offenders, and I think it is worth every penny. We have much higher periods of continuity in treatment than most other programs, and this is a key indicator of effectiveness. Of those who do not make it, the vast majority are removed from supervision for relapse or failure to comply with the program. Our results are excellent: only 8.4 percent were terminated for new criminal activity. This indicates that officers are intervening in meaningful ways in the patterns of drug abuse, and bringing violators back to the court or Parole Commission before their addiction leads them back into crime.

A unique feature of the substance Abuse program is the Urinalysis Program we operate. There is a very high quality testing methodology that is very near state of the art, yet able to keep the per test costs reasonable, near $9 a test. The system will collect and test about 500,000 samples this year. Because of the quality control system, court challenges to the test results are rare.

TTB: Could you discuss implementation of the Sentencing Guidelines and any problem areas that have been identified?

JUDGE BECKER: The entire judiciary can be proud of its stewardship in this area. Although guidelines implementation was for some a difficult and unpopular task, the courts have implemented the guidelines fully and complied with the law that Congress passed. The key to this accomplishment was training.

The Sentencing Commission and Federal Judicial Center have shared the guideline training activities for probation officers and deserve much credit. The officers in turn are responsible for training the remainder of the judicial personnel in many districts.

Major parts of the implementation task have fallen to probation officers, and I am pleased to recognize how well they responded to the call. Judges throughout the country rely on their probation officers to help advise the court as to the guideline range and proper sentence.

The two major issues concerning sentencing guidelines at present are the need for more flexibility in application of the guidelines, and the

need to fulfill the statutory requirement that the judge's statement of reasons for sentence be sent to the Sentencing Commission for monitoring and study. The Committee is at work on a package of proposals for the consideration of the Sentencing Commission designed to create more flexibility in guidelines application. Judges need to improve their record in sending statements of reasons to the Commission, and it is hoped that a new short form designed to accompany the judgment will improve performance in this area.

TTB: The mandatory minimum sentence question has received a great deal of attention. What issues are at the heart of this controversy?

JUDGE BECKER: While judges have long opposed statutory mandatory minimums, Congress finds this particular solution attractive, especially when trying to deal with the problem of drug trafficking. Both the 1986 and 1988 Anti-Drug Abuse Acts contained a number of new mandatory minimum penalties.

Mandatory minimum sentences constitute a legislative requirement that a judge impose a significant prison term on any offender who falls into a group defined on the basis of only one or two aspects of the offense of conviction. By promulgating mandatory minimum sentences, Congress removes the authority it delegated to the Sentencing Commission in the Sentencing Reform Act. Judges have no discretion to impose a lower sentence when sentencing an offender convicted under a mandatory minimum statute. Prosecutors, on the other hand, can control, through their charging and bargaining decisions, whether a mandatory minimum will apply. Further, pursuant to 18 U.S.C. § 3553 (e), the prosecutor determines whether the court has discretion to sentence below the term because of an offender's substantial assistance. This reallocation of discretion raises concerns about whether minimum terms are being applied as they were intended.

Individual instances of unduly harsh results of mandatory minimum sentences, usually cases of first offenders, quite young, with minimal roles in the offense, have been identified. Judges of the Third, Eighth, Ninth and Tenth Circuits have passed resolutions in opposition to mandatory minimum sentences. Acting on recommendation of our Committee, the Judicial Conference, at its March meeting, adopted a resolution urging Congress to reconsider the wisdom of mandatory minimum sentencing statutes. Although we have been without success thus far, we will continue to press the point with Congress at every turn.

TTB: We have heard a good deal about home confinement as an increasingly common alternative to imprisonment. What are the pros and cons of this procedure?

JUDGE BECKER: The 1988 Anti-Drug Act authorized the use of home confinement as a condition of parole, probation, or supervised release. Unfortunately, the necessary funds to implement the legislation were not provided at the same time. We have conducted a pilot test of electronically monitored home confinement in two sites, the Central District of California and Southern District of Florida, using persons on parole. This pilot has been jointly funded by the Judiciary and Federal Bureau of Prisons, with the cooperation of the U.S. Parole Commission. It is being expanded to 12 more districts, for offenders on probation as well as parole, starting this summer. The Bureau of Prisons will pay the cost of the contract electronic monitoring and will provide one Bureau staff member in 10 of the sites.

Home confinement is a new, increasingly popular and less costly alternative to imprisonment. It is not cheap, however. Our experience in the two pilot sites tells us that it is staff intensive. It is not sufficient to hook up an offender to an electronic monitoring device and forget him. To make sure the offender is accountable, professional staff must be available to respond to every breach of the monitor, including every time the equipment malfunctions and gives a false report of a breach. We learn more than we ever knew before about an offender's habits, family relationships, substance abuse, and associates. While we welcome this new addition to the tools available to probation and pretrial services officers, it is no panacea, and no substitute for hard work and personal contact with the offender.

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Please direct all inquiries and address changes to the managing editor of The Third Branch at the above address.

At a ceremony April 25, AO Director L. Ralph Mecham presented five members of the National Conference of Bankruptcy Judges with a framed "red line" copy of House Bill 3660, in appreciation for the vital role they played in the enactment of the legislation. The legislation gave federal judicial officers a significant salary increase. From left: Judge Ralph H. Kelley, Judge Arthur B. Briskman, Judge Charles N. Clevert, Jr., Judge William C. Anderson, Judge George C. Paine, II, and Mr. Mecham.

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