

Deskbook for Chief Judges of U.S. District Courts

Fourth Edition

Federal Judicial Center

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This Federal Judicial Center publication was undertaken in furtherance of the Center's statutory mission to develop educational materials for the judicial branch. While the Center regards the content as responsible and valuable, this publication does not reflect policy or recommendations of the Board of the Federal Judicial Center.

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Foreword

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

Even if you are a chief judge or a chief judge-to-be, we realize that you probably won’t read the deskbook from cover to cover but instead will use particular chapters and sections to help you deal with specific issues. Therefore, there is some overlap in the materials and there are extensive cross-references.

Much of the deskbook summarizes the relevant statutes and Judicial Conference policies and describes resources and assistance available from the Center and the Administrative Office of the U.S. Courts. Other portions, in particular Chapter V, provide suggestions to consider as you approach your role as chief judge and as you confront particular matters. These suggestions incorporate the experience of veteran chief judges as well as literature about the management of public and private organizations.

The Center published the first edition of this deskbook in 1984. We are producing this fourth edition only in an electronic format so that we can update it more regularly this phra, including the *Guide to Judiciary Policy* and other sources cited herein. You may, of course, download the electronic text and make photocopies if you would like.

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

A handwritten signature in black ink, appearing to read 'Jeremy Fogel', with a stylized flourish at the end.

Jeremy D. Fogel, Director
Federal Judicial Center

Abbreviations Used for Standard Sources

Guide—*Guide to Judiciary Policy*. The *Guide* is a multivolume compilation of judiciary laws, regulations, and official policies. It can be accessed on the J-Net.

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

Judges’ Manual—*Judges’ Administrative Manual*. A companion to the *Guide*’s repository of laws, regulations, and official policies, it expands on the *Guide* and gives judges and their staff practical advice and information on administrative and operational matters of importance to them.

Note: For simplicity, most citations are given in the text. Statutory citations are to the U.S. Code only. Public laws are cited to the Statutes at Large.

I. The Office of Chief Judge of the U.S. District Court: History, Selection, Orientation, and Responsibilities

A. *History of the Office*

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

Although this statutory framework has not changed, the size of the district courts and the tasks of managing them have increased steadily since then. Today, even the smallest districts have multimillion dollar budgets, dozens of employees, sophisticated technology, and critical security requirements, all to support the administration of justice in thousands of cases.

B. *Qualifications and Term of Office*

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

C. *Declining the Office, Resignation, and Incapacity*

District judges who do not wish to serve or to continue serving as chief judges but who want to retain their status as active judges may certify that fact to the Chief Justice (28 U.S.C. § 136(d)). The position of chief judge then devolves pursuant to the statutory criteria. The statute also provides that “[i]f a chief judge is temporarily

1. House Comm. on the Judiciary, Revision of Title 28, United States Code (report to accompany H.R. 3214, Apr. 25, 1947), app. Revisor’s Notes A31. For information on the evolution of the office, see Russell R. Wheeler, *Origins of the Elements of Federal Court Governance* 11–12 (Federal Judicial Center 1992).

unable to perform his duties as such, they shall be performed by the district judge in active service, present in the district and able and qualified to act, who is next in precedence” (28 U.S.C. § 136(e)).

D. Preparation and Orientation for New Chief District Judges

1. Local programs

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

Steps for preparing the incoming chief judge may include ensuring that copies of all significant correspondence relating to the court are provided to the incoming chief; including the incoming chief in meetings relating to the court’s business; informing (and, perhaps, consulting with) the incoming chief about key decisions; having unit executives brief the incoming chief on key issues and initiatives; and having the incoming chief visit different courthouses and court units. Some courts assign the incoming chief to the court’s executive committee or to a key management role.

A smooth transition is most likely when the current chief creates a system for familiarizing the new chief judge with the court, its key people, and major issues. Chapter V.A, *infra*, provides more information on making the transition to chief judge.

2. National programs

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

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

The Center offers a program on the leadership role of the chief judge for new chiefs to attend with selected unit executives. The Center also conducts an annual conference for all chief district judges, and other leadership programs for chief judges are held periodically.

3. Additional staff

In courts with five or more judgeships, chief district judges are authorized to employ an additional judicial assistant or law clerk to assist with the administrative workload. Whether or not entitled to hire an additional law clerk or judicial assistant, a chief judge should consider how to allocate the additional work that will flow

into chambers. Some chief judges arrange for additional support within the clerk of court's office.

4. Caseload

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

Many chief judges take a reduced caseload, typically in consultation with the outgoing chief judge and with their colleagues. Chapter III.E.1, *infra*, provides further discussion of the chief judge's caseload.

E. Formal and Informal Sources of Authority

There is no single or simple statement of a chief district judge's authority and responsibility. Many responsibilities devolve on the chief district judge as the result of various statutory provisions, Judicial Conference policies, and delegations from the director of the Administrative Office. The Administrative Office's *Compendium of Chief Judge Authorities* (Judges Information Series no. 8, May 2013) is an extensive catalog of such provisions and policies. Congress and the Judicial Conference have assigned many responsibilities to the district court (or its active judges), to the chief judge specifically, or to a court officer appointed or approved by the entire court. Some tasks that fall to chief district judges have no specific statutory or administrative underpinnings.

Despite this lack of clear-cut formal authority, the predominant view is that the chief district judge is ultimately responsible for seeing that the court is administered effectively and efficiently, is in compliance with statutes and with Judicial Conference and circuit judicial council policies, and follows Administrative Office procedures.² Some courts emphasize that all the district's judges have a collective responsibility for these functions, and they downplay any special executive role for the chief judge. But even if judges as a group share considerable management responsibility, someone must coordinate their doing so. One person, working alone or through committees, must ultimately ensure that the court keeps the big picture in sight. Ordinarily, that is the chief judge.

F. Responsibilities

The chief district judge's official and unofficial responsibilities fall into several basic categories.

2. Appendix A contains links to resources for more information on federal judicial administration on the national and regional levels.

1. Court-management oversight

The chief judge, primarily through oversight of court unit executives, ensures that the court operates effectively. This responsibility includes ensuring that laws, regulations, and court policies are followed, that the needs of court employees are properly addressed, and that administrative tasks are carried out. Chapter II describes specific management and administrative functions. The chief judge's oversight and stewardship roles have taken on added significance in light of the specific financial, procurement, and personnel management authorities that the Administrative Office has delegated to district courts. The Administrative Office's *Management Oversight and Stewardship Handbook* (reissued July 2003) provides guidance on these authorities.

2. Case-management oversight

Statutes and national procedural rules provide the chief judge with limited authority over the court's assignment of cases and even less authority over how other judges manage their dockets. The chief judge, however, can monitor caseloads and trends and identify problems—either systemic ones or those of individual judges. Case-management considerations are discussed in Chapter III, *infra*.

3. Liaison with outside groups

The federal district court is of interest to numerous outside groups, such as bar associations, civic groups, federal and state agencies, law schools, and the press. The court also maintains working relationships with other government agencies, such as the U.S. Attorney's Office and the U.S. Marshals Service, as well as with state and local courts. The chief district judge is typically seen as the court's representative and focal point for dealing with such groups. Chapter IV, *infra*, suggests ways to work with these outside groups.

4. Leadership

Leadership is more than making decisions. Its essence is using a process that includes listening and communicating so that those affected by decisions and those who execute decisions understand and accept (even if they may not agree) how and why the decisions are to be implemented. The chief district judge is uniquely situated to lead the district court in determining the administrative policies and actions the court should initiate, continue, or discontinue. There is no single, or simple, way to achieve this goal. Chapter V, *infra*, offers some principles and guidance on effective leadership.

II. The Chief District Judge's Management and Oversight Functions

This chapter describes the chief district judge's primary management duties. The Administrative Office's *Compendium of Chief Judge Authorities* (Judges Information Series no. 8, May 2013) lists chief district judges' responsibilities pursuant to statute, rules of procedure, Judicial Conference policy, and delegations from the director of the Administrative Office.

The chief judge is ultimately responsible for the district court's effective completion of administrative and management tasks, even though statutes or Judicial Conference policies assign some important tasks to clerks of court and even though other tasks have been delegated to the clerk. The Administrative Office can conduct a management review, which may be particularly useful to new chief district judges. A management review can include all of the court's functions or only one aspect of the court, such as information technology or chambers management.

A. *Structures and Practices of District Court Governance*

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

1. Structures of district court governance

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

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

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

2. Local administrative practices

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

3. Internal reports and meetings

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

B. People³

1. Other judges in the district

a. New judges

The chief judge swears-in new judges and assists them in the transition to their new duties. Although new judges must take the oaths prescribed by 28 U.S.C. § 453 and 5 U.S.C. §§ 3331–3333, there is no prescribed format for swearing-in ceremonies. The *Judges' Manual*, Ch. 11, has further information on judicial investitures.

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

Local orientation or mentor programs take various forms. Some courts designate a standing mentor judge or panel of judges. Others make ad hoc assignments as the need arises. Alternatively, new judges may be scheduled to spend time with and

³ Appendix B, *infra*, provides links to resources for more information on specific court units and personnel.

observe judges from the court who want to participate. Small districts sometimes arrange with nearby districts to supplement their resources and broaden the new judge's exposure to different approaches.

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

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

A new judge's focus will naturally be on setting up chambers and handling the caseload, so the orientation should emphasize these. Nonetheless, it is also important to familiarize new judges with the court's organization, procedures, and culture and with their role in the court's efficient and effective operation.

ii. Federal Judicial Center orientation programs. The Federal Judicial Center invites each new district judge to two orientation programs. The first is a regional orientation seminar, which a judge ideally will attend soon after entering duty. It stresses practical instruction in court procedure, the Federal Rules of Evidence, judicial ethics, and sentencing, and it includes a tour of a federal correctional facility. Sometime later during their first year, new district judges are also invited to the Center's week-long orientation seminar in Washington, D.C.—the seminar builds on the instruction in the initial orientation program. A similar two-step orientation program is offered to bankruptcy and magistrate judges in their first year on the bench. The Center also sends new judges a collection of its reference guides, manuals, and other materials, including the *Benchbook for U.S. District Court Judges* (6th ed. 2013), *Manual on Recurring Problems in Criminal Trials* (6th ed. 2010), *Reference Manual on Scientific Evidence* (3d ed. 2011), and *Manual for Complex Litigation, Fourth* (2004). Orientation resources for new judges—including Center publications, media programs, and Web-based resources—can be found on FJC Online, the Center's website on the judiciary's intranet.

iii. Administrative Office orientation programs. The Administrative Office invites district judge nominees to attend an individual orientation program in Washington, D.C., at the time of their confirmation hearings (the Administrative Office pays the travel costs). This several-hour program covers compensation, benefits, ethics, security, and administrative aspects of becoming a federal judge. In addition, judge nominees receive the Administrative Office handbook *Getting Started as a Federal Judge* (December 2005), which provides practical advice and information addressing the most frequent inquiries received from nominees and newly appointed judges during the transition to the federal bench. The Administrative Office has other materials available for new judges on the J-Net.

b. Active judges and judgeships

The chief district judge typically monitors the workloads of other judges on the court and may take steps to address issues or problems, such as caseload imbalances, judges who are behind in their work, illnesses or vacancies, and the overall workload in the district. Ways to address these issues are discussed in Chapter III.F, *infra*.

When a district's caseload warrants, a district may seek Judicial Conference approval of a request that Congress create additional judgeships. Every two years the Statistics Subcommittee of the Judicial Resources Committee solicits requests for new judgeships. Requests must be supported by detailed information and forwarded through the respective circuit council. For more information, see the Biennial Judgeship Survey page on the J-Net.

c. Senior judges

The chief circuit judge or circuit judicial council may designate a senior district judge to perform "such judicial duties within the circuit as he is willing and able to undertake" (28 U.S.C. § 294(c)). The chief district judge may also assign duties to a senior judge in that district (28 U.S.C. § 294(c)). Circuit judicial councils' practices concerning senior judges' work assignments differ; for guidance, consult circuit internal operating procedures or the circuit executive.

Two distinct workload requirements apply to senior judges. First, in order for a senior judge to receive salary increases other than cost-of-living adjustments, the chief circuit judge must certify that the senior judge handles the workload required by the Judicial Conference (28 U.S.C. § 371(e)(1)). The Judicial Conference authorizes retroactive certification when a senior judge's additional workload in a subsequent year is sufficient to offset a reduced workload in a prior year. The Conference's *Rules for Certification of Senior Judges Under 28 U.S.C. § 371* (1998) articulates standards for meeting the statutory work requirements (see *Senior Status and Retirement for Article III Judges*, Appendix I (with June 1999 update)).

Second, the Conference authorizes chambers and staff for senior judges only upon the circuit judicial council's certification to the director of the Administrative Office that the judge is performing "substantial service" to the court to justify facilities, and that the number of supporting positions requested is necessary based on the judge's actual workload (*Guide*, Vol. 3, Ch. 8, § 860). The information the circuit judicial councils use in making those judgments is provided annually by the Administrative Office and is based on the caseload data routinely provided by the district courts. The chief district judge may provide information to assist the circuit council's decision.

Questions may occasionally arise, as when a senior judge (or a former chief district judge) insists on retaining chambers that other judges should have. Persuasion and compromise solve most problems, but the district court or circuit judicial council could presumably resolve problems by order. Consult circuit internal operating procedures and the circuit executive to determine the circuit's approach to allocating chambers space and staff to senior judges.

Judicial Conference policy encourages circuit judicial councils to develop policies on courtroom sharing by senior judges and to consider judges' workloads, among other things, in projecting future courtroom requirements. *Guide*, Vol. 3, Ch. 8, § 860.40. To facilitate obtaining sufficient space to accommodate senior judges and their successors, the Conference has encouraged judges to notify the President and the Administrative Office as early as possible of their intention to take senior status.

d. Bankruptcy judges

The 1984 Bankruptcy Act established the bankruptcy judges of each district as "a unit of the district court to be known as the bankruptcy court for that district." Bankruptcy Amendments and Federal Judgeship Act of 1984, § 104(a), 28 U.S.C. § 151. Thus, the bankruptcy judge is a judicial officer of the district court. This provision strengthens the judicial and administrative relationship between the district court and the bankruptcy court. Section 1334(a) of Title 28 provides that "the district courts shall have original and exclusive jurisdiction of all cases under title 11 [of the United States Code]." Section 1334(b) gives the district courts original (but not exclusive) jurisdiction over all civil proceedings arising under Title 11 or arising in or related to cases under Title 11.

The bankruptcy judge may "hear and determine . . . and may enter appropriate orders and judgments" relating to all cases and core proceedings arising under title 11 referred to that judge. 28 U.S.C. § 157(b)(1). A bankruptcy judge may hear a proceeding that is not a core proceeding but can only submit proposed findings of fact and conclusions of law to the district court. 28 U.S.C. § 157(c)(1). Core matters are civil proceedings arising under the Bankruptcy Code or in a bankruptcy case, including any proceedings that affect the liquidation of the estate's assets or the ad-

justment of the debtor–creditor relationship. Core proceedings include confirmation of plans, matters concerning the administration of the estate, and the allowance or disallowance of claims. A non-exclusive list of “core” proceedings is contained in § 157(b)(2).⁴ Non-core proceedings, also known as related matters, include the debtor’s causes of action that could have been brought in state court or in federal district court had there been no bankruptcy case, such as a breach of contract or breach of warranty.

Other provisions of Title 28 of the U.S. Code tie the operation of the bankruptcy court to the district court. For example, while the authority to appoint the bankruptcy judges for each district is vested in the court of appeals, the authority to designate the chief bankruptcy judge is reserved to the judges of the district court and to the chief judge of the district court in the event that a majority decision cannot be reached. 28 U.S.C. § 154(b).

Each district court may make and amend local rules governing practice and procedure in all cases and proceedings within the district court’s bankruptcy jurisdiction that are not inconsistent with the Federal Rules of Bankruptcy Procedure. A district court may, however, authorize the bankruptcy judges of the district to make local rules of practice and procedure for the bankruptcy court. Fed. R. Bankr. P. 9029.

Section 154(b) of Title 28 vests the chief bankruptcy judge with responsibility to ensure that the business of the bankruptcy court is handled effectively and expeditiously. To that end, the bankruptcy court may “promulgate rules for the division of business among the bankruptcy judges to the extent that the division of business is not otherwise provided for by the rules of the district court.” 28 U.S.C. § 154(a).

Note that despite the close statutory link between the district court and the bankruptcy court, bankruptcy clerks’ offices operate independently of the district clerks. Section 156(d) of Title 28 prohibits consolidation of the office of the bankruptcy clerk with the office of the district clerk without the prior approval of the Judicial Conference and Congress. The district and bankruptcy courts may share administrative services, however, such as human resources, training, and procurement. See subsection G, Shared Administrative Services, in this chapter. The bankruptcy court’s relative independence makes the personal relationships of the respective chief judges and the clerks of the two courts especially important.

4. *Stern v. Marshall*, 131 S. Ct. 2594 (2011), introduced the possibility that a proceeding defined as core under the Judicial Code may nevertheless lie beyond the constitutional power of a bankruptcy judge to adjudicate finally. Section 157(b)(2)(C) of Title 28 expressly includes as a core proceeding “counterclaims by the estate against persons filing claims against the estate.” The Court in *Stern*, in a 5–4 decision, held that a non-Article III bankruptcy judge cannot enter a final judgment on a state law counterclaim raised by a debtor in a core proceeding under 28 U.S.C. § 157(b)(2)(C) that is not resolved in the process of adjudicating the allowance of the underlying claim. The Court expressly stated that its decision should be interpreted narrowly and that Congress had exceeded constitutional limitations “in one isolated respect.” Nonetheless, owing to broad language in *Stern*, its implications are uncertain at this time.

e. Magistrate judges

A magistrate judge is a judicial officer of the district court who exercises the jurisdiction of the district court as delegated by statute and by the judges of the court. The *Inventory of United States Magistrate Judge Duties* (July 2009), published by the Administrative Office, details the jurisdiction of U.S. magistrate judges. These duties, set forth in 28 U.S.C. § 636, fall into four broad categories:

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

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

District courts may also assign magistrate judges "such additional duties as are not inconsistent with the Constitution and laws of the United States." These "additional duties" typically include civil and criminal case pretrial matters, prisoner cases, Social Security appeals, and post-judgment duties. Local rules or general orders determine magistrate judges' precise duties in a particular court and the manner of allocating work among magistrate judges. The *Strategic Plan for the Federal Judiciary* recommends the effective use of resources, "including the effective utilization of magistrate judges" (Judicial Conference of the United States, *Strategic Plan for the Federal Judiciary*, Strategy 2.1, at 8 (September 2010)).

The judges of the district court appoint the court's magistrate judges. See 28 U.S.C. § 631(b)(5). The Administrative Office pamphlet *The Selection, Appointment, and Reappointment of United States Magistrate Judges* (March 2010) includes the Judicial Conference regulations and provides guidance on appointment procedures (see *Guide*, Vol. 3, Ch. 4).

To initiate requests for additional magistrate judge positions or changes in existing positions, the chief district judge should contact the Administrative Office. Once a position is authorized and funded, selection of the magistrate judge proceeds according to the statutory criteria and Judicial Conference regulations governing appointment of magistrate judges.

The chief district judge should ensure that the court regularly monitors what the magistrate judges are doing and at whose request. Periodic statistical reports

from the magistrate judges can aid this monitoring function and serve as the basis for their office's annual report to the court. Reports designed for local use may be more beneficial in monitoring case assignments and ensuring that magistrate judges are used effectively than reports the magistrate judges provide to the Administrative Office, which serve national statistical reporting functions. Some district courts have designated a (nonstatutory) "chief" or "administrative" magistrate judge to coordinate magistrate judges' activities, make duty assignments, prepare reports, and maintain liaison with the district judges and other court officers and committees.

f. Unanticipated vacancies

If there is an unanticipated judgeship vacancy, chambers staff may remain on the court payroll for 90 days, with an extension of an additional 120 days if the chief district judge certifies to the circuit judicial council that additional staff resources are necessary. If necessary, additional staffing needs beyond the 120-day extension are funded from existing allocations to the circuits for emergency temporary law clerks and secretaries. See *Guide*, Vol. 12, § 615.50.30.

g. Judicial disability procedures

The Judicial Conduct and Disability Act, 28 U.S.C. §§ 351–364, establishes the statutory procedures by which the federal courts receive and handle complaints of judicial misconduct and disability. The chief circuit judge and the circuit judicial council have primary responsibility in these matters. The Judicial Conference has adopted *Rules for the Processing of Certificates from Judicial Councils that a Judicial Officer Has Engaged in Conduct that Might Constitute Grounds for Impeachment*, as well as *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. See *Guide*, Vol. 2, Pt. E, Ch. 4 and Ch. 3, respectively. The Conference's Committee on Judicial Conduct and Disability considers judicial council action on judicial misconduct or disability complaints in accordance with these rules. Many problems may not reach the circuit level, however, and some that do still involve the chief district judge.

h. Residence and place of holding court

Section 134(c) of Title 28 anticipates that it may be in "the public interest" for at least one judge of the district to maintain residence at or near each of the district's designated places for holding court. The circuit judicial council is authorized to make such a determination as well as to determine which judge shall reside near the court if the district judges cannot agree.

i. Judicial travel

Judicial travel regulations authorize reimbursements for judges for travel to hold court or to attend authorized judicial meetings (as defined in the regulations) when-

ever they determine such travel to be necessary (see *Judges' Manual*, Pt. C, Ch. 16). For other official travel by judges, reimbursement is authorized only when the travel is approved in advance by the appropriate chief judge (i.e., the chief district judge for district, bankruptcy, and magistrate judges in the district), or, in certain instances, by the chair of the appropriate Judicial Conference or circuit judicial council committee. Travel costs to Federal Judicial Center programs and meetings are reimbursed by the Center; reimbursement requires the advance approval of the Center.

Judicial travel regulations also direct the chief district judge to send the director of the Administrative Office the reports on “non–case-related travel” required to be filed annually by all judges in the district. Travel is “non–case-related” if it is not directly related to the judge’s assigned cases but nevertheless involves judicial administration, education, or extrajudicial activities permitted by law and the Code of Conduct for United States Judges, and if the expenses are paid for (either directly or by reimbursement to the judge) by another person, an organization, or an agency of the federal government (see *Judges' Manual*, Pt. C, Ch. 16, § 4.2).

2. Court Staff Personnel Policies and Management

a. *The chief judge's role*

The district court appoints the clerk of court (28 U.S.C. § 751(a)), court reporters (28 U.S.C. § 753(a)), and the chief and other probation officers (18 U.S.C. § 3602). When a majority of the district judges cannot agree on the appointments, 28 U.S.C. § 756 authorizes the chief district judge to make the appointment. The statute does not prescribe the form for certifying or ascertaining court approval or approval by a majority of the judges. In districts with separate probation and pretrial services offices, the chief district judge serves as a member of a panel with the chief circuit judge and a magistrate judge, or their designees, to select the chief pretrial services officer (18 U.S.C. § 3152(c)).

While the chief district judge has ultimate responsibility for the court’s management, chief judges generally delegate most administrative duties related to court management (other than probation and pretrial services duties) to the clerk of court. The chief judge’s working relationship with the clerk is thus vital to the effective management of the court. Some courts share administrative services (such as human resources or financial management) among court units or with other courts. See section G, Shared Administrative Services, of this chapter.

Ideally, the chief district judge’s relationship with the clerk of court and with the probation chief and pretrial services chief, if there is one, should be a partnership, in which each helps the other do his or her job better. The chief judge is the senior partner to be sure. But if the clerk and chief(s) are doing their jobs well, the chief judge’s role is to monitor, not micromanage, general operations, and to assist with or take action on those matters that are beyond the clerk’s or chief’s authority or

ability to handle alone. Specifics will vary from court to court and from individual to individual, but the chief judge and unit executives should strive to reach a mutual understanding of the allocation of their time and responsibilities. Chapter V, *infra*, discusses in greater detail the relationship of the chief judge and the clerk and other unit executives.

For court unit support staff (not including chambers law clerks and secretaries, court reporters, interpreters, and certain other employees), the director of the Administrative Office can delegate authority to establish and classify positions under the Court Personnel System (CPS), determine the qualifications of those positions, and fill them at appropriate pay levels. This authority can be redelegated to the relevant court unit officers. An incoming chief district judge should check to see what delegations are in place and whether new delegations or redelegations are needed.

Other personnel-related tasks that involve the chief judge include:

- approving requests for emergency law clerks and judicial assistants;
- reviewing official adverse personnel actions taken by managers against court employees; and
- resolving informal disputes that the officers cannot resolve.

b. The clerk of court's role

In almost all district courts, the clerk of court serves as the chief administrative officer, implementing the court's policies and reporting to the chief district judge. (A few districts have district court executives or other positions that perform this administrative role.) The clerk of court is responsible for the development and administration of a comprehensive personnel system for the court. The Administrative Office, in accordance with 28 U.S.C. § 604(a)(1) and Judicial Conference resolutions, exercises a supervisory function over the court's personnel system and acts in an advisory capacity. Official policies regarding personnel and management are available through guidelines issued by the Judicial Conference and the Administrative Office. See *Guide*, Vol. 12, and the *Human Resources Manual*.

Courts are encouraged to develop, in written form, personnel and office policies to inform employees of practices and policies and to guide the supervisory staff in upholding these practices and policies. Many courts have developed an effective personnel-management system that is detailed in a local personnel or office policy manual. The local personnel manual will generally address such matters as recruitment, termination, performance standards and evaluation, grievance resolution, training policies, leave policies, employment discrimination, and sexual harassment. Such a manual, if available, may serve to limit the need for the chief judge's involvement in most personnel problems.

c. Interviewing and hiring practices

The Federal Judicial Center's *Conducting Job Interviews: A Guide for Federal Judges* (1999) provides guidance on interviewing applicants for court unit executive positions (clerk of court, chief probation officer, and chief pretrial services officer) and law clerk positions. The guide recommends a process for analyzing a job and the experience needed to fill it. It also provides suggestions for simple, fair, and effective hiring practices, as well as examples of interview questions.

The Administrative Office has established a central online resource, called the Online System for Clerkship Application and Review (OSCAR), for federal law clerk and appellate court staff attorney hiring. OSCAR provides comprehensive and timely information for applicants and saves time for judges' staff.

d. The Court Personnel System

The Judicial Conference approved the Court Personnel System (CPS) at its September 1993 session. The CPS replaced the JSP position classification process, grade structure, salary schedule, supervisory grade criteria, and qualifications standards program for most court employees. The CPS does not apply to court unit executives and their chief deputies, law clerks or secretaries on the chambers staff, or court reporters. These employees remain under the JSP classification and compensation systems.

The Judicial Conference has approved CPS benchmarks reflecting current job duties and responsibilities performed in the courts and has approved titles and classification levels for these benchmarks, minimum qualification requirements, and a procedure for classifying CPS supervisory and managerial positions.

The chief judge may request a delegation of authority from the director of the Administrative Office to establish and classify positions under the CPS, determine the qualifications of those positions, and fill them at appropriate pay levels. This authority can be redelegated to the clerk of court.

e. Judiciary equal employment opportunity and employment dispute resolution plans

i. Judicial Conference policy. The Judicial Conference has established a national equal employment opportunity policy for the federal judiciary in the form of a Federal Judiciary Model Employment Dispute Resolution Plan (Model EDR Plan). The Model EDR Plan was adopted by the Conference in order to provide rights and protections to employees of the U.S. courts, rights comparable to those provided to legislative branch employees under the Congressional Accountability Act of 1995. The Model EDR Plan supersedes Appendix I ("Discrimination and Complaint Procedures") of the Judiciary Model Equal Employment Opportunity Plan (Model EEO Plan), except for section VI of Appendix I ("Annual Report"), which imposes

reporting requirements on the courts. Both the Model EDR Plan and the Model EEO Plan are available on the J-Net.

ii. Court employment dispute resolution plans. The Model EDR Plan is to be implemented in the local courts in the same manner as the Model EEO Plan. Each court must adopt and implement a local EDR Plan based on the model plan. Any modification of this EDR Plan by a court must first be approved in its circuit by the judicial council. A copy of each local court's EDR plan and any subsequent modifications must be filed with the Administrative Office. The chief judge of each court submits an annual report on the implementation of its EDR Plan to the Administrative Office for inclusion in the director's *Annual Report to the Judicial Conference*.

The Model EDR Plan is not intended to duplicate the protections provided for the resolution of complaints of judicial-officer misconduct or disability and otherwise is intended to be the exclusive remedy of the employee relating to rights enumerated under the Plan.

iii. Employment dispute resolution coordinators. The court's employment dispute resolution coordinator assumes the duties of the former EEO coordinator, and the dispute resolution procedures and related duties set forth in the Model EDR Plan supersede those under the Model EEO plan.

iv. General procedures. Under the Model EDR Plan, an employee who claims a denial of the rights granted under Chapters II through VII of the plan shall seek resolution of such claims through the following procedures:

- counseling and mediation;
- an opportunity to seek review by the chief judge of the court (or a designated judicial officer) in which the alleged violation arises; and
- review of the district court's decision under procedures established by the judicial council of the circuit.

For additional information concerning the dispute resolution procedures, see Chapter X of the Model EDR Plan. The Administrative Office can assist courts with questions about policy or procedures. Also helpful are the Administrative Office's *Judiciary Fair Employment Practices Annual Report* and its *Employment Dispute Resolution Bench Book for Judges* (March 2011).

f. Indemnification for improper employment practices

Judicial Conference guidelines for the indemnification of judges and employees who are found liable for actions taken within the scope of their employment (such as wrongful employment practices resulting from such administrative acts as dismissing or demoting employees) are in the *Guide*, Vol. 20, Ch. 3. Further informa-

tion on this topic can be found in *The Risk of Personal Liability for Federal Judges* (July 2002), an Administrative Office publication.

g. Temporary personnel for judges during emergencies

A judge sometimes needs additional, temporary law clerks or judicial assistants during emergency situations. Judicial Conference policy requires that the judge's declaration of a "judicial emergency" and request for temporary assistance, along with the chief district judge's concurrence, be transmitted to the circuit executive for approval by the circuit judicial council for whatever term the council deems appropriate. The Conference discourages such assistance except when there is a serious problem that cannot be solved by temporary reallocation and reassignment of cases.

In situations in which staff are on sick leave or maternity leave, judges may certify their need for temporary assistance to the director of the Administrative Office. The Conference has also approved the option of contracting with a temporary help service.

3. Education and training programs and other assistance

a. Orientation and continuing education

Court managers should establish and maintain formal training programs. For example, each unit or office should administer an orientation program to familiarize all new personnel with court personnel procedures, the organization and work of the court, and the federal judicial system. Continued training improves work standards and fosters upward mobility of employees.

The Federal Judicial Center provides resources and assistance in designing orientation, leadership and management training, and continuing education programs, including online tools, for nonjudicial court personnel such as those in clerks' offices (including its Web-based orientation program for new court employees, *Inside the Federal Courts*). Information on its programs and services for court personnel can be found on FJC Online.

The Administrative Office provides training in administrative and operational duties delegated by the director of the Administrative Office to court personnel. It conducts national and regional education and training programs pursuant to the director's authority granted under 28 U.S.C. § 604. For information on Administrative Office training, consult the *Guide*, Vol. 12, Ch. 11.

The U.S. Sentencing Commission provides education and training to judges, judicial branch personnel, and practitioners in understanding and applying the Sentencing Guidelines. Information about the Commission's training programs and educational materials on the guidelines are available on its website, <http://www.ussc.gov>.

Local training programs in the courts, arranged primarily by court personnel, can complement national and regional programs. The Federal Judicial Center can provide advice, training materials, and, in some cases, faculty, for local training. Courts receive budget allotments to fund training for court support staff employees in administrative, operational, or managerial support areas. Judges and chambers staff are provided training funds through a general authorization. For specific information about funding allotments for training, consult the *Guide*, Vol. 12, Ch. 11, § 1125.

Court-training specialists are key elements in the court's local programs. They are court employees who assume responsibility for identifying local training needs and developing programs to meet them, with the help of the Center and the Administrative Office. The Court Personnel System authorizes creating court-training specialist positions. These positions may be appointed in the clerk's office, the probation office, the pretrial services office, and the bankruptcy court. In many courts, training specialists perform other duties as well as their training duties.

b. Law clerk orientation

The Federal Judicial Center's website, FJC Online, has materials including videos to assist in orienting new law clerks, as well as educational materials and resources for career law clerks. In addition, the Center published *Maintaining the Public Trust: Ethics for Federal Judicial Law Clerks* (2013) in coordination with the Judicial Conference's Codes of Conduct Committee and the Administrative Office.

C. Financial Matters

1. Financial statutes and authority

The director of the Administrative Office is responsible by statute for authorizing and controlling the expenditure of funds appropriated to the federal judiciary. The director delegates authority for this function to several divisions within the Administrative Office and to chief judges. These authorities are delegated to chief judges with the expectation that courts and court officers will strictly comply with federal statutes that regulate the management and expenditure of federal funds and the procurement and care of federal property. Chief judges are authorized to redelegate these authorities, in writing, to various financial liaison officers, usually unit executives. The director has specifically authorized chief judges to retain certain budget authority, delegate specific authorities to judicial budget committees, or delegate all or specific authorities to the clerk of court (*Guide*, Vol. 13, Ch. 2).

2. Delegation of financial authority

A chief district judge receives substantial fiscal and administrative authority by express delegation from the director of the Administrative Office. As "the adminis-

trative officer of the courts” serving “under the supervision and direction of the Judicial Conference,” 28 U.S.C. § 604(a), the AO director is responsible for, among other things:

- supervising administrative matters relating to clerk’s offices;
- setting personnel compensation;
- disbursing funds for court operations;
- paying office expenses, travel expenses, and annuities;
- purchasing law books, equipment, and supplies;
- entering into contracts to support the work of the courts;
- auditing court accounts; and
- submitting the judiciary’s budget.

28 U.S.C. §§ 604–605.

The director, however, has delegated substantial administrative and financial power to chief judges under 28 U.S.C. § 602(d), which provides:

The Director may delegate any of the Director’s functions, powers, duties, and authority . . . to such officers and employees of the judicial branch of Government as the Director may designate, and subject to such terms and conditions as the Director may consider appropriate

The statute also authorizes “the successive redelegation of such functions, powers, duties, and authority” as the director may deem desirable. It provides that “[a]ll official acts performed by such officers and employees shall have the same force and effect as though performed by the director in person.” 28 U.S.C. § 602(d). Chief judges often delegate certain financial-management roles to court unit executives. *Guide*, Vol. 13, Ch. 2, § 230.20. By subdelegating such authority, chief judges can empower court unit executives and staff to handle and expend public funds, purchase government property, enter into contracts, and manage a human resource program. All authority and funds are delegated on the express condition that the responsible employees comply with all applicable statutes, regulations, policies, and procedures. Ultimate responsibility for a court’s financial integrity rests with the court and its chief judge. *Guide*, Vol. 13, Ch. 2, § 230.20.

Chief judges may not delegate greater authority than needed to meet court needs. All delegations must be in writing and must specify which authorities are being subdelegated and to whom. Subdelegations and designations (for property, IT security, budget, and procurement) expire when the delegatee changes and do not need to be reissued when there is a change in chief judge. With the appointment of a new chief judge, it is recommended that the court unit executive discuss the nature of these positions and the associated responsibilities of the chief judge so that the new chief judge can determine if it is appropriate to make any changes. However, it is not necessary to reissue delegations made by a previous chief judge unless a

change is desired. See *Guide*, Vol. 16, § 510.30; *Guide*, Vol. 15, § 130.30.10; *Guide*, Vol. 13, § 230; the *Court Budget Operating Manual*; and *Guide*, Vol. 14, § 140.15.30.

All persons in the chain of delegated responsibility, including officers and employees of the judiciary, are legally bound by strict statutes and rules designed to prevent the mismanagement of public moneys, including all appropriations laws, the Anti-Deficiency Act, and government contract laws.

Chief judges have a number of financial and budget-management responsibilities set forth in the U.S. Code and the *Guide*. These responsibilities include:

- ensuring that the court has adequate internal controls in place and that they are followed scrupulously (*Guide*, Vol. 11, Ch. 1, § 140);
- ensuring that the court has formal decision-making procedures in place to approve the budgets of court units and to review their financial operations (*Guide*, Vol. 13, Ch. 1, § 120.35);
- ensuring each court unit has an annual spending plan that is reviewed and approved by the designated court officials (*Guide*, Vol. 13, Ch. 1, § 120.35);
- ensuring that policies and procedures exist to prevent staff from obligating funds in excess of the amounts allotted (*Guide*, Vol. 13, Ch. 1, § 120.35(b)(2)); and
- monitoring the implementation of spending plans during the fiscal year and overseeing any necessary and proper adjustments to the plans (*Guide*, Vol. 13, Ch. 1, § 120.35).

The legal authorities of a chief judge are identified in the Judges Information Series publication, *Compendium of Chief Judge Authorities*.

3. Financial responsibilities

In exercising the financial-management authority delegated by the director of the Administrative Office, a chief judge's managerial role is comparable to that of chair of the board of directors of a small to mid-size company. Each chief judge typically redelegates most day-to-day financial and procurement functions to professional court managers. Chief judges are responsible for supervising court managers, particularly in their handling of federal funds and their procurement and care of federal property. What matters most is that chief judges ensure that the court has an effective system in place to safeguard financial integrity. Such a system should include:

- competent, ethical staff, with clearly defined responsibilities;
- a chief judge with personal knowledge of major or sensitive operational events and decisions;
- a process to approve and monitor the budget;
- regular, accurate, meaningful reports from the unit executives on the status of funds and other key financial activities;

- written internal controls that are being strictly followed and regularly updated;
- open and honest internal communications and regular meetings;
- effective training programs; and
- periodic evaluations and audits.

4. Budget formulation

Section 605 of Title 28 of the U.S. Code requires the director of the Administrative Office, under the supervision of the Judicial Conference, to submit budget estimates for the federal courts to the Office of Management and Budget for inclusion, without change, in the budget that the President sends to Congress. This process begins sixteen months in advance of the fiscal year being considered. First, the program committees of the Judicial Conference review and approve budget estimates for their program areas. These estimates are based on caseload projections, formula calculations, inflationary factors, and other appropriate increases or decreases. The Judicial Conference's Budget Committee considers the requests of the various program committees and forwards a recommended budget to the Judicial Conference for its consideration. The Conference considers and approves the budget request in September, twelve months in advance of the subject fiscal year. The request is combined with requests of the Supreme Court, other special courts, and judicial branch agencies and submitted to Congress in February, eight months before the fiscal year begins. Congress considers the Judiciary's request along with the requests of other government agencies, and it ultimately passes an appropriation bill to provide funding for the fiscal year.

In recent years, Congress has not enacted an appropriation for the judiciary before the beginning of the fiscal year. Instead, Congress has enacted a "continuing resolution" that funds the judiciary and other parts of the government for a period of weeks or months, usually at a level close to the appropriation for the previous year. (See below in this chapter for a discussion of the effect this has.)

5. Budget execution

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

To help the Judicial Conference's Executive Committee prepare a financial plan for the forthcoming fiscal year, approximately six months before the fiscal year begins the Administrative Office estimates funding likely to be available. The Administrative Office also estimates the needs of both centrally managed programs and allotments provided to the individual courts on the basis of anticipated workload and

staffing for the coming year, as well as support costs and projected requirements. The Executive Committee finalizes and approves the financial plan after Congress enacts the appropriations. In the event Congress does not enact the judicial branch appropriation by the October 1 start of the fiscal year, the Executive Committee approves an interim financial plan to serve as a spending guide until appropriations are enacted. Because the final appropriation may not be known for some time, the chief judge and unit executives must engage in especially careful contingency planning. It is highly advisable for the chief judge to involve, or at least inform, other judges and court staff about such planning.

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

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

Understanding the Judiciary's Budget Process, which consists of a 15-minute video and a companion guide for chief judges, provides further information on the requirements and procedures for budget formulation and execution.

6. Internal controls

The responsibility for the integrity of the court's fiscal-management practices rests with the court and the chief judge. One of the principal means of ensuring accountability and integrity of operations is through systemic internal control. Internal control is not an annual event or occasional process, but rather the ongoing application of the checks and balances needed to ensure the integrity of operations. Internal control measures are an integral component of the court unit's management and operations performed on an ongoing basis. Collectively, internal control measures are the policies, actions, and activities that provide reasonable assurance that assets and resources are protected from loss, waste, or abuse; operations are efficient and effective; financial reports are accurate and reliable; and business practices are in compliance with applicable laws and regulations.

Internal control activities that courts use to monitor and safeguard operations include defined procedures, assignment of responsibility and segregation of duties, access restriction, control over assets, appropriate records and documentation, and verification and review. Court unit executives have a responsibility to establish and

review internal control procedures, and chief judges have an oversight responsibility.

The *Management Oversight and Stewardship Handbook* (reissued July 2003) provides chief judges with simple, practical, and high-level guidance and tools for oversight and management of court resources, including official funds, personnel, and property. Volume 11 of the *Guide* (Internal Controls) contains information to assist courts with reviewing their internal controls. These are minimum standards and may be supplemented by additional controls. *Principles of Federal Appropriations Law*, also known as the “Redbook,” is a major reference work produced by the Government Accountability Office (GAO). It is a source of detailed information about appropriation issues.

7. Audit of moneys in custody of court personnel

The clerk of court, as the court's financial officer, is accountable for a wide range of financial activities:

- certifying appropriated and other funds in the treasury for travel and normal operations and maintenance;
- collecting and accounting for funds received for court services in accordance with the frequency schedule established by the Judicial Conference; and
- accounting for other deposited funds that pass through the courts to individuals, corporations, and trustees.

The director of the Administrative Office has a statutory responsibility under 28 U.S.C. § 604(a)(11) to conduct audits of the courts. The Administrative Office uses an independent public accounting firm and its own auditing office to conduct these audits. The audit cycle is approximately every two-and-a-half years for large courts and every four years for smaller courts. The court audit includes an attestation to the fairness of the accounting reports, evaluations of internal controls and compliance with financial-management requirements, and tests of financial transactions. The Administrative Office is also responsible for performing audits whenever a court changes its clerk of court, and a chief judge may request that the Administrative Office conduct a special audit whenever there is reason to suspect problems. All audit reports are forwarded to the circuit chief judge and the circuit executive. Chief district judges are entitled to receive all audit reports and should oversee follow-up actions.

8. Certifying officer program

The Federal Courts Improvement Act of 2000 provided the statutory basis for establishing additional certifying officer positions within the judiciary, paralleling authority that has worked well in the executive branch for over 60 years. See 28 U.S.C. § 613. Historically, the clerk of the district court, as the disbursing officer,

also served as the certifying officer for approving payments for goods and services acquired by *all* court units within the district and for appellate court units and any Federal Public Defender Office for which the district disburses.

Under the 2000 Act, the director of the Administrative Office, with the concurrence of the respective chief judge, may designate additional certifying officer positions within the judiciary to separate the certifying and disbursing functions. In most courts, each court unit executive has assumed similar responsibilities, authorities, and liabilities as those of executive agency certifying officers covered by 31 U.S.C. § 3528.

Certifying officers are “accountable officers” and are held to the same standards of liability and relief as their counterparts in the Executive Branch. Certifying officers are responsible for the existence and correctness of the facts cited in a request for payment and its supporting papers, the legality of the proposed payment under the appropriation or fund involved, and the correctness of the computations.

The liability of a certifying officer is enforced in the same manner and to the same extent as provided by law with respect to the enforcement of the liability of disbursing and other accountable officers. A certifying officer will be required to make restitution to the United States for the amount of any illegal, improper, or incorrect payment resulting from any false, inaccurate, or misleading certification, as well as for any payment prohibited by law or that did not represent a legal obligation under the appropriation or fund involved. The liability of certifying officers is not affected by any lack of fault or negligence on their part, but rather is strict and automatic. The fact that an improper payment has occurred raises a presumption of liability on the part of the accountable officer, and the burden of proof to rebut the presumption rests with the accountable officer. In the absence of a certifying officer appointed under statutory authority, the disbursing officer also assumes the duties, responsibilities, and liability of the certifying officer.

9. Operating without a budget

Courts will receive guidance if the legislative process fails to produce an appropriation bill or continuing resolution to fund court operations. Even without an appropriation, the judiciary may be able to fund continuing operations for a limited period using funds such as fees. The Administrative Office will provide specific guidance about operating in such circumstances. Generally, the Administrative Office’s position is that all functions and services necessary to exercise the courts’ constitutional responsibilities should continue. Functions unrelated to the resolution of cases in which jurisdiction has been established should be suspended, and obligations should not be incurred unless absolutely necessary. *Guide*, Vol. 13, Ch. 2, § 220.30.

10. References

Financial-management policies and stewardship guidance for chief judges are set forth in the *Guide*, Vol. 13 (Finance and Budget); *Guide*, Vol. 11 (Internal Control); and the *Management Oversight and Stewardship Handbook*.

D. Facilities, Security, and Emergency Preparedness

1. Space and facilities program

a. Administrative Office and the chief judge

The director of the Administrative Office has the statutory responsibility to “[p]rovide accommodations for the courts” through the acquisition, management, alteration, and construction of facilities. 28 U.S.C. § 604(a)(12). Chief judges should participate actively in all of the major functional areas of the space and facilities program: long-range facilities planning; space acquisition and release of space; space alterations and construction; cyclical facilities maintenance; and daily building operations and parking policies.

b. Long-range facilities planning

The asset management planning (AMP) process, including long-range facilities planning, was approved by the Judicial Conference in March 2008. The planning process includes the following:

- forecasting caseload growth in incremental timeframes;
- projecting the number of judges and staff needed to meet the forecasted caseloads, taking into consideration historical judgeship and staff growth;
- conducting comprehensive courthouse tours and assessments;
- determining the amount and type of space needed owing to operational and staff changes; and
- comparing projected space needs with the capacity of existing facilities.

Administrative Office staff will assist court representatives in long-range facilities planning sessions and development of the items listed above. The chief district judge, acting as coordinator, customarily appoints a team leader, often either the district court clerk or the district court executive, to work with Administrative Office staff to schedule a planning session. The team leader should then select a planning team consisting of representatives from the circuit, district, and bankruptcy courts and the probation, pretrial services, and federal public defender’s offices, and at least one representative from each of the district’s divisions. The General Services Administration (GSA) regional account manager and building manager, as well as members of the U.S. Marshals Service and U.S. Attorney’s Office, should be present at each session.

c. Space acquisition and release

The acquisition or release of space involves the court, the circuit judicial council, the Administrative Office, and the GSA. Circuit judicial councils must always approve accommodations, and the director of the Administrative Office is statutorily charged with providing accommodations to the courts. If the circuit has received a space and facilities delegation from the director, the circuit will ask the GSA to acquire the space for space assignments that are below the prospectus level.⁵ As of December 2013, circuits that have received such a delegation are the First, Second, Fourth, Fifth, Ninth, and Tenth.

When a court identifies a need to acquire space, the request is forwarded to its circuit judicial council. For requests below the prospectus level, if the council agrees that the space is necessary, it transmits the request to the GSA.⁶ For circuits that do not have a delegation, the circuit-approved under-prospectus level space request is sent to the Administrative Office. All prospectus-level requests, regardless of whether the circuit has delegated authority, must be sent to the Administrative Office, which transmits requests it receives to GSA through an occupancy agreement planner. Upon receipt of a space request, GSA will implement steps to either provide government-owned space or leased space to meet the court's need.

At its September 2008 session, the Judicial Conference approved the institution of a circuit rent budget (CRB) process that requires all new space requests to reflect consideration of the existing available inventory, cost for improvements, and future rent implications. CRB requests are reviewed annually during the June committee meetings of the Committee on Space and Facilities. The circuits are required to submit their CRB requests by no later than March for the Administrative Office to complete a thorough review of the requests.

Similarly, a court must ask its circuit judicial council to approve a request to release space. If a request is approved by the council, a circuit with a delegation will ask the GSA to release the space. Circuits without a delegation will transmit the court's request to the Administrative Office for action. However, an entire facility can be closed only if the circuit judicial council recommends and the Judicial

5. Prospectus space projects are projects costing in excess of an amount fixed annually by GSA and requiring line-item approval by the authorizing and appropriating committees in both houses of the Congress. Further, prospectus projects involving new courthouses or annexes are prioritized and ranked in the [Judiciary's Five-Year Courthouse Project Plan](#) approved by the Judicial Conference. The plan is provided to the GSA to seek funding from Congress as part of the President's budget request.

6. The one exception to this is the Fifth Circuit, which may approve lease-construction projects. A lease-construction project, also known as a lease construct courthouse, refers to the circumstance in which a private developer constructs the facility to the lessee's (the GSA on behalf of the judiciary) specifications on the developer's land. The *U.S. Courts Design Guide* is applicable in the build-out of the court spaces, and the Interagency Security Committee's *Security Design Criteria* apply to the entire building and site. This type of courthouse generally contains one or two courtrooms at most and chambers. The rent for these projects must be below the prospectus level in the year the project is initiated.

Conference approves closure. In addition, Congress has asked to be notified when facilities are to be closed. On Conference approval of a closure, the Administrative Office will request that the GSA close the facility and notify Congress.

d. Space alterations and construction

Space alteration projects fall into two categories: (1) projects that are less than the prospectus level (a threshold amount fixed annually by GSA), and (2) projects that are equal to or greater than the prospectus level (and therefore must be approved by Congress through line items in GSA's annual budget). Under budget decentralization, funds are allocated to each circuit judicial council to fund projects throughout its circuit.

Courts have limited authority to perform tenant alterations or other construction and must rely on the GSA to make alterations through a process called a reimbursable work authorization (RWA).⁷ For projects that are less than the prospectus level, circuit and court unit executives have authority to sign RWA requests to the GSA for tenant alterations costing up to \$25,000. The circuit judicial council must approve alterations costing more than \$25,000 but less than the prospectus level.

Additional information on space alterations and related matters is available in the *Guide*, Vol. 16, Ch. 3.

e. Cyclical facilities maintenance

The administrator of the GSA has delegated to the director of the Administrative Office authority to procure certain cyclical maintenance services up to \$100,000 in contract value directly from private sector vendors. The director has redelegated this authority to the courts. The cyclical facilities maintenance program provides funding to court units for the specific cleaning, repair, and replacement services authorized by this redelegation.

To obtain cyclical maintenance services, a court can either issue a reimbursable work authorization (RWA) to GSA requesting that it procure such services or, under the cyclical facilities maintenance program, the court can procure the services from a commercial vendor. Services from a commercial vendor are procured in accordance with the policies and procedures contained in the *Judiciary Procurement Program Review Procedures*, the *Judiciary Purchase Card Program*, and the *Guide*, Vol. 14.

Regardless of the method used, courts must consult with their respective GSA building manager on all cyclical facilities maintenance projects to ensure that the GSA will authorize completion of the work by the outside vendor and that the work

7. As of December 2013, only the district court for the Northern District of Alabama operates facilities under a building delegation signed by the director of the Administrative Office and the administrator of the GSA. The court is authorized to conduct procurements up to the limits of its delegation.

will be accomplished according to building standards. Courts are encouraged to first determine whether the appropriate GSA office can provide the needed services on more favorable terms than those offered by a commercial vendor. If GSA procures the needed services, it will charge a fee, generally calculated as a percentage of the price. If a commercial vendor is used to perform the work, GSA retains the right to inspect the project to ensure it meets all regulatory requirements and to charge a fee for such inspection.

The *Cyclical Facilities Maintenance Desk Reference*, which reflects the formal delegation and provides guidance on implementation of the cyclical facilities maintenance program, has been posted on the Facilities page of the J-Net.

f. Daily building operations

The chief judge may need to know about miscellaneous matters pertaining to daily building operations, such as space rental, parking policies, and use of utilities outside normal working hours. Advice or assistance concerning these matters can be obtained from the clerk of court, the circuit executive, or the Administrative Office. Extensive online guidance on space and facilities matters is also available on the Facilities page on the J-Net.

2. Court security and emergency preparedness

a. Court security program

i. Role of the U.S. Marshals Service. The U.S. Marshals Service, a bureau of the Department of Justice, is responsible for the security of the federal courts, providing security for judges and members of the judicial family. 28 U.S.C. § 566(a). A major part of the marshals service's mission is to ensure that courthouses and courtrooms are safe. It has been successful in providing a safe and secure environment for the operation of the federal courts through the development of effective court security techniques. It is essential that courts establish an effective liaison with the U.S. marshals office in their districts and become familiar with their policies and programs. At the national level, the Administrative Office maintains a liaison with the Marshals Service and oversees the Judicial Facility Security Program (discussed in subsection ii, below), which is funded by the judiciary.

In the event of any threat to a federal judge or courthouse, contact the Marshals Service.

ii. Security programs. The following are security programs managed by the U.S. Marshals Service.

- **Technical Assistance Program.** The program provides technical assistance in surveying and determining security requirements for federal court facilities. The Marshals Service undertakes an analysis and security inventory

of court facilities and makes recommendations to the local court security committees for instituting security systems, devices, and procedures.

- **Courtroom Security Program.** Security at federal court proceedings is provided by the physical presence in the courtroom of one or more deputy marshals. The U.S. Marshals Service, however, is not required to provide a deputy marshal for all court proceedings. In March 1982, an agreement was reached between the Judicial Conference and the U.S. Attorney General that the Marshals Service would provide physical security for high-risk proceedings. In March 2003, the Judicial Conference amended its policies on courtroom security to require a deputy U.S. marshal in the courtroom during all criminal proceedings in which a defendant is present, including proceedings before magistrate judges, unless the presiding judge determines a marshal is not required; and a court security officer (CSO) in all civil proceedings in which a party is present, including bankruptcy proceedings, upon the determination of the presiding judge. The Judicial Conference also reaffirmed, notwithstanding the policies established above, that the presiding judge may determine the level of security necessary in a particular proceeding pursuant to 28 U.S.C. § 566(b). CSOs, however, should never be used in a high-risk proceeding without the presence of U.S. marshals.
- **Protective Investigations Program.** The Marshals Service conducts protective investigations on individuals suspected of posing a risk to judges and judicial employees. They analyze threats and inappropriate communications and determine the appropriate protective response. Each district office has a deputy marshal trained in conducting these investigations. The Marshals Service notifies the FBI upon receipt of all inappropriate communications, and joint investigations are conducted when necessary. More information about this program can be obtained from the U.S. marshal in each district.
- **Personal Security Program.** When the need arises, this program provides for the personal security of federal judges and judiciary employees. Personal security is tailored to the needs of the protectee resulting from Marshals Service risk assessment. Protective measures can include a 24-hour protective detail and/or portal-to-portal transportation. Federal judges who do not have a residential alarm system may qualify for a government-purchased and installed system. Additional information about how judges can obtain home security systems is available on the J-Net.
- **Judicial Facility Security Program.** Using funds provided by the judiciary, the Marshals Service contracts with private security firms to provide CSOs. The primary duties of CSOs are to provide a security presence at federal courthouses and judicial areas of multitenant federal buildings housing court operations. The CSOs provide security screening by using magnetom-

eters and X-ray security screening equipment. They also provide access control for parking lots and garages and conduct interior and exterior roving patrols. Like deputy U.S. marshals, CSOs are armed. CSOs are deputized by the Marshals Service, but this authority does not extend beyond the work site. The Judicial Facility Security Program also provides resources for the purchase, installation, and maintenance of security systems and equipment for judicial areas.

iii. Security committees

- **Judicial Conference Committee on Judicial Security.** The Committee on Judicial Security has jurisdiction over all court and judicial security matters. It reviews and monitors security policy for the judiciary and makes recommendations for changes when deemed advisable. The committee's responsibilities include reviewing the provision of security services by the U.S. Marshals Service, the Federal Protective Service (FPS), and the GSA. The committee meets semiannually and submits recommendations on a wide range of court security matters to the Judicial Conference. Suggestions for agenda items can be directed to the Administrative Office.
- **Court Security Committees.** Each judicial district has a court security committee (CSC) consisting of the following: the U.S. marshal for the district, who serves as principal coordinator of the committee; the chief district judge (or judge designee); a magistrate judge; a representative of the bankruptcy court; a circuit representative in districts in which there is a court of appeals or the chambers of a circuit judge; the U.S. attorney, where appropriate; the clerk of court; and a representative of the GSA, where appropriate. The responsibilities of the court security committee are to develop and implement a district-wide security plan and to meet periodically to identify security problems and recommend solutions. The local court security committee is responsible for addressing the security concerns of the entire judicial family, including judges, chamber staffs, clerks, probation and pretrial services officers, librarians, public defenders, and other members of the court. This responsibility includes the security for all judicial areas within federal buildings as well as any leased space that has court staff on site. Any building security countermeasures and/or enhancements proposed by the CSC, including Federal Protective Service (FPS) contract guards, must first receive approval from the Administrative Office.
- **Building Security Committees.** In *Vulnerability Assessment of Federal Facilities*, issued in June 1995 following the April 1995 bombing of the Alfred P. Murrah Building in Oklahoma City, the Department of Justice (DOJ) recommends the establishment of building security committees (BSCs) for each federal facility under GSA's control. Unlike Court Security Commit-

tees, which consist of representatives of the court family and address security issues involving the courts, BSCs address the security requirements of multitenant federal buildings and consist of representatives from all of the federal agencies that occupy the building and the GSA. BSCs are tasked with evaluating the building's physical security requirements against the standards outlined in the above mentioned DOJ report. Each BSC should forward to the GSA its requests and cost estimates for the security enhancements necessary to comply with the standards. Any building security countermeasures and/or enhancements proposed by the BSC, including FPS contract guards, must first receive approval from the Administrative Office.

iv. Security surveys and plans. Each district marshal should conduct an annual standardized and comprehensive court security survey of each judicial facility in the district. The marshals should also develop a written judicial security plan for each judicial facility within the district, based on the results of the court security survey. This plan should include all security policies and procedures for the facility.

v. CSO staffing standards. The number of CSO positions allocated to a particular district is determined based on a facility-by-facility application of a staffing formula developed by the Marshals Service and endorsed by the former Judicial Conference Committee on Security and Facilities. The staffing formula limits the assignment of CSO positions to full-time places of holding court with a judicial officer in residence or at a visiting location where court is routinely held two or more weeks a month. The total number of CSO positions assigned to a particular district is determined by adding the number of CSOs that each facility within the district is entitled to under the formula. Each CSO contract specifies the location (facility) where the CSO is to be assigned and the number of CSO hours authorized for that location.

Although the total number of CSO positions allocated to a district is based on a facility-by-facility analysis, where the CSO positions are actually assigned in the district is determined locally by the U.S. marshal and the district's court security committee. If a district wishes to reassign CSOs from one facility to another, a request to modify the CSO contract should be forwarded to the Marshals Service's Judicial Security Division.

vi. Role of the Administrative Office. The Administrative Office provides advice and assistance to the judiciary on security matters. It is responsible for assisting in the formulation of security policies for the judiciary, monitoring the Marshals Service's provision of security services to the judiciary, overseeing the implementation and financial management of the Judicial Facility Security Program, working with the Service on security policies and procedures, reviewing the Service's formulation

of the annual court security appropriation request, and providing advice to court officials on security matters.

vii. Moving to new facilities—security issues. When a court begins to consider a move to new facilities, it is essential that the chief judge contact the district’s U.S. marshal. Security concerns are best addressed when the U.S. marshal is involved at an early stage in any relocation discussions and before site selection has been made. Through that process, the chief judge can determine from the marshal the type and level of security that should be provided at the new location.

b. Emergency preparedness

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

Under GSA regulations, the highest ranking official of the primary agency in each federal building is the “designated official” who oversees emergency planning to ensure that occupant emergency plans are made and that employees are designated to undertake emergency response duties should the need arise. The court security committee or the Building Security Committee in a given facility usually takes the lead in developing occupant emergency plans and may also assist in developing plans for continuity of operations.

Further information on emergency preparedness can be found on the J-Net.

E. Information Technology

1. Long Range Plan for Information Technology in the Federal Judiciary

The Administrative Office provides a variety of computer equipment and specific software applications to the federal judiciary, including case management/electronic case files (CM/ECF). The Administrative Office also maintains the Data Communications Network (DCN), which provides electronic mail services for the courts and access to the judicial branch’s intranet (J-Net) and the public Internet.

The various computer software applications available to the courts and their current and projected status are described in the most recent *Long Range Plan for Information Technology in the Federal Judiciary*. This plan, first issued in 1983, is revised annually after review by the Judicial Conference’s Committee on Information Technology. The committee also sets priorities for implementation of information technology (IT) projects that may be funded from the Judiciary Information Technology Fund, which is administered by the Administrative Office under the com-

mittee's direction. In developing strategies for the implementation of information technology, the Administrative Office communicates with advisory groups of judges, clerks of court, and other court employees.

2. Setting local priorities

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

There are several approaches to managing a court's IT structure. Some districts have separate systems managers and systems staff for the clerks' offices and probation and pretrial services offices. Some districts have developed formal arrangements for the offices to share technology resources and determine common goals and priorities. In other districts, collaboration may be less formal. Some districts have consolidated their IT resources under one umbrella, with a single systems manager coordinating the resources of all offices in the district.

3. Case management/electronic case files (CM/ECF)

As a general rule, information that a judge needs regarding cases can be obtained from the CM/ECF system utilized in the court. For example, the CM/ECF software comes installed with a variety of standard case-management reports that can be used for case administration and quality-control purposes.

In addition to the standard reports, many courts have developed reports that meet the individual needs of their judges and their clerk's office staff. Clerks' offices either possess the local programming skills to produce ad hoc reports for court management and for judges or obtain support from another court to develop reports for local use. Accordingly, the chief judge may consult the clerk of court to determine the court's reporting needs and capabilities.

Automated reports generated from CM/ECF can be used in a variety of ways in the court. Most prominently, automated reports are used for quality control of the data that goes into the database, case-management, and executive level reports for court managers. In addition, the clerk's office can provide a variety of automated case information in reports on an ad hoc basis.

The *CM/ECF Chambers Handbook* is available on the J-Net to assist judges with the use of CM/ECF. In addition to information concerning legal and policy issues that judges were most concerned with during the implementation process, the handbook contains the following: information about chambers use of CM/ECF; information regarding software functionality; statistics; and a glossary of common terms used with respect to CM/ECF.

4. Electronic courtrooms, audio records, and electronic transcripts

Various technologies can be used in the courtroom to help manage cases, to reduce trial time and litigation costs, and to improve fact-finding, juror understanding, and access to court proceedings. The Judicial Conference endorses the use of technologies in the courtroom, including video-evidence presentation systems, video-conferencing systems, and electronic methods of taking the record. Subject to the availability of funds and priorities set, the Conference recommends that courtroom technologies be considered necessary and integral parts of courtrooms undergoing construction or major renovation and be retrofitted into existing courtrooms or those undergoing tenant alteration as appropriate.

The Administrative Office has contracts with several companies for the design of courtroom audiovisual systems and for their installation. For more information, go to Courtroom Technology on the J-Net.

The Federal Judicial Center's *Effective Use of Courtroom Technology: A Judge's Guide to Pretrial and Trial* (2001) provides case management and legal guidance to judges on the use of courtroom technologies. Another resource is the Center's *Roundtable on the Use of Technology to Facilitate Appearances in Bankruptcy Proceedings* (Aug. 11–12, 2005, Washington, D.C.).

5. Telephone systems and telecommunications

The clerk of court serves as the court's "telephone coordinator." Although the duties of coordinator may be delegated, the clerk remains responsible for the proper performance of those duties. Each circuit executive's office has a telecommunications coordinator responsible for coordination of telephone activities in that circuit. The coordinator is the court's liaison with vendors, the circuit executive, the Administrative Office, and the GSA. The coordinator is responsible for arranging service maintenance, the purchase of new or additional equipment, and the certification of invoices. Courts should seek assistance as soon as possible if there is to be major renovation or new construction that will involve telecommunications issues. Telecommunication guidance can be found on the Telephony site on the J-Net. In addition, assistance with telecommunications can be obtained from the Administrative Office.

6. Library service

The federal court library system was established at the circuit court level. 28 U.S.C. § 713(a). Pursuant to § 713(b), the circuit librarian may, with the approval of the court, appoint assistants in such numbers as approved by the director of the Administrative Office. A headquarters library exists at each circuit headquarters with staffed satellite libraries established in many courthouses across the country.

To efficiently utilize funding for legal resources and minimize duplication, the chief judge should encourage judges, especially those collocated with a library, to first consider the legal resources available in court libraries and online. This approach often will go a long way toward addressing the court's need for publications. Sharing of resources among judges also is encouraged. To the extent that additional materials are deemed essential, the *Guide* contains a listing of suggested resources that judges may request and others that can be provided subject to availability of funds. See *Guide*, Vol. 21, Ch. 3, § 330.20. Contact your librarian or the Administrative Office for assistance with any library matter.

Another valuable tool for legal research is the availability of computer-assisted legal research (CALR). Two main systems, Lexis and Westlaw, are available to all judiciary personnel. These services provide desktop access to the full text of all reported state and federal cases, selected unreported cases, rules of civil and criminal procedure, ALR annotations, selected law reviews, and specialty materials on a wide variety of subjects. For password access, training, or assistance with the systems, contact the CALR coordinator or local satellite librarian. For additional information about CALR, contact the circuit librarian or the Administrative Office.

In addition to Lexis and Westlaw, other online resources are available, including HeinOnLine, the Oxford English Dictionary, and the Law Library Microform Consortium (LLMC) collection of online government and other historical documents. These resources are available without password to all judiciary users. Additional online resources also may be made available within each circuit by the circuit libraries in order to meet the unique research needs of that circuit. A list of links to legal and general research resources is available on the J-Net; more detailed information is available on each circuit library's webpage.

7. Training support

IT training is available at both the national and local levels. At the national level, training support for court staff is provided primarily through the Administrative Office's Systems Deployment and Support Division (SDSD) Training Branch. The SDSD Training Branch provides training for staff on applications that are supported nationally. Much of this training takes place at the training center in San Antonio, Texas. In addition, SDSD has developed online computer-based training (CBT) and written training materials. Go to the SDSD Training Branch website for more information, including training schedules.

Specialized IT training for judges is available, including how to use specific software applications. FJC Online and the J-Net contain IT training resources for judges in various formats, including the Chambers Online Automation Training electronic learning modules. The Federal Judicial Center and the Administrative Office have partnered to train local court staff to provide training and assistance specifically for judges. A new chief judge should check with the clerk of court to see whether the

court has had such training. If not, the chief judge may want to see whether such training can be provided.

IT training is also provided at the local court level. One or more individuals within the clerk's office and chambers may be involved in the training. Such training can also be provided by personnel from other court units under a sharing arrangement or by outside trainers brought in to train on specific applications when appropriate. Materials and expertise to support local training can be located and/or developed locally or nationally. Local talent in the area of training has also been a great resource for supplementing and further developing IT skills. The clerk of court should have information on the availability of local IT training.

8. Personal use

To protect the security of the judiciary's electronic systems and information, the Judicial Conference approved a national minimum standard defining appropriate personal use of government office equipment subject to the right of each court unit to impose or maintain more restrictive policies. Individual courts are responsible for enforcing appropriate use policies. *Personal Use of Government Office Equipment (Including Information Technology)* is available on the J-Net's Information Technology page or through the Administrative Office.

9. Additional information

For more information about the judiciary's information technology programs, including Judicial Conference policy, security and privacy issues, and managing your local IT program, see the *Guide*, Vol. 15, *Judges' Manual*, Ch. 20, or contact the Administrative Office.

F. Procurement and Property Management

The director of the Administrative Office has delegated to chief judges the authority and responsibility for procurement and management of goods and services in their respective courts. See *Guide*, Vol. 1, Ch. 6, §§ 630, 640. The chief judge, in turn, should delegate the authority and responsibility for property procurement and management to a procurement liaison officer, a custodial officer, and a disposal officer. To minimize the vulnerability of property to fraud or abuse, no one person should serve in all three property-management positions.

1. Procurement liaison officer

The procurement liaison officer is usually the clerk of court, but the chief judge may designate another employee. The chief judge should designate the court's procurement liaison officer in writing. A copy of the designation should be retained in the

chief judge's administrative file and a second copy should be sent to the Administrative Office.

Designations of procurement liaison officers become effective once the designee certifies that he or she has "read, understood, and will comply with Volume 14, Chapter 1 of the *Guide*." Upon designation by the chief judge and certification by the designee, the procurement of goods and services becomes the responsibility of the procurement liaison officer.

2. Custodial officer

The custodial officer is responsible for receiving, storing, and maintaining inventory lists of all equipment, furniture, and other property that costs \$250 or more and was obtained by procurement, transfer, or donation. The chief judge should designate a custodial officer in writing. A copy of the designation letter should be maintained in the judge's file and a second copy should be forwarded to the Administrative Office. The custodial officer also must report excess property to the disposal officer (discussed below).

3. Disposal officer

The chief judge should designate a disposal officer, usually the chief deputy clerk, who is responsible for approving the proper disposal of excess and surplus property.

4. Additional resources

Information on the judiciary's procurement program and specific procurement policies is found in the *Guide*, Vol. 14. Information on property management and further description of the property management functions regarding IT resources can be found in the *Guide*, Vol. 15, Ch. 5.

G. Shared Administrative Services

The judiciary has maintained a long standing effort to contain costs and improve efficiency, and the sharing of administrative services is one tool in this continuing effort. Generally, shared administrative services can mean sharing with other court units in the same district, sharing administrative services with other courts in the same circuit, or even sharing such services with other court units outside the district and circuit.

Courts have developed and implemented several means of sharing administrative services with other court units. Administrative services that could be shared include human resources, information technology, finance and budget, contracts and procurement, property management, space and facilities management, and training.

Chief judges should be aware of past and current efforts to share administrative services (both with respect to their own courts and with respect to other courts) and encourage their courts' management to explore new and different ways of sharing services. The sharing of administrative services offers the possibility of reducing costs and improving efficiencies, but implementing shared services can be complicated because of entrenched practices and attitudes and because of concerns about job security and responsiveness of service. Therefore each opportunity should be thoroughly examined for likelihood of success and to ensure continued operational effectiveness.

Because of a high level of interest, efforts have been made in recent years to study, collect, and develop information on sharing administrative services. To learn more about the topic, generally, chief judges should consult the Shared Administrative Services page on the J-Net. Chief judges should also be aware of JShare, an online resource for courts to offer or seek to share services with other courts.

H. Strategic Planning

Long-range planning is actively promoted in the federal courts. See *Strategic Plan for the Federal Judiciary*, September 2010. Planning enables courts and court units to establish objectives for the future, evaluate their results, and implement changes when needed. It offers a useful mechanism for examining major issues in a systematic manner and for determining how to allocate scarce resources.

The Administrative Office has developed many resources for courts to use in conducting their own long-range planning—these resources are available on the J-Net's Long-Range Planning site. One such resource is a “mini-guide” identifying ten things chief judges can do to support and strengthen planning efforts in their courts. In addition, the site includes several sample long-range plans developed by district courts throughout the country.

Commitment from all the judges, the clerk of court, and all court units is important to the success of any plan or initiative. To assist courts that wish to engage in long-range planning, the Administrative Office has developed a handbook, *Planning Handbook for Federal Courts*. The handbook suggests an approach to establish a planning process and to producing a plan. The long-range planning process and materials in the handbook may be used by courts or court units at any level. The handbook presents the mechanics and basic methodologies for going through the planning process. It also recommends that a local planning committee be established to provide the substance and context for planning decisions. The *Planning Handbook* is available on the J-Net's long-range planning site.

The Federal Judicial Center also has several resources on strategic planning, available on FJC Online. The Center periodically conducts strategic planning workshops and provides advice to individual courts to help them develop and implement strategic plans.

I. Reporting Requirements

To enable the director of the Administrative Office to fulfill statutorily mandated responsibilities, each month each court is responsible for assembling and transmitting to the Administrative Office certain data extracted from the court's docket. In addition, certain reports must be prepared and filed. The Administrative Office uses these data to compile statistical information about the work of the federal courts. The Administrative Office and circuit councils use the data to evaluate requests from district courts, such as for judicial assistance. The Administrative Office has developed training materials, which incorporate the use of CM/ECF.

1. Statistical reporting

The director of the Administrative Office is required to present statistical information on the caseload of the courts to the Judicial Conference and the Congress. 28 U.S.C. § 604(a)(2), (3). Accordingly, each district court is responsible for extracting, correcting, and transmitting specific docket data to the Administrative Office. The data are compiled, analyzed, and published in statistical reports on the operations and caseloads of all federal courts (e.g., the *Annual Report of the Director, Federal Court Management Statistics, Federal Judicial Caseload Statistics*). In general, the court data are collected by the clerk of the court and sent to the Administrative Office electronically. In addition, each district judge must send a monthly report of trials and other judicial activity (Form JS10) to the Administrative Office, usually as an electronic online form.

The clerk of court is generally responsible for the accurate and timely processing of all the case-related statistical forms and the transmission to the Administrative Office of data extracted from the docket. These statistical reports provide information necessary to the effective operation of the court system and to meet congressional reporting responsibilities.

The *Criminal Statistical Reporting Guide*, the *Civil Statistical Reporting Guide*, and the *Guide*, Vol. 18, Ch. 3, contain explicit instructions on the preparation of manual statistical reports and the forms to be used.

The *Guide*, Vol. 18, Ch. 5, § 510, also contains filing instructions for the district judge's quarterly report of matters that have been under advisement for over 60 days. These reports must be completed by the judges personally, and the chief judge should ensure that they are handled correctly and submitted on time.

While the statistical data provided to the Administrative Office and the programs and manuals relating to the collection and transmission of those data are used primarily by the clerk's office, the chief judge should be aware of the statistical information available. Oversight of the statistical program will keep the judge informed of court operations and the possible need for internal changes. The statistical information is valuable both for internal court-management purposes and

to prepare and justify requests for court resources. The Administrative Office can assist in preparing specially tailored reports, including weighted caseload by judge, division, and county and/or zip code within a district, as well as comparative analyses of specific aspects of a court's caseload and/or case processing relative to other districts.

2. Intradistrict reports

The chief judge may choose to initiate an informal practice of periodic reporting within the district. The chief judge can access the district's case-filing and case-management reports through the electronic case-management system. In order to obtain additional information not available through CM/ECF, the chief judge may ask that court units in the district submit periodic reports. Such reports generally focus less on statistics and more on the court's accomplishments and problems, as well as projections for the future. Reports may include personnel data; budget information and projections for the next fiscal year; space and facilities information, especially if any changes, additions or renovations are planned or underway; the status of case-management or other courthouse issues; and any other topics relevant to the district as a whole.

The practice of intradistrict reporting to the chief judge varies from district to district. In districts where a chief judge initiates or continues such a reporting practice, it is advisable to apprise the entire district well in advance of any submission deadlines, as well as the topics to be covered and the specific format (if any) to be used.

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

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

A. *Local Rules*

1. Purpose

The use, and even the existence, of local rules has long been the subject of controversy, as has judicial rule making generally. See *Hollingsworth v. Perry*, 130 S. Ct. 705 (2010). District courts, and especially chief judges, should consider the purposes their local rules are to serve and the appropriate processes for their adoption, modification, and distribution to the bar.

Local rules generally should specify how lawyers and the court should proceed during litigation. In addition, a handbook or webpage for attorneys explaining court procedures, and perhaps significant variations in the practices of the court's individual judges and magistrate judges, can assist attorneys in filing and preparing cases and thus reduce the number of questions they put to the clerk's office. In adopting local rules, courts should consult with the bar, in addition to providing the statutorily required "appropriate public notice and opportunity for comment" (28 U.S.C. § 2071(b)).

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

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

2. Authority, public comment, and distribution

The chief judge should oversee local rule making. The Rules Enabling Act, as well as Federal Rule of Civil Procedure 83 and Federal Rule of Criminal Procedure 57, authorize district courts, by majority action of their judges, to make and amend rules of practice that are not inconsistent with the federal rules. The Judicial Conference

has adopted a numbering system for local rules that corresponds with the relevant federal rules of practice and procedure. See Fed. R. App. P. 47; Fed. R. Bankr. P. 8018 and 9029; Fed. R. Civ. P. Rule 83; and Fed. R. Crim. P. Rule 57.

Federal Rule of Civil Procedure 83 and Federal Rule of Criminal Procedure 57 both specify that the making and amending of local rules require public notice and comment. Likewise, 28 U.S.C. § 2071(b) requires “public notice and an opportunity for comment” before district courts can promulgate new rules, although a court may prescribe rules without public notice and opportunity for comment if “there is an immediate need” for the rule (28 U.S.C. § 2071(e)). Congress has also directed courts of appeals and district courts to appoint advisory rules committees to study their rules of practice and internal operating procedures and to make appropriate recommendations (28 U.S.C. § 2077(b)).

Local rules take effect when the district court directs, and those rules remain in effect unless the court amends them or the circuit judicial council abrogates them. Circuit judicial councils are required to review local rules periodically for consistency with the federal rules (28 U.S.C. § 332(d)(4)) and to modify or abrogate local rules that fail to comply.

Federal Rule of Civil Procedure 83 and Federal Rule of Criminal Procedure 57 direct that copies of local rules be furnished to the circuit judicial council and the Administrative Office and be made available to the public. The miscellaneous fee schedules, promulgated pursuant to 28 U.S.C. §§ 1914 and 1930, allow the courts to charge fees for copies of the local rules, commensurate with the cost of providing either paper or electronic copies, or to distribute them free of charge. Courts have posted their local rules on their public websites, which can be accessed through the Internet at <http://www.uscourts.gov>.

B. Places and Times of Holding Court

District courts, divisions of the court in some districts, and places of holding court are prescribed in 28 U.S.C. §§ 81–131. Section 141 of Title 28 authorizes special sessions of court. Although Congress has told district courts not to hold “formal terms” of court (28 U.S.C. § 138), in practice many courts continue to honor the concept, especially in districts with more divisions than judges. As a result, judges specify when they will be available at the various divisions. The court is to determine the times of holding court, and a court may pretermite a court session with circuit judicial council approval (28 U.S.C. §§ 139–140).

Occasional pressure to increase the number of places of holding court in a district, perhaps to benefit the local bar or enhance the prestige of a community, led the Judicial Conference to recommend that Congress establish new places of holding court only upon a strong showing of need, corroborated by data, and with the support of the chief district judge and circuit judicial council. The Conference will not consider proposals to change the geographical and organizational configurations

of federal judicial districts unless both the district court and circuit judicial council have approved the change and filed a brief report with the Committee on Court Administration and Case Management summarizing their reasons.

C. Jury Matters

The Jury Selection and Service Act, 28 U.S.C. §§ 1861–1878, provides the judicial machinery for selecting federal juries. The chief judge should ensure that the court follows the statute and Judicial Conference policies and that the court has procedures in place to ensure compliance with the law. These include procedures for proper treatment of prospective jurors, juror orientation, and effective juror utilization. The chief judge should monitor the court's jury utilization statistics. See *Guide*, Vol. 4, Ch. 3, for information on jury matters.

The Administrative Office's annual *Report on Juror Utilization* may also prove helpful. The Center has produced two media programs that courts can use for juror orientation: *The Federal Grand Jury: The People's Panel* (2009) and *Called To Serve* (2013), a program on petit juries. The Center sent DVD copies of these programs to all district courts. Additional copies can be ordered on FJC Online. The Administrative Office's *Handbook for Trial Jurors Serving in the United States District Courts* (October 2007) and *Handbook for Federal Grand Jurors* (October 2007) (Forms HB 100 and 101) can be downloaded from the J-Net.

In some districts, instructing the grand jury is a function traditionally assumed by the chief district judge. The Center's *Benchbook for U.S. District Court Judges* § 7.04 (6th ed. 2013) includes grand jury instructions approved by the Judicial Conference.

D. Statutory and Other Requirements

1. Speedy Trial Act

The Speedy Trial Act of 1974, as amended (18 U.S.C. §§ 3161–3174), requires each district court to have a plan describing the court's goals and performance under the Act. The chief district judge should be familiar with the court's plan.

The chief judge should give special attention to judicial emergencies and suspensions of the Act's time limits. Although used sparingly, 18 U.S.C. § 3174(a) authorizes the chief district judge, "after seeking the recommendations of the planning group," to apply to the circuit judicial council for a suspension of up to a year of the Act's time limits for commencement of trial (18 U.S.C. § 3161(c)). Under 18 U.S.C. § 3174(e), the chief judge may also order a thirty-day suspension, but a request for a longer suspension pursuant to subsection (a) must be made by the chief judge to the council within ten days of the entry of such order.

2. Alternative Dispute Resolution Act

The Alternative Dispute Resolution Act of 1998 (28 U.S.C. §§ 651–658) requires each district court to “devise and implement its own alternative dispute resolution program, by local rule adopted under [28 U.S.C.] section 2071(a), to encourage and promote the use of alternative dispute resolution in its district.” Under the Act, courts have a number of obligations, including providing litigants with at least one alternative dispute resolution (ADR) process, adopting procedures for making ADR neutrals available, establishing qualifications and training requirements for neutrals, adopting local rules on confidentiality and disqualification of neutrals, and designating an employee or judge to administer the ADR program.

The chief judge has no specific obligations under the Act but should ensure that the Act’s requirements are met. This responsibility could be delegated to another judge or to a committee of judges and bar members. Courts have found that an ADR program is more likely to meet the needs of judges and attorneys, and thus is more likely to be used, if both groups are involved in designing the program. The Judicial Conference’s Committee on Court Administration and Case Management has prepared *Guidelines for Ensuring Fair and Effective Court-Annexed ADR* (1997). The Federal Judicial Center’s *Guide to Judicial Management of Cases in ADR* (2001) provides information on the costs and benefits of various ADR procedures.

3. Civil Justice Reform Act

Congress enacted the Civil Justice Reform Act of 1990 in response to a perception that civil litigation in federal district courts costs too much and takes too long. The *Civil Litigation Management Manual* was produced in response to the CJRA, under the direction of the Judicial Conference Committee on Court Administration and Case Management, with substantial contributions from the Federal Judicial Center and the Administrative Office. The Judicial Conference approved the second edition of the manual in March 2010.

Although most CJRA provisions expired in 1997, the Conference’s May 1997 final report to Congress included recommendations that remain in place:

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

- extend education regarding efficient case management to the entire legal community; and
- where appropriate, encourage the use of electronic technologies in the district courts.

The report also endorsed the national statistical reporting requirements in the CJRA.

E. Case Assignments

Section 137 of Title 28 directs district courts to adopt rules or orders that specify how cases will be assigned to the individual district judges. The chief judge is “responsible for the observance of such rules and orders, and shall divide the business and assign the cases so far as such rules and orders do not otherwise prescribe.” The chief judge or the court sometimes delegates this responsibility to the most senior active judge in a division or court location.

1. Chief district judge’s caseload

The chief judge needs to decide whether to take a reduced caseload. Some chief judges are reluctant to reduce their caseloads, either because they fear appearing to shirk responsibilities that will devolve on other busy judges or because they regard resolving cases as the essence of a judgeship and thus a full caseload as their primary obligation. However, to create the conditions under which all judges can meet their responsibilities, the chief judge should give proper attention to a court’s systemic administrative needs. The conventional view, at least in larger courts, is that a chief judge should not carry a full caseload.

To reduce the caseload, the chief judge might take only criminal cases or only civil cases, or take a reduced percentage of case assignments—civil, criminal, or both. The chief judge can take responsibility for only particular types of cases or matters, such as pre-indictment motions or grand jury instructions. Reassignment of current cases is inefficient and impedes an effective case-management system.

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

2. Random assignment

Most district courts use an automated case-assignment system, available from the Administrative Office—the system permits courts to use a variety of approaches to random assignment. For example, a court may decide simply to assign each new case randomly to the judges, or a court may decide to assign cases randomly within different divisions of the district or within categories of cases, such as civil and criminal or routine and complex.

3. Protracted, difficult, or unusual cases

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

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

The burden placed on the court by repetitive litigation can be alleviated in two ways. First, all cases from the litigant can be assigned to the judge who received the litigant's first case. This approach provides some means of monitoring issues that the court has already dismissed, but it might unduly burden a single judge. Second, the court or the appropriate committee can order the clerk of court to accept no more pleadings from the litigant without approval of the chief district judge or another designated judge, who may be assisted by a pro se law clerk in reviewing the complaints. This approach focuses responsibility and relieves most of the court of the burden of dealing with the problem. A danger with either approach is that continual meritless pleadings of "frequent filers" might obscure the infrequent meritorious claims that such litigants might file.

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

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

4. Cases under civil priority statutes

Some of the so-called civil priority statutes impose special case-assignment duties on the chief judge. For example, if neither the defendant nor the Attorney General asks for a three-judge panel in a voting rights case, or if the Attorney General certifies a public accommodations case or employment discrimination case as one of “general public importance” yet does not request a three-judge panel, the chief district judge is “to designate a judge” in the district to hear the case on an expedited basis. If no judge in the district is available, the chief district judge should ask the chief circuit judge to assign a judge (either district or circuit) to the district to hear the case. (See 42 U.S.C. § 1971(g), voting rights; 42 U.S.C. § 2000a-5(b), public accommodations; 42 U.S.C. § 2000e-6(b), employment discrimination—in some districts, magistrate judges often hear these “expedited EEO cases”.)

The chief district judge is to order expedited treatment as well for civil RICO cases that are certified by the Attorney General to be of “general public importance” (18 U.S.C. § 1966). It is also the chief judge’s responsibility to advise the chief circuit judge when the Federal Trade Commission or Department of Justice seeks an injunction in connection with pre-merger notification and waiting periods requirements, so that the chief circuit judge can appoint a district judge to hear the request (15 U.S.C. § 18a(f)).

F. Backlogs and Delays

1. Use of judges other than those in regular service in the district

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

a. Chief district judge’s role

Requests for assistance from visiting Article III judges are usually initiated by the chief district judge and are made to the chief circuit judge. Once the request is made, procedures differ depending on whether the visiting judge comes from inside or outside the circuit. For intracircuit assignments, the chief circuit judge is authorized to designate circuit or district judges to serve temporarily on another district court within the circuit (28 U.S.C. §§ 291(b), 292(b)). In some circuits, judicial council committees or the circuit executive, with oversight by the chief circuit judge, may

manage the intracircuit assignment process. Intercircuit assignments require the consent of the Chief Justice, who is authorized by statute to assign active circuit and district judges and judges of the Court of International Trade to serve temporarily on a district or appellate court of another circuit upon a chief circuit judge's presentation of a certificate of necessity (28 U.S.C. §§ 291(a), 292(d), 293). The Administrative Office has posted forms and other guidance on visiting judges on the J-Net.

b. Standards for temporary intercircuit assignments

The Judicial Conference Committee on Intercircuit Assignments assists the Chief Justice in making temporary assignments of Article III judges. The committee develops guidelines in consultation with the Chief Justice to provide direction to the committee and courts seeking temporary help (*Guide*, Vol. 3, Ch. 5, § 530.20).

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

A judge assigned to work on an appellate court should serve for at least one regular sitting on the circuit to which he or she is assigned. A judge assigned to work on the general calendar of a district court should serve at least two weeks.

The Judicial Conference has also approved guidelines for intracircuit and intercircuit assignments of magistrate judges under 28 U.S.C. § 636(f) (*Guide*, Vol. 3, Ch. 7, § 720), and intercircuit assignments of bankruptcy judges under 28 U.S.C. § 155(a) (*Guide*, Vol. 3, Ch. 6, § 630).

c. Host court's responsibilities to visiting judges

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

Visiting judges and their staff should be provided with suitable hotel accommodations, adequate chambers and courtroom arrangements, and support staff when needed. Judicial Conference guidelines allow a judge on assignment to bring up to two staff members; the host court is expected to furnish any additional staff. Whenever possible, the host court should ensure that a courtroom deputy and other support services are available.

The host court should also make sure that the visiting judge's cases are ready for trial, a task that is frequently overlooked. Some courts use a "visiting judge's checklist" to guide clerk's office personnel in reviewing each case to be certain that a pretrial conference has been held and no motions are undecided when the judge arrives. The visiting judge should receive a copy of the complaint and response (or the indictment), any pretrial orders, and other necessary papers. A telephone discussion with the judge can ensure that everything needed is available.

It is important for the clerk to schedule cases to accommodate the judge's visit and then to advise attorneys of the trial dates. Suggestions regarding visiting judges are presented in *The Use of Visiting Judges in the Federal District Courts: A Guide for Judges and Court Personnel* (Federal Judicial Center 2006 update).

2. Chief district judges and case delay

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

Reducing case delay can be difficult, particularly when the delay appears to be the result of a judge's inability to manage his or her caseload. Some courts have established "calendar committees" to relieve the chief judge of the day-to-day responsibility for monitoring caseloads and resolving problems of case delay.

Whether case delay is pervasive throughout the court or limited to certain judges, the first step in reducing it is to identify the extent and causes of delay. This begins with analysis of the case-management data, but more is required than simply perusing statistical reports. It is important to discuss and analyze the reports at judges' meetings or in other forums and to plan a court-wide effort to reduce delay.

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

Delay in civil litigation is sometimes beyond the court's control. Some delay is a natural consequence of the particular litigation. Sometimes delay results from the impact of criminal filings on the civil docket, extended judicial vacancies, or related proceedings. When case delay results from factors largely beyond the court's con-

trol, consider recording that situation in brief memoranda for reference in responding to inquiries from the circuit judicial council or the media.

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

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

A useful tool for dealing with case delay is the *Civil Litigation Management Manual, Second Edition* (2010).

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

3. Circuit judicial councils and case-flow management

Statutory provisions authorize the circuit judicial council's oversight of case-flow management and intervention in poorly administered district courts. The councils' statutory charter holds that "regular business of the courts need not be referred to the council" except when "an impediment to the administration of justice is involved" (28 U.S.C. § 332(d)(3)). However, as noted, the statute also provides a circuit judicial council with the blanket mandate to "make all necessary and appropriate orders for the effective and expeditious administration of justice within its circuit" (28 U.S.C. § 332(d)(1)), and directs "[a]ll judicial officers and employees of the circuit . . . [to] promptly carry into effect all orders of the judicial council" (28 U.S.C. § 332(d)(2)).

The circuit judicial councils are to be provided with statistical data involving district court dockets. Administrative Office statistical reports are first received by the chief circuit judge, who is then required by 28 U.S.C. § 332(c) to submit the reports to the council for "such action thereon as may be necessary." The Administrative Office must "prepare and transmit semiannually to the chief judges of the circuits, statistical data and reports as to the business of the courts" (28 U.S.C. § 604(a)(2)). Pursuant to this charge, the Administrative Office distributes its *Judicial Business of the United States Courts*. The data and reports, along with the director's recommendations, are "public documents" also submitted to the Judicial Conference, the Attorney General, and Congress (28 U.S.C. § 604(a)(2)–(4)).

A semiannual public report, which 28 U.S.C. § 476 directs the Administrative Office to prepare, contains, for each district judge and magistrate judge, lists of motions pending for more than six months, bench trials submitted more than six months ago, and civil cases pending for more than three years. Additional reports, required by the Judicial Conference, show Social Security cases and bankruptcy appeals that are pending beyond acceptable time frames. The Judicial Conference has adopted uniform standards for determining when cases and motions are subject to the reporting requirements. Any questions regarding reporting requirements should be addressed to the Administrative Office.

IV. The Chief District Judge and Representing the Court

A. *Outside Groups*

1. The public

The chief judge usually represents the court at various public events and official ceremonies and often receives speaking invitations from bar groups and civic groups. The court should also have procedures in place for dealing with groups that visit the courthouse and with the public generally (including procedures for what to do if it appears a visitor to the court may become violent or attempt to disrupt a court proceeding).

The Federal Judicial Center brochure, *Welcome to the Federal Courts* (2013), helps federal courts explain their function and introduce visitors to the courthouse. It is available on FJC Online, and courts can order printed copies from the Administrative Office to have available for court visitors. The Center has a Web-based program called *Inside the Federal Courts*, which explains the role and organization of the federal courts, as well as the civil, criminal, appellate, and bankruptcy processes. It is available to the public at <http://www.fjc.gov>. Judges and court officers who speak about the courts to community and civic groups can refer to the History of the Federal Judiciary page on FJC Online and on the Center's Internet site—these pages contain talking points on the federal judiciary, its origins, and judicial independence. The history site also contains teaching materials about historically significant cases in the federal courts.

The Administrative Office publishes and distributes the publication *Understanding the Federal Courts*, which is available on the J-Net and on the judiciary's public website, <http://www.uscourts.gov>. In addition, the Administrative Office operates a community and educational outreach program and makes available materials to assist courts that want to participate in outreach events (e.g., student Law Day programs). See section IV.A.4, *infra*, concerning international visitors.

2. The bar

a. *Admission*

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

b. *Conduct and disciplinary action*

Traditionally, attorney licensing and discipline have been within the sphere of state authority (this can create special problems in the case of federal prosecutors). Federal court rules often vary from state rules and sometimes conflict with them. Inter-

pretations of even the same written text may differ. Most districts simply incorporate the state rules of professional responsibility as the source of substantive ethical standards. In multidistrict states, different districts may take different approaches.

The Judicial Conference approved the Model Federal Rules of Disciplinary Enforcement of the American Bar Association in 1978, and amendments in 1979 and 1984. These rules provide, *inter alia*, for courts to inform the ABA National Lawyer Regulatory Data Bank of their disciplinary actions so that all courts will have access to information on disciplinary action taken by any court against an attorney. The Conference has urged all courts to adopt the Model Rules and emphasized the importance of reporting disciplinary actions to “all licensing authorities with jurisdiction over the attorney or attorneys disciplined.”

c. Admission fees

The court may retain attorney admission fees that it collects in excess of the Judicial Conference minimum and use them “only for purposes which benefit the members of the bench and the bar in the administration of justice” (*Guide*, Vol. 13, Ch. 12, § 1220). Examples of such purposes are attorney admission proceedings, attorney discipline proceedings, periodicals and publications for court libraries for which appropriated funds are not available, lawyer lounge facilities, and charts and stands for courtroom use. Attorney admission fees may not be used to supplement appropriated funds and may not be used to pay for materials or supplies available from statutory appropriations. Under no circumstances should such funds be used to supplement the salary of, or provide any benefit to, a court officer or employee. For policies and procedures relating to attorney admission fees, see *Guide*, Vol. 13, Ch. 12.

d. Services

The chief judge is typically the initial contact between the court and members of the bar with regard to certain court services provided to attorneys. Courts frequently sponsor educational programs for members of the bar. Clerks often make presentations to bar groups or organize or participate in programs dealing with court procedures. Some clerks’ offices run periodic seminars on court procedures for legal secretaries or paralegals. All of these educational measures help to avoid problems with filings and thus reduce the work of the clerk’s office. By making attorneys aware of court requirements and encouraging compliance, these measures also reduce the need for the court to take remedial action.

The relationship of the clerk and the entire clerk’s office staff with attorneys is governed by the Code of Conduct for Judicial Employees. All employees should be made aware of Canon 3C:

A judicial employee should never influence or attempt to influence the assignment of cases, or perform any discretionary or ministerial function of the court in a manner that improperly favors any litigant or attorney, nor should the judicial employee imply that he or she is in a position to do so.

3. The media

Courts can do several things to assist the media. All courts have public websites on the Internet, which they can use to provide basic information about the court, including its location, contact information, calendars, rules, and procedures. The Administrative Office has produced a toolbox of resources for use in the design and development of court Internet websites; the toolbox is available on the J-Net. Some courts prepare press announcements on non-case subjects, such as appointments or retirements, the elevation of a judge to a higher court, the promulgation of new local rules, or the institution of new case-processing procedures, which can be posted on the court's website as well as distributed to the media.

When members of the media contact the court, some courts either have public information officers or have designated someone knowledgeable in court processes and policies—usually the clerk of court or a person on the clerk's staff—as the court's liaison between journalists and judges or other court officials. That person must be made aware of areas that the court views as inappropriate for comment. Clerks and court staff are required by the Code of Conduct for Judicial Employees to refrain from public comment about pending proceedings. Canon 3D should be brought to the attention of all employees:

A judicial employee should avoid making public comment on the merits of a pending or impending action and should require similar restraint by personnel subject to the judicial employee's direction and control.

There is often significant media pressure when a case elicits intense public interest, and staff may need to be reminded of this prohibition. The Administrative Office can provide advice and assistance to courts on media relations.

The Federal Judicial Center's Web-based program *Inside the Federal Courts* can help journalists learn about the role and organization of the federal courts. It is available on the Center's public website, and many courts have links to it on their public websites.

4. International visitors

The judiciary often hosts foreign jurists who wish to learn more about the judicial system within the United States. In addition, judiciary representatives from the United States are sometimes invited by foreign representatives to visit their countries to learn about a country's legal system or to assist its judiciary with legal reform efforts. The Judicial Conference's Committee on International Judicial Relations co-

ordinates with the numerous agencies and institutions involved with international judicial reform and the rule of law and provides information about judicial independence, legal traditions, and effective court administration in the United States. In addition, the Federal Judicial Center, through its International Judicial Relations Office, provides information to judicial and legal officials from foreign countries.

Neither the Committee nor the Center uses judiciary funds to conduct programs assisting foreign entities. Rather, support comes from the sponsoring organization, usually USAID, the State Department, a foundation, an international organization, or a foreign country. The Committee and the Center also do not initiate their own programs. Rather, they serve as resources to other organizations, responding to requests for assistance to the extent it is appropriate and feasible. Judges and court administrators are encouraged to complete the Committee's online questionnaire concerning international activity. This questionnaire seeks to identify the international interests, experiences, and special abilities of judges and court professionals to link requests for assistance to those individuals who might best be able to apply the assistance.

Both the Center and the Administrative Office have developed materials about the federal judiciary that have been translated into other languages, as well as materials for judges to use when speaking to foreign visitors. These can be found on the international judicial relations pages on FJC Online and on the J-Net.

B. Other Government Agencies

1. U.S. attorney

Each district has a U.S. attorney, whose responsibility is to “prosecute or defend, for the Government, all civil actions, suits or proceedings in which the United States is concerned . . .” 28 U.S.C. § 547(2). The U.S. attorney is appointed by the President with the consent of the Senate for a four-year term (28 U.S.C. § 541) and may continue to serve beyond the four-year term until a successor is appointed. In the event of a vacancy in the office of a U.S. attorney, the U.S. Attorney General may appoint an interim U.S. attorney until the vacancy is filled, but not for longer than 120 days. If no permanent presidential appointment is confirmed by the Senate within that time, the district court may appoint a U.S. attorney to serve until the vacancy is filled (28 U.S.C. § 546(d)). Maintaining liaison with the U.S. Attorney's Office on matters such as scheduling, prisoner handling, and courthouse operation contributes to the efficient operation of the district court.

2. General Services Administration (GSA)

The General Services Administration (GSA) is an executive branch agency that serves, in effect, as the landlord for executive agencies and the federal judiciary. It is

responsible for courthouse construction, renovation, and maintenance. Generally, the field office manager (or, for a building operated through Commercial Facility Management, the commercial facility manager) is the primary GSA official responsible for maintaining GSA-operated buildings.

3. U.S. Marshals Service and Federal Protective Service

See Chapter II.D.2.a, *supra*, on court security.

4. U.S. Government Accountability Office (GAO)

The U.S. Government Accountability Office (GAO), a legislative branch agency, studies the performance and expenditures of the federal government, primarily executive branch agencies. It performs most of its studies at the request of Congress. The GAO occasionally conducts studies of federal judicial administration. GAO reports sometimes become the source of congressional inquiries at the time of the courts' appropriations hearings. They may also be referred to the Judicial Conference and result in internal recommendations for change.

The GAO conducts field research in the courts, often interviewing judges and support personnel, as well as Judicial Conference members or committee chairpersons and Administrative Office and Federal Judicial Center staff. The GAO sometimes selects particular districts as illustrative and subjects them to more intensive analysis.

The GAO usually advises the Administrative Office when it proposes to contact particular district courts and personnel, whereupon the Administrative Office advises the chief district judge to anticipate the GAO request. A chief district judge who is contacted by the GAO but has not heard from the Administrative Office should contact the Administrative Office.

5. State and local courts

Good working relationships with state and local courts in a district court's jurisdiction can help a district court resolve scheduling conflicts. Courts should explore sharing some services, such as jury rolls, and should promote cooperation in addressing common problems. In some states, councils of state and federal judges meet periodically to promote cooperation and coordination between the two judiciaries. The *Manual for Cooperation Between State and Federal Courts* (Federal Judicial Center 1997) describes the work of state–federal judicial councils as well as numerous other less formal means of cooperation and collaboration between state and federal courts.

V. The Chief District Judge as Leader: Doing What's Best for the Court

Many judges become chief judge with no formal training and limited practical experience in leading and managing an organization. Hence, many chief judges, especially new ones, express interest in learning about leadership. This chapter, based largely on reported experiences of chief judges and other leaders, suggests leadership principles and techniques that chief judges may want to adopt, particularly when they first begin their duties as chief judge. While other chapters of this deskbook are about “what” and “why,” this chapter is about “how.” The topics are not in order of importance; their importance will vary from judge to judge and from court to court. At the end of the chapter are several scenarios involving court-management issues to help chief judges prepare for and anticipate possible leadership challenges before they arise.

A. Making the Transition to Leader

Some courts, primarily larger ones, have mechanisms for preparing an incoming chief judge for the position. For example, in some courts an incoming chief judge chairs one of the court's management committees (see Chapter II.A.1, *supra*), represents the court on the circuit judicial council, or otherwise is brought into the court's management and administrative decision making processes. Even in the absence of formal transition practices, some outgoing chief judges prepare their successors by, for example, including them in management meetings with court unit executives, copying them on management-related letters, memoranda, and emails, and briefing them on significant management issues facing the court.

Below are three steps a new chief judge can take to assume leadership during the transition period shortly before and immediately after taking the office of chief judge.

1. Learning about the court

Just as in judging cases, the job of chief judging requires making the best decisions possible with the facts available at the time. Gathering the facts needed to make management decisions involves collecting information and educating oneself. But, while judging cases requires being detached and impersonal, leading depends on personal relationships that inspire confidence and commitment in others.

Early visits with the clerk of court and other unit executives are a good first step toward gathering facts and building relationships. These meetings will help the new or incoming chief judge get better acquainted with the unit executives and learn more about each unit executive's operations and major areas of emphasis and concern, such as finance, procurement, IT, and human resources. Whether to discuss

ideas and goals or more specific expectations for the unit executives at these initial meetings will depend on the circumstances. Unit executives and other employees will want some guidance, but the new chief may need to learn more about the organization and its people and to discuss initiatives with colleagues before proposing specific goals, especially if they may involve major change. The first goal at the outset is to create an atmosphere in the court in which the staff know that they can communicate openly with the chief judge.

Similarly, a new chief judge who is not well acquainted with the chief circuit judge, the circuit executive, or the district's chief bankruptcy judge should try to meet with these individuals before or soon after becoming chief. Use the chief judge orientation at the Administrative Office to get acquainted with their offices and staff and to learn whom to call when help is needed. Other valuable sources of guidance and information include the *Compendium of Chief Judge Authorities* (May 2013) and the *Management Oversight and Stewardship Handbook* (reissued July 2003), both published by the Administrative Office and available on the J-Net.

It is also good to establish contacts with outside agencies and constituencies in anticipation of future needs. Even a judge with long-standing personal contacts with the local media, law school and other educational personnel, and the state judiciary may find it helpful to meet with them upon becoming chief judge to enhance lines of communication and cooperation. The chief judge's contacts with outside agencies are likely to multiply and to expand to include institutions like GSA.

And, of course, talking with the other judges on the court, finding out what problems they have, and asking them what help they need, not only educates the new chief judge but helps to establish him or her as the leader among coequals.

2. Changing perspective

District judges do much of their work in isolation, especially those in smaller districts who may sit in single-judge courthouses or other remote offices separated by distance from other judges. Judges become used to working and thinking independently. When judges think of "court management," they may focus on what they need to manage their own chambers and caseloads.

Court governance, however, involves the common good. Chief judges must expand their perspective from managing their chambers to managing the court as an institution. Instead of "What is best for *my* court?" the chief judge must consider "What is best for *the* court?" Sometimes that means disappointing one or more colleagues or employees for the sake of achieving a court-wide good. Sometimes it means declining to take an expedient short-term solution in the interest of accomplishing a longer-term goal. Sometimes it means shielding the clerk of court from other judges who are trying to influence decisions, for example, about space or equipment. "What is best for the court" is the standard by which the chief judge

should measure all management decisions and is the ultimate goal of court governance.

3. Establishing leadership

Acquiring the title of “chief judge” occurs by operation of law. Acquiring the respect of one’s colleagues and staff and earning their acceptance as “leader” occurs over time and as a result of the chief judge’s conduct and actions.

Experienced chief judges recommend that a new chief establish leadership slowly but consistently. Leadership should become part of the chief judge’s daily activity. Below are some steps that a new chief judge can take to build a leadership style so that other judges and court staff will look upon him or her as leader:

- Communicate information regularly
- Walk around and talk to other judges and court staff often. One-on-one conversations are particularly important with people at all levels.
- Send memos, messages, and notes thanking people and congratulating people on milestones and achievements, or to mark holidays or other special occasions for the court.
- Ask people what they need to do their job better.
- Offer suggestions for others to consider. But be careful not to appear to micromanage, particularly at the outset. Leading is about providing direction, not necessarily providing answers.

B. Leadership and Management Skills and Techniques

One chief judge defined “leadership” this way:

Leadership doesn’t mean doing everything yourself. It means making the ultimate decisions, but using all of the resources at your disposal to do what is best for the court.

There is no “best way” to lead a court, or any organization, and no single set of guidelines on how to be a good leader. Moreover, the court’s needs and management priorities may vary over time. The ten subsections below present some basic leadership practices that experienced chief judges, as well as executives and managers outside of the courts, recommend. In addition, new chief judges can read articles on leadership and management in the business sections of national newspapers and magazines, and can consult books on management, some of which are listed in the bibliography.

1. Enhancing collegial leadership

In a collegial organization like a district court, colleagues share authority and responsibility to one degree or another. Effective chief judges use good-faith consul-

tations and, in many cases, joint decision making to produce effective outcomes. As one chief judge said:

Talk to other judges and solicit their points of view when it's appropriate to do so. You may not always be able to reach consensus, but it's important that you try to do so, especially when it comes to major issues that affect the court as a whole.

Methods for keeping colleagues informed and involved vary with the size and geography of the court. They include holding scheduled meetings with a prepublished agenda (consider teleconferencing or using other technology to meet when schedules and distance make it difficult for all to attend meetings); holding informal meetings regularly over lunch or coffee; systematically forwarding relevant correspondence from the circuit, the Administrative Office, the Federal Judicial Center, and similar sources; and sending email updates on key matters. Involving other judges in court management, on committees or as single liaisons, helps keep others informed and interested in the court's administration.

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

2. Building relationships

Chief judges should build on their relationships with all of the court's constituencies, especially colleagues and court unit executives. As President Lyndon B. Johnson famously said: "The best time to make friends is before you need them." Cultivate these relationships by keeping people informed, soliciting their views, recognizing their achievements, and, when necessary, making corrections. All of this contributes to solid relationships.

Schedule regular, routine meetings with unit executives. Although some meetings and contacts may offer no immediate payback, they are of lasting value in creating an atmosphere in which staff know that they can communicate openly. "It gives them the confidence that they can communicate little problems before they become big problems," one chief judge said.

Small gestures can say and mean a lot. A thank-you is always welcome, particularly when it is delivered in person or in a handwritten note. Some courts have staff appreciation events at which judges, for example, serve breakfast to staff. Celebrations and other events offer opportunities for the chief judge to talk with people one on one. As leadership expert R. Dale Lefever advised chief judges at a Center

workshop on leadership, “People won’t care how much you know until they know how much you care.”

3. Listening

Being a good listener is a key to successful leadership. Chief judges have no doubt developed listening skills in the courtroom that they can put to good use in their leadership role, but listening as a leader is different from listening as a judge. “You have to listen very carefully and have to, at first, withhold your views,” one former chief judge said. “You need to seek to coalesce people around an idea and find consensus. That’s the most effective way, as opposed to saying ‘here’s the strategy that we’re going to follow.’”

The more someone knows about the organization and, especially, the people in it, the more effective he or she can be as a leader. “Get as much information as possible from as many sources as possible,” one chief judge said. By visiting and talking with staff informally at their work sites, a leader may learn things that people would be less likely to talk about in a different setting. Moreover, a visit by the leader can boost employees’ morale, even if it is just to say “hello.”

Avoid getting hung up on rank or protocol. Court staff are usually deferential to judges and to chief judges in particular, and while that may contribute to the dignity of the court, it could also insulate the chief judge from very real and necessary feedback to improve the court’s management. People in the lowest ranks of the official hierarchy often have helpful insights about the organization’s activities and performance and should be encouraged to share them. A good example comes from a Navy ship commander, whose casual conversation with a sailor helped him discover that he could save thousands of dollars in paint costs by switching to rust-proof fittings on the ship—a practice that is now standard Navy-wide.⁸ Leaders like this commander have discovered a basic truth: it’s not a person’s rank but a person’s knowledge that counts in making organizational improvements.

4. Consulting

Closely related to good listening skills is effective consultation. Consider who should be involved in various decisions and how to reach well-informed decisions and consensus efficiently. Failure to consult adequately can lead to poor decisions and lack of support. “People will accept a decision if they participate in making it,” one chief judge said, emphasizing the need for “buy-in.” This does not mean including everyone who might have an interest in every meeting, but at least weigh the potential costs of exclusion when determining whom to invite.

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

Make a special effort to include in a meeting or decision-making process those who are not inclined to agree with your own positions. One chief judge said: “Get dissenting opinions, with no repercussions for dissenting.” Another said to “allow people to disagree and vent, but always keep your focus on what’s best for the court.”

Be mindful of what psychologists call “groupthink,” the tendency of decision-making groups to form a consensus before making a sufficiently rigorous analysis of their assumptions or the consequences of their beliefs. Groups can quickly form the illusion of consensus and block out any dissenting opinions. Ask lots of questions, question assumptions, and, as new information and perspectives emerge, be willing to go back over ground that may have been covered already.

When a decision is made, continue to build consensus by giving credit to all who participated in the process. “Have no ego,” one chief judge said. “Pass the credit around.”

5. Sharing information

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

The chief judge is uniquely positioned to facilitate information sharing. The court’s internal website provides numerous possibilities, such as newsletters, blogs, announcements, and other notices. Regular meetings are important, as are informal events such as brownbag lunches, after-hours get-togethers, and celebrations of special occasions. The chief judge can encourage and monitor communications without originating every communication or being present at every event.

Do not be afraid to repeat the same message. “Even if you’ve already said it, say it again,” one chief judge advised. This is especially important, for example, in difficult budgetary times, when the message about cost consciousness cannot be repeated often enough.

6. Persuading

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

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

3. Use various kinds of evidence. Effective persuaders supplement numerical data with examples, stories, metaphors, and analogies to make their positions come alive.
4. Connect on a personal level. Good persuaders show their own strong commitment to the position they are advocating. More important, effective persuaders have a good sense of their audience's attitude and feelings, and they adjust the tone of their arguments accordingly. Effective persuaders often canvass key staff members who have a good feel for the mood and expectations of those to be persuaded and test possible reactions to proposals in advance.⁹

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

7. Clarifying expectations

Clear expectations are essential in relations with the key managers in the court. Court unit executives are almost always highly skilled and capable professionals on whom the chief judge will rely heavily. But even those who have extensive experience in running court operations need to understand what the chief judge wants, and the chief needs to understand what they want. Think of court governance as a collegial process, a partnership between the judges and court unit executives.

Two things that most employees want (and all need) are guidance and feedback. The clerk of court, the chief probation officer, and the chief pretrial services officer should each know what the chief judge sees as the most important things they must do in their jobs. These are the four or five things on which the chief judge will evaluate their performance. Court managers deserve answers to the questions, "What is expected of me?" and "How will I know that I am successful at my job?" The response should focus on the results the chief judge expects, relative to specific tasks and responsibilities. For example, is it the number of docket entries per day that is important? Or is it a reduction in problems with chambers? The more specific the guidance, the better these managers will be able to prioritize their work, and the fewer surprises there should be.

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

It is important to have difficult conversations early, especially when the court is confronting management challenges. As one management expert puts it, “prevention is better than intervention.”¹⁰

8. Monitoring the court

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

Monitoring performance does not mean “micromanagement.” The mechanisms for supervision, and the level of detail involved, vary. Mechanisms include regular meetings, activity reviews, reports, and briefings. Occasional visits to court officers (“management by walking around”) can be an effective way to check on things that would never appear in a report.

Delegating some oversight activities to colleagues can make monitoring more efficient. “You can’t do it all yourself,” one former chief judge cautions. “Even in the small districts you can have one or more of your colleagues develop particular areas of expertise.” The important thing is for the chief judge to stay sufficiently informed and to ensure that others are informed in order to identify potential problems and deal with them early. When a problem does arise, assess it fully and take prompt corrective action if necessary.

9. Dealing with problems

There is no textbook solution for dealing with problems, particularly people problems. Problems come in all forms, and most do not have a perfect—or sometimes even a very good—solution. As one chief judge said, “Some problems are just facts.” Nevertheless, problems seldom get better with time, and it is usually best to confront an issue early, before it becomes a major problem.

When a leader is faced with a problem, careful gathering of the facts, accompanied by objectivity, common sense, and compassion for the people affected, are important elements in finding a solution. Identify resources that are available to help with the problem. Moreover, consulting with colleagues (such as chief judges of other similar size district courts), key staff, and appropriate subject-matter experts almost always contributes to a better solution.

10. R. Dale Lefever, *Leadership Role of the Chief District Judge* (Federal Judicial Center, Apr. 24, 2013).

Particularly difficult are problems associated with the performance of another judge, such as physical or mental infirmity. These problems require sensitivity to the judge's professional independence and personal pride. Formal mechanisms exist (see Chapter II.B.1.g, *supra*) but are not always required. It is usually helpful to discuss possible approaches with colleagues, the chief circuit judge, the circuit executive, or another trusted adviser, but take care to protect the privacy and reputation of the judge in question. Seeking the advice of a doctor or other professional may also be useful. Having a close friend and trusted colleague discuss the problem in a sensitive but candid way with the judge concerned has worked in some situations.

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

In some instances, the chief judge may wish to discuss the backlog with the judge concerned or ask another experienced colleague to do so. Again, approach the judge in a nonconfrontational way, which gives the judge concerned an opportunity to ask for help, and the chief judge an opportunity to offer it. If the problem continues, the chief judge may decide not to appoint the judge to positions within the court's governing structure and may advise the chief circuit judge to consider the problem when making appointments to circuit positions and commenting on suitability for positions on Judicial Conference committees.

Another occasional challenge is helping the clerk of court or other staff deal with competing (and sometimes unrealistic) requests put to them by other judges. Some courts have internal policies that cover some of these issues and have committees of judges that review some categories of requests. The chief judge need not get involved personally in each problem, but should be accessible so that the clerk can discuss such matters with the chief discreetly. If the clerk is following established court policy, be especially careful before directing an exception. The chief judge should not micromanage the clerk's office, nor allow other judges to micromanage it, but the perspective and stature of the chief are vital and can be uniquely instrumental in helping.

10. Establishing a vision

Leadership and management literature is full of talk about "vision." What is "vision," where does it come from, and why is it important? Basically, "vision" refers to the

core values and broad goals that the leader brings to the job. They become the guiding principles for setting priorities, making decisions, and executing policies.

To say that a chief judge should have vision does not mean defining the mission of the district court. That's been done in the Constitution, in statutes and rules, and in mission statements that individual courts have adopted. Indeed, the mission is summed up well in Rule 1 of the Federal Rules of Civil Procedure: "to secure the just, speedy, and inexpensive determination of any action." Within the confines of these authorities, however, there is room for emphasis on certain goals and values over others.

Nor does having a vision necessarily mean that every new chief judge should enter office with the intent of making major changes. Rather, "each new judge should think about ways to make the court better," one chief judge said. Vision may be something quite measurable (like a new courthouse that serves the needs of the court and the public), or it may be more amorphous (like solid relations with the local bar or a district court workforce with a high sense of public service and ethics). One chief judge stated a goal to "demystify the legal process—to make the court a little friendlier place for others." Another sought "to make our court as user-friendly as possible."

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

Why is vision important for chief district judges? Some dismiss vision as something for the private sector. It is enough, they say, for government officials to know that they serve the "public interest." In fact, when one considers the Speedy Trial Act and other statutes, jury management plans, court reporter plans, GSA requirements, circuit judicial council plans, and Administrative Office guidance and procedures—not to mention colleagues who point out that all judges on the court have the same certificate of appointment—one might well think that the last thing a chief judge needs to worry about is vision.

It is precisely because of all those pressures that some bigger picture of what the court should be is needed. Establishing a vision of the kind of court that the chief judge wants to promote—and that the rest of the court accepts—will provide a steady guide in the face of inevitable egos, power struggles, or turf wars. "It serves as the rudder for the ship you're running," one chief judge said. "Otherwise it's more of a reaction—putting out fires, responding to problems."

One government official put it this way:

You have to be prepared to have a daily interaction between the philosophical and the real. If you don't allow for that you become a lunatic. You're just a crazed participant in the political system. That's something you have to comprehend. But

the penalty of not having a philosophy is a total lack of direction, getting easily bogged down, and atrophy.¹¹

In short, “[u]nless you know where you’re going, and why, you cannot possibly get there.”¹²

C. Leadership and Management Scenarios

Below are several scenarios involving court management issues that the Federal Judicial Center uses in its workshop, the Leadership Role of the Chief District Judge. The scenarios are included here for consideration because, as one chief judge said, the best time to think about a problem is before it becomes a problem. At the workshop, new chief judges, with the assistance of faculty, including experienced chief judges, discuss the scenarios and how they might handle these issues in their court. The discussion questions are also included for consideration.

Scenario 1: Engaging the full court in budget reduction

With continuing budgetary constraints in the judiciary, there is considerable stress on the court’s ability to meet its mission. It will be important, therefore, for the chief judge to oversee the development of a budget that ensures the core services of the court are preserved and all options for reductions are fully reviewed (e.g., staff cuts and furloughs; a curb on spending for space renovations, staff training, judicial travel, and upgrades in technology).

The severity of the budget reductions will require, for the first time, a court-wide approach where efficiencies across court units and even within chambers and support for senior judges will need to be part of this comprehensive review. Judicial Conference policy calls for examination of shared administrative services among court units. Such possible sharing affects not only the units and services involved, but all judges and staff who rely on such services. Also, decisions made at the national level could affect funding for chambers—but even if such central funding is untouched, to what degree can and should chambers “share the pain” as local funds are reduced?

This court has five Article III judges, two senior judges, and two magistrate judges, as well as two bankruptcy judges, with two locations about 70 miles apart. In the past, the budget process has been managed by the chief judge and the three unit executives. However, the need to conduct a comprehensive review of the court’s budget will require a broader representation if the best decisions are to be made and full ownership of the final plan is to be achieved.

11. Kim Beazley, Australian Minister of Employment, Training and Education, *quoted in* Richard N. Haass, *The Power to Persuade: How To Be Effective in Government, the Public Sector, or Any Unruly Organization* (1994), at 43.

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

Questions for discussion

- How would you inform the judges as to the scope and severity of the budget cuts and the impact of these reductions on the work of the court?
- How would you approach the judges regarding the need for chambers to participate in the development of a court-wide budget-reduction plan?
- What strategies would you recommend for involving the bankruptcy court as well as probation and pretrial services?
- How would you work with the unit executives and solicit their ideas as to the proposals being considered for budget reductions?
- How should the other judges be involved in the development of the final budget and the reductions that will need to be made?
- Would you consider using a committee of judges and unit executives to help resolve the budget issues facing the court?
- How would you deal with additional services associated specifically with criminal cases, including those provided by the Bureau of Prisons and the federal defenders, where budgets are equally constrained?
- What kinds of outreach would you attempt with your congressional delegation, to inform them of the consequences of budgetary constraints on the court's operations?

Scenario 2: Preparing to manage judicial and staff transitions

The changing demographics and the realities of an aging workforce affect all organizations, but they have a special application for the courts, where often there is a lag time in the appointment of new Article III judges, uncertainties as to who will take senior status, as well as budget limitations in the replacement of senior staff.

This court currently has four Article III judges, three senior judges, and three magistrate judges. Three of the four Article III judges are eligible to take senior status within the next twelve-month period when the youngest judge will become the chief judge. On the staff side, the clerk, after twenty-five years, has announced his retirement later this year with five of the senior staff eligible to retire within the next four years. In addition to losing key individuals, there is the less tangible, but equally important issue of the loss of important “institutional memory,” as well as the limitations on replacing staff because of the severe budget reductions.

All of these potential changes have caused considerable angst among the staff where morale is in decline owing to the frequent discussions about furloughs, budget cuts, and increased workloads for existing staff.

Questions for discussion

- How should the current chief judge begin to address these significant transitions? How, if at all, should the incoming chief judge be engaged in this process?
- How can either the current or the incoming chief judge best determine the plans of the other judges who are eligible to take senior status, but are not required to do so?
- How can the chief judge and his/her colleagues, assisted by the clerk of court and other unit executives, prepare for the potential arrival of three new Article III judges within the next several years?
- How can the chief judge and his/her colleagues, assisted by the clerk of court and other unit executives, prepare for and manage a succession plan and initiate the efforts required to attract and retain the qualified staff in a time when salary and promotional options are limited by the budget?

Scenario 3: Senior judge performance

In the past year, you have received about a dozen informal complaints from attorneys regarding the judicial performance of one of the senior judges, with three such complaints coming to you within the last month. The judge often is late to court, loses concentration during hearings, and is falling behind in the timely disposition of cases. The judge's courtroom deputy has informed you through the clerk of court that she has concerns about the judge's ability to manage the current caseload. You are aware of some health issues with which the senior judge is dealing.

Possible courses of action for consideration and discussion:

- Discuss the issue with the senior judge based on what you know now. (How much do you tell him about the information you have received?)
- Gather additional information or advice from other judges and staff, as discreetly as you can; from a trusted medical professional; and/or from your circuit chief judge. (In any event, should you inform your circuit chief judge?)
- Ask a colleague who is especially close to the senior judge if he or she has observed any problems, and if he or she will talk with the judge
- Take steps to reduce the senior judge's caseload.
- Do nothing.

Scenario 4: Personal misconduct

A career law clerk for an Article III judge informs you about a significant alcohol problem she has observed with this judge. The judge has been absent from the bench

on an increasingly regular basis (reported as health issues by the judge), has had alcohol-laden breath at times early in the day, and has made inappropriate comments to chambers staff, which they have attributed to the effects of alcohol abuse.

Possible courses of action for consideration and discussion:

- Attempt to gather more information—if so, how would you do this? Do you have an obligation to try to get more information?
- Decide whether to discuss this directly and privately with your chief circuit judge.
- Discuss the matter with the judge in question, if you believe the comments by the career law clerk are accurate. If the judge denies the accuracy of the information, should you drop the matter?
- Commit to protecting the identity of the law clerk who came to you. What would be the best strategies for doing this?

Scenario 5: Case management

The chief judge would like to standardize the role of the court's three magistrate judges. The chief judge receives support from three of the five Article III judges (and all three magistrate judges, who have respectfully complained that the current practice makes them less efficient than they would like to be). The other two Article III judges, however, strongly object. One of them says: "Nobody is going to tell me how to use my magistrate judges; I will retire rather than be forced to do anything I don't want to do. I have been working with magistrate judges in the same way for a long time and reject any requests to alter my practices."

Possible courses of action for consideration and discussion:

- Discuss the matter with all five Article III judges. Should the magistrate judges participate in all or part of such a meeting? What "groundwork" might you lay for such a meeting?
- Meet individually with the two judges who object to discuss their concerns. After hearing their concerns, decide whether and how to try to persuade them to change their minds.
- Move ahead with the three supportive judges and standardize procedures, leaving the other two judges to do what they will.
- Keep the status quo. In which case, should you discuss this further with the three supportive judges and/or the magistrate judges?

Appendix A: Federal Judicial Administration

See generally Russell Wheeler, *A New Judge's Introduction to Federal Judicial Administration* (Federal Judicial Center 2003).

National Level

Chief Justice of the United States

Guide, Vol. 1, Ch. 3

Judicial Conference of the United States

The Judicial Conference of the United States and Its Committees (August 2013)

Guide, Vol. 1, Ch. 4

Reports of the Proceedings of the Judicial Conference of the United States

Administrative Office of the United States Courts

Guide, Vol. 1, Ch. 5

Judges' Manual, Ch. 4

Federal Judicial Center

Guide, Vol. 1, Ch. 7

FJC Online

Regional Level

Circuit Judicial Councils

Guide, Vol. 1, Ch. 10

Judges' Manual, Ch. 2, § 1

Chief Circuit Judges

Compendium of Chief Judge Authorities (Judges Information Series No. 8)

Guide, Vol. 1, Ch. 11, § 1110.20

Circuit Executives

Guide, Vol. 1, Ch. 10, § 1020

Appendix B: District Court Units and Personnel

U.S. Bankruptcy Judges

Appointment and reappointment

The Selection, Appointment, and Reappointment of U.S. Bankruptcy Judges
Guide, Vol. 3, Ch. 3
Judges' Manual, Ch. 8, Pt. B

Tenure and discipline

Bankruptcy judges are appointed to fourteen-year terms (28 U.S.C. §§ 152(a)(1), 153(a)). They are subject to the judicial discipline procedures of 28 U.S.C. §§ 351–363, which, *inter alia*, authorize the circuit judicial council to remove them from office (28 U.S.C. § 354(a)(3)(B)) on the grounds and conditions for removal listed at 28 U.S.C. § 152(e). The Administrative Office, after consultation with the circuit judicial councils, assists the Judicial Conference in determining the judges' official duty stations and places of holding court (28 U.S.C. § 152(b)(1)). Section 152(c) authorizes bankruptcy judges to hold court in such additional places as the business of the court may require.

Assignment

Guide, Vol. 3, Ch. 6, § 630
Judges' Manual, Ch. 7, § 3

Recall

Guide, Vol. 3, Ch. 11 (ad hoc recall)
Guide, Vol. 3, Ch. 10 (extended service recall)
Judges' Manual, Ch. 10

U.S. Magistrate Judges

Authority

Inventory of United States Magistrate Judge Duties (July 2009)

Appointment and reappointment

The Selection, Appointment, and Reappointment of United States Magistrate Judges (March 2010)
Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Appointment and Reappointment of United States Magistrate Judges (*Guide*, Vol. 3, Ch. 4)

Appendix B

Tenure and Discipline

Full-time magistrate judges are appointed to eight-year terms; part-time magistrate judges are appointed for four years. Magistrate judges are subject to the judicial discipline procedures of 28 U.S.C. §§ 351–363, which, *inter alia*, authorize the circuit judicial council to remove magistrate judges from office (28 U.S.C. § 354(a)(3)(B)) on the grounds and conditions for removal listed at 28 U.S.C. § 631(i).

Assignment

Guide, Vol. 3, Ch. 7

Recall

Guide, Vol. 3, Ch. 1 (ad hoc recall)

Guide, Vol. 3, Ch. 12 (extended service recall)

Judges' Manual, Ch. 10

Employees

Clerk of court

Judges' Manual, Ch. 3, § 4.2

District Clerks' Manual

L. Scott Messinger, *Order in the Courts: A History of the Federal Court Clerk's Office* (Federal Judicial Center 2002)

Courtroom deputies

Judges' Manual, Ch. 24, § 3

District Clerks' Manual, Ch. 15

Pro se law clerks

District Clerks' Manual, Ch. 8, § 8.07

Probation officers and pretrial services officers

Guide, Vol. 8

Court reporters

Guide, Vol. 6

Judges' Manual, Ch. 24, § 2

Court interpreters

Guide, Vol. 5

Judges' Manual, Ch. 24, § 4

Code of Conduct for Judicial Employees

Guide, Vol. 2, Pt. A, Ch. 3

Defender Services

Generally

Guide, Vol. 7

Criminal Justice Act (CJA) requirements

Guide, Vol. 7, Pt. A

Defender organizations

Guide, Vol. 7, Pt. A, Ch. 4

Code of Conduct for Federal Public Defender Employees

Guide, Vol. 2, Pt. A, Ch. 4

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The Federal Judicial Center

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

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

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