

# Resource Guide for Chief Circuit Judges' Deskbooks

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# Contents

Preface: Origin and Purpose of the Original Template, v

Part One: The Selection and Role of the Chief Circuit Judge and an Overview of the Resource Guide, 1

- I. Selection of Chief Circuit Judges, 1
- II. Role of Chief Circuit Judges, 1
- III. Overview of the Resource Guide, 2

Part Two: Formal, Nationally Designated Duties of Chief Circuit Judges, 5

- I. Administration of the Court of Appeals and of the Circuit as a Whole, 5
- II. Appointments of Judges and Court Staff, 8
- III. Assignment of Judges, 10
- IV. Duties Under the Criminal Justice Act, 16
- V. Duties Under the Judicial Conduct and Disability Act, 19
- VI. Duties Derived from the AO Director's Delegation of Financial, Procurement, and Human Resources Authority to the Courts, 21
- VII. Duties Under Policies Governing Human Resources Functions in the U.S. Courts, 34
- VIII. Duties Under the Judiciary's Travel and Relocation Regulations, 42
- IX. Miscellaneous Duties and Responsibilities, 55

Part Three: Role of Chief Circuit Judges in Fostering Judicial Wellness and Promoting an Exemplary Workplace, 59

- I. Judicial Wellness, 59
- II. Promoting an Exemplary Workplace, 62

Appendices, 65

Appendix A: Evolution of the Chief Circuit Judge Position, 65

Appendix B: Background on the 2008 Rules for Judicial-Conduct and Judicial-Disability Proceedings, 69

Appendix C: Selected Circuit Judicial Wellness Programs, 73



## Preface: Origin and Purpose of the Original Template

The Federal Judicial Center (FJC) prepared the original *Template for Chief Circuit Judges' Deskbooks* (2001) in response to requests in 1998 from chief circuit judges. Recognizing the diversity of administrative and procedural practices in the thirteen circuits, the FJC did not attempt to draft a comprehensive deskbook. Instead, with the endorsement of the chief circuit judges, the FJC developed a concise outline of chief circuit judges' major responsibilities and sources of authority—in other words, a template. The circuits could supplement this template with local practices if they chose to do so, but few did. Nonetheless, chief circuit judges and other judges told the FJC that they found the template to be a useful overview of authorities and responsibilities generally applicable to chief circuit judges in all thirteen circuits. In view of various developments since 2001, the FJC revised and expanded the template, which resulted in this publication, *Resource Guide for Chief Circuit Judges' Deskbooks* (hereinafter *Resource Guide*).



# Part One: The Selection and Role of the Chief Circuit Judge and an Overview of the Resource Guide

## I. Selection of Chief Circuit Judges

[Title 28 U.S.C. § 45\(a\) \(2012\)](#) provides that when a chief circuit judge vacancy occurs, it will be filled by the judge in regular active service who, at the time of the vacancy, (1) is senior in commission, (2) is under the age of 65, (3) has served at least a year as circuit judge, and (4) has not previously served as chief circuit judge. The statute has provisions that come into play in the event that no judge of the court meets these criteria. If no judge of the court is younger than age 65, then the next youngest judge who has not previously been the chief may serve in that position. If no one has served for more than a year as judge, then the judge most senior in commission who has not previously been the chief may serve in that position. If no judge meets the age or service criteria, then the current chief circuit judge will continue to serve—even if his or her term is complete or he or she is over age seventy—until a new judge is appointed who qualifies under the statute.<sup>1</sup>

The statute limits the chief judge’s term to seven years and bars any chief judge from serving beyond the age of 70 unless no other judge is available to serve or act as chief circuit judge. Service as chief circuit judge is not mandatory: [28 U.S.C. § 45\(c\)](#) allows a chief circuit judge to advise the Chief Justice in writing that he or she wishes to step down, whereupon the next eligible judge becomes chief.

## II. Role of Chief Circuit Judges

It is widely accepted that the chief circuit judge serves as the leader of administrative operations for the court of appeals and for the circuit as a whole, and is generally responsible for making sure that all courts within the circuit are in compliance with applicable laws and policies. “[A] chief judge needs to know the scope of his or her authority, the responsibilities he or she must carry out, and how those responsibilities dovetail with those of the court and the circuit judicial council.”<sup>2</sup>

The chief circuit judge’s authority has no single, overarching source. Rather, it derives from various statutory provisions, Judicial Conference and circuit council policies, delegations from the director of the Administrative Office of the U.S. Courts, the authority vested in the court of appeals as an entity, and customs in the circuit. Except for those that create circuit-specific duties and responsibilities, many of these sources are identified in this Resource Guide, and others can be found in the resources cited here. Like the template, this Resource Guide is not

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1. See [28 U.S.C. § 45 \(2012\)](#).

2. [Compendium of Chief Judge Authorities 5](#) (Administrative Office of the U.S. Courts [hereinafter AO] 2016).

intended to represent “the universe” of authorities that define the scope of a chief circuit judge’s duties and responsibilities as leader of administrative operations. However, the Resource Guide does provide a comprehensive overview from which any chief circuit judge can build. It behooves a new chief circuit judge to identify formal policies adopted by the court or council, including standing customs, and to understand the scope of his or her authority within them.

### III. Overview of the Resource Guide

Part Two of this Resource Guide outlines the major responsibilities of the chief circuit judge. We describe duties that Congress, the Judicial Conference of the United States, and the director of the Administrative Office of the U.S. Courts (AO) have assigned or delegated to chief circuit judges, and we place them in nine major categories:

1. administration of the court of appeals and of the circuit as a whole;
2. appointments of judges and court staff;
3. assignment of judges;
4. duties under the Criminal Justice Act;
5. duties under the Judicial Conduct and Disability Act;
6. duties derived from the AO director’s delegation of financial, procurement, and human resources authority to the courts;
7. duties under policies governing human resources functions in the U.S. courts;
8. duties under the judiciary’s travel and relocation regulations; and
9. miscellaneous duties and responsibilities.

Chief circuit judges often exercise broader or additional authority in these areas. Some decide not to implement non-mandatory or discretionary policies, on the basis of circuit-specific policies and practices; such circuit-specific policies and practices are not listed here.

In its outline format, Part Two can serve as a template for circuits to supplement with their local rules and policies. The Resource Guide should be used in conjunction with other resources that contain more detailed information on the chief circuit judge’s duties and responsibilities. The most important of these resources are the following:

- [Guide to Judiciary Policy](#) (AO & Judicial Conference of the U.S.) (dates at the end of each chapter indicate year of adoption and year of revisions if any) [hereinafter *Guide*];
- [Compendium of Chief Judge Authorities](#) (AO May 2016);
- [Management Oversight and Stewardship Handbook](#) (AO July 2003);
- [Judges Administrative Manual](#) (AO Apr. 2018);
- [Court Budget Operating Manual](#) (AO May 2018); and

- [Human Resources Manual](#) (AO) (chapters dated separately as revised).

Other useful resources are the following:

- [Judges' Corner](#) on the AO's JNet (reorganized by subject matter June 2018 to improve access to resources and information important to judges and chambers staff);
- [Judges' Information Series Publications](#) (AO May 2016 to present; comprehensive treatment of topic areas important to federal judges);
- [Ethics Essentials](#) (AO June 2006);
- [Financial Management Handbook](#) (AO Feb. 2017);
- [Federal Judiciary's Oversight and Accountability System](#) (AO June 2012);
- [Deskbook for Chief Judges of U.S. District Courts](#) (FJC, 4th ed. 2014); and
- [Deskbook for Chief Judges of U.S. Bankruptcy Courts](#) (AO & FJC, 4th ed. 2015).

Part Three discusses the role of the chief circuit judges in fostering judicial wellness and collegiality. These two issues were suggested by chief circuit judges and court staff as important in leading and managing a circuit. The FJC surveyed circuit executives during the spring of 2017 to get their perspectives on how the chief judges promote judicial wellness and collegiality. In addition, we describe the judiciary's most recent efforts to promote an exemplary workplace.

The Resource Guide maintains a consistent format throughout, in which a chief circuit judge's duties and responsibilities that are prescribed as mandatory by statutes, policies, rules, and regulations are presented as affirmative directives with the verb "must" or "shall." A chief circuit judge's duties and responsibilities that are considered discretionary are presented as directives with the verb "may" or "should."

The full text of statutory references, Judicial Conference policies, and rules cited is available to the reader by clicking on the links provided.<sup>3</sup>

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3. Access to the JNet is necessary in order to view the content of links to *Guide* provisions or other sources that contain information concerning the internal operations of the federal judiciary, unless the content is available on the judiciary's public website. For example, access to links to specific *Guide* provisions such as the [Code of Conduct for U.S. Judges \(Guide, vol. 2A, ch. 2\)](#), [Judicial Conference Regulations on Gifts \(Guide, vol. 2C, ch. 6\)](#), and [Rules for Judicial-Conduct and Judicial-Disability Proceedings \(Guide, vol. 2E, ch. 3\)](#) is not limited to the judiciary, since such *Guide* content and other judiciary policies are available on the AO's public website (<http://www.uscourts.gov/rules-policies/judiciary-policies>).



## Part Two: Formal, Nationally Designated Duties of Chief Circuit Judges

This part discusses nine major areas of chief circuit judge responsibilities. It references only those authorities that assign affirmative duties or responsibilities to chief circuit judges in these areas. Part Two is not intended to serve as a comprehensive compilation of all the detailed rules and regulations that have been promulgated in each of the major areas.

### I. Administration of the Court of Appeals and of the Circuit as a Whole

- A. Administration of the Court of Appeals.<sup>4</sup> The chief judge of the circuit courts of appeals
1. Shall preside over any session of the court of appeals that the chief circuit judge attends and shall have “precedence” over all other circuit judges of the court in regular active service, including any circuit judge who may be senior in commission or senior in age [[28 U.S.C. § 45\(b\)](#)]<sup>5</sup>.
  2. May designate and assign a retired circuit judge to perform judicial duties in the circuit [[28 U.S.C. § 294\(c\) \(2012\)](#)] so that the judge is eligible to participate in en banc proceedings [[28 U.S.C. § 46\(c\) \(2012\)](#)].
  3. May certify that there is an emergency, including the unavailability of a judge of the court because of illness, that would permit formation of a three-judge panel authorized to hear and determine cases and controversies that do not involve a majority of judges of that court [[28 U.S.C. § 46\(b\)](#)].

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4. Although the majority of specific sources vest the “court” with authority to regulate the conduct of its own business, including assigning cases, establishing times for holding regular sessions of court, ordering special sessions of court, hiring court personnel, and reviewing proposals for new places of holding court, the chief judge plays a key leadership role in overseeing and coordinating efficient operations. [Compendium of Chief Judge Authorities 16](#) (AO 2016) [hereinafter *Compendium*].

5. The statute provides as follows: “If a chief judge is temporarily unable to perform his duties as such, they shall be performed by the circuit judge in active service, present in the circuit and able and qualified to act, who is next in precedence.” [28 U.S.C. § 45\(d\)](#). Moreover, “[i]f the chief judge desires to be relieved of his duties as chief judge while retaining his active status as circuit judge, he may so certify to the Chief Justice of the United States, and thereafter the chief judge of the circuit shall be such other circuit judge who is qualified to serve or act as chief judge under subsection (a) [of 28 U.S.C. § 45].” *Id.* [§ 45\(c\)](#).

B. Administration of the Circuit as a Whole.

1. Judicial Conference of the United States. The chief judge of the circuit court of appeals must represent his or her circuit as a member of the Judicial Conference of the United States and must attend an annual conference at such time and place as designated by the Chief Justice, unless excused by the Chief Justice. The chief circuit judge, or any circuit judge from his or her circuit summoned to attend by the Chief Justice if the chief circuit judge is unable to attend, must remain throughout the sessions of the conference and advise the conference of the needs of his or her circuit and any matters that may improve the administration of justice in the courts of the United States [[28 U.S.C. § 331, ¶1, ¶3 \(2012\)](#)].
2. Circuit Judicial Council.<sup>6</sup> The chief circuit judge must convene the judicial council of the circuit at least twice each year and must preside over its meetings, setting the agenda for the council's exercise of its authority to "make all necessary and appropriate orders for the effective and expeditious administration of justice within its circuit" [[28 U.S.C. § 332 \(2012\)](#)]. The chief circuit judge
  - a. May designate the locations of the circuit judicial council's meetings [[28 U.S.C. § 332\(a\)\(1\)](#)].
  - b. May excuse a member of the circuit judicial council<sup>7</sup> from attendance at a council meeting; otherwise, all members of the judicial council must attend each council meeting [[28 U.S.C. § 332\(a\)\(6\)](#)].
  - c. Must designate a replacement member to serve the remainder of an unexpired term in the event of the death, resignation,

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6. While the Judicial Conference of the United States is the national policy-making body, the circuit judicial council is the principal enforcement group within the federal judiciary. The council may issue orders to effectuate its statutory authorities and duties delegated by the Judicial Conference. All judges and employees of the circuit "shall promptly carry into effect all orders of the judicial council." [28 U.S.C. § 332\(d\)\(2\)](#). The council or its appointed committees may initiate investigations and even contempt proceedings against those judicial officers or employees who fail to comply with their orders. *Id.* Nevertheless, the regular business of the courts does not need to be referred to the council unless an impediment to the administration of justice is involved. *Id.* [§ 332\(d\)\(3\)](#). *Compendium, supra* note 4, at 9.

7. In addition to the chief circuit judge, the council consists of equal numbers of active or senior circuit judges and district judges of the circuit. [28 U.S.C. § 332\(a\)\(1\), \(3\)](#). The manner of selecting council members varies by circuit. In some circuits, bankruptcy and magistrate judges serve on the council as non-voting observers. *Compendium, supra* note 4, at 9. The equal numbers of circuit judges and district judges of the circuit who will serve as members of the judicial council and the length of their terms will be determined by a majority vote of all judges of the circuit in regular active service. *Id.* [§§ 332\(a\)\(1\), \(2\)](#).

- retirement, or disability of a member of the judicial council [[28 U.S.C. § 332\(a\)\(5\)](#)].
- d. Must provide the circuit judicial council with the semiannual reports received from the director of the Administrative Office of the U.S. Courts pursuant to [28 U.S.C. § 604\(a\)\(2\), \(3\) \(2012\)](#) [[28 U.S.C. § 332\(c\)](#)].
3. Supervision of Circuit Executive. The chief circuit judge must supervise the circuit executive's performance of such duties as the circuit judicial council may delegate [[28 U.S.C. § 332\(e\)](#)], which may include the following:
- a. Exercising administrative control of all nonjudicial activities of the court of appeals of the circuit in which he or she is appointed.
  - b. Administering the personnel system of the court of appeals of the circuit.
  - c. Administering the budget of the court of appeals of the circuit.
  - d. Maintaining a modern accounting system.
  - e. Establishing and maintaining property control records and undertaking a space management program.
  - f. Conducting studies relating to the business and administration of the courts within the circuit and preparing appropriate recommendations and reports to the chief judge, the circuit council, and the Judicial Conference.
  - g. Collecting, compiling, and analyzing statistical data in order to prepare and present reports based on such data as may be requested by the chief judge, the circuit council, and the Administrative Office of the U.S. Courts.
  - h. Representing the circuit as its liaison to the courts of the various states in which the circuit is located, the marshal's office, state and local bar associations, civic groups, the news media, and other private and public groups that have a reasonable interest in the administration of the circuit.
  - i. Arranging and attending meetings of the judges of the circuit and of the circuit council, including preparing the agenda and serving as secretary in all such meetings.
  - j. Preparing an annual report to the circuit and to the Administrative Office of the U.S. Courts for the preceding calendar

year, including recommendations for more expeditious disposition of the business of the circuit.

4. Circuit Judicial Conference.<sup>8</sup> The chief circuit judge may convene annually or biennially, may preside at, and may designate the time and location of the nonmandatory circuit judicial conference [[28 U.S.C. § 333 \(2012\)](#)]. The chief circuit judge may invite the active circuit, district, bankruptcy, and territorial district judges of the circuit to attend the conference in order to consider the business of the courts and to advise and seek input from the judges on means of improving the administration of justice within the circuit. [*Id.*]
5. Review District's Civil Justice Expense and Delay Reduction Plan. The chief circuit judge must serve, or may designate another judge of the court of appeals of the circuit to serve, with the chief judge of each district court in the circuit, as a committee, (a) to review the civil justice expense and delay reduction plan and report submitted by each district court pursuant to [28 U.S.C. § 472\(d\) \(2012\)](#), and (b) to make suggestions for additional or modified actions to be implemented by the district court if the committee considers this appropriate for reducing costs and delay in civil litigation in that district court [[28 U.S.C. § 474\(a\) \(2012\)](#)].

## II. Appointments of Judges and Court Staff

- A. Senior Staff Counsel. The chief circuit judge may appoint or remove a senior staff attorney, with the approval of the court [[28 U.S.C. § 715\(a\) \(2012\)](#)]. The chief circuit judge must approve a senior staff attorney's appointment or removal of necessary staff attorneys and secretarial and clerical employees [*Id.* at [§ 715\(b\)](#)].
- B. Chambers Staff. The chief circuit judge may appoint a secretary or paralegal (at level JSP-11); up to four other staff members as law clerks or assistant secretaries (at level JSP-10); and one additional secretary, paralegal (at level JSP-11), or law clerk above the standard allocation to fill the six authorized positions allocated to a chief circuit judge during his or her tenure [[28 U.S.C. § 712 \(2012\)](#); [Guide, vol. 12, § 615.50](#)].

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8. The circuit judicial conference is attended by the judges of the courts within the circuit as well as members of the bar, federal defenders, and other judiciary personnel. The conference allows judges and lawyers to interact and exchange information in order to promote more efficient and effective circuit operations. [Compendium](#), *supra* note 4, at 44–45. The court of appeals for each circuit must establish rules to ensure representation at and active participation in the conference by members of the bar of the circuit. [28 U.S.C. § 333 \(2012\)](#).

*See infra* section VI.E.2.b for circumstances permitting temporary promotion of the chief circuit judge's principal secretary or paralegal.

- C. Bankruptcy Judge.<sup>9</sup> The chief circuit judge must appoint a bankruptcy judge for a judicial district within his or her circuit whenever a majority of the active judges of the court of appeals cannot agree on the appointment of a bankruptcy judge or the reappointment of an incumbent bankruptcy judge [[28 U.S.C. § 152\(a\)\(3\) \(2012\)](#); [Guide, vol. 3, § 320.50.30](#)].
1. Merit Selection Panel. If authorized by the judicial council of his or her circuit, the chief circuit judge may appoint a merit selection panel to submit recommendations of individuals whose character, experience, ability, and commitment to equal justice under the law fully qualify them to serve as a U.S. bankruptcy judge [[Guide, vol. 3, § 320.30](#)].
  2. Reappointment of U.S. Bankruptcy Judges. The court of appeals votes on the reappointment of bankruptcy judges. However, the chief circuit judge must receive written notice of a bankruptcy judge's willingness to be reappointed no earlier than nine months but no later than six months before the date on which the bankruptcy judge's term of office expires [[28 U.S.C. § 377\(b\) \(2012\)](#); [Guide, vol. 3, § 320.50](#)].
  3. Notice of Intent to Fill a Vacant Bankruptcy Judgeship. The chief circuit judge must notify the Judicial Conference Committee on the Administration of the Bankruptcy System and the AO prior to initiating the process for filling a vacant bankruptcy judgeship so that relevant, up-to-date data can be provided to facilitate the court's decision [[Guide, vol. 3, § 330](#)].

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9. Bankruptcy judges are judicial officers of the district court ([28 U.S.C. § 151 \(2012\)](#)), but the court of appeals appoints them for fourteen-year terms after considering recommendations of the circuit's judicial council and the Judicial Conference as to the official duty stations of bankruptcy judges and places of holding court. [28 U.S.C. § 152\(a\)\(1\) & \(b\) \(2012\)](#). The Regulations of the Judicial Conference of the United States for the Selection, Appointment, and Reappointment of United States Bankruptcy Judges can be found in the [Guide, vol. 3, §§ 310, 320](#).

### III. Assignment of Judges<sup>10</sup>

#### A. Intracircuit Assignments of Article III Judges.<sup>11</sup>

1. Assignment of Active Circuit Judges. If it is in the public's interest, the chief judge of the circuit court of appeals may temporarily assign any active circuit judge within the circuit, including a circuit judge assigned to temporary duty therein by the Chief Justice, to hold a district court in any district within the circuit [[28 U.S.C. § 291\(b\) \(2012\)](#)].
2. Assignment of Active District Judges. The chief circuit judge may assign one or more active district judges within the circuit to sit on the court of appeals when the business of the court requires it. [[28 U.S.C. § 292\(a\) \(2012\)](#)]. If it is in the public's interest, the chief circuit judge may also temporarily assign any active district judge of the circuit to hold district court in any district within the circuit [[28 U.S.C. § 292\(b\)](#)].
3. Assignment of Senior Circuit or District Judges. The chief circuit judge may designate and assign any senior Article III judge to perform such judicial duties within the circuit as the senior judge is willing and able to undertake, including service on a district court [[28 U.S.C. § 294\(c\)](#)].

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10. Title [28 U.S.C. § 296 \(2012\)](#) describes the duties and powers delegated to a judge during the period of his or her assignment:

A justice or judge shall discharge, during the period of his designation and assignment, all judicial duties for which he is designated and assigned. He may be required to perform any duty which might be required of a judge of the court or district or circuit to which he is designated and assigned. Such justice or judge shall have all the powers of a judge of the court, circuit or district to which he is designated and assigned, except the power to appoint any person to a statutory position. . . . A justice or judge who has sat by designation and assignment in another district or circuit may, notwithstanding his absence from such district or circuit or the expiration of the period of his designation and assignment, decide or join in the decision and final disposition of all matters submitted to him during such period and in the consideration and disposition of applications for rehearing or further proceedings in such matters.

11. "Each circuit has developed its own procedures for the temporary assignment of judges to other courts within the circuit. Information about procedures for intracircuit assignments may be obtained from the relevant circuit executive's office or the clerk of the court of appeals." [Guide, vol. 3, § 520.20](#).

B. Intercircuit Assignments of Article III Judges.<sup>12</sup>

1. Intercircuit Assignment of Active and Senior Judges to a Borrowing Circuit. The chief judge of the borrowing circuit must present a certificate of necessity to the Chief Justice of the Supreme Court when the need arises within the circuit for the temporary assistance of
  - an active circuit judge from outside the circuit for service on the court of appeals [[28 U.S.C. § 291\(a\)](#); [Certificate of Necessity \(Form AO 81\)](#)].
  - an active district judge from outside the circuit for service on the court of appeals or in a district court within the circuit [[28 U.S.C. § 292\(d\)](#); [Certificate of Necessity \(Form AO 81\)](#)].
  - a senior circuit or district judge from outside the circuit to perform such judicial duties as the senior judge is willing and able to undertake within the circuit [[28 U.S.C. § 294\(d\)](#); [Certificate of Necessity \(Form AO 81\)](#)].
2. Intercircuit Assignment of Active and Senior Judges from a Lending Circuit. The chief judge of the lending circuit
  - must consent to the designation and assignment outside the circuit of any active Article III judge (circuit or district judge in active service) from the circuit [[28 U.S.C. § 295 \(2012\)](#); [Consent for An Active Judge \(Form AO 82B\)](#)].
  - may revoke previously made designations and assignments of circuit or district judges in active service to other circuits [[28 U.S.C. § 295](#)].
  - does not have to consent to the intercircuit assignment of a senior circuit or district judge from the circuit, since senior judges may consent to their own assignments pursuant to [28 U.S.C. § 294\(d\)](#); however, a chief circuit judge should consult with the senior judge before he or she formally consents, to ensure that

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12. Although the chief circuit judge has authority to authorize *intracircuit* assignments—temporary assignments of judges within the circuit to sit on other courts within the circuit—Congress requires that the Chief Justice authorize *intercircuit* assignments—temporary assignments of judges from one circuit to sit on courts within another circuit or on the Court of International Trade. See [28 U.S.C. §§ 291–296 \(2012\)](#). To assist the Chief Justice in assigning Article III judges for service outside their circuits, the Judicial Conference Committee on Intercircuit Assignments reviews requests for intercircuit assignments, maintains rosters of judges who are willing to take intercircuit assignments, and in consultation with the Chief Justice, develops guidelines governing intercircuit assignments of judges. See [Guide, vol. 3, § 530.20](#) (Guidelines for the Intercircuit Assignment of Article III Judges).

the needs of the court are sufficiently met and that there is no objection to the proposed intercircuit assignment [[Guide, vol. 3, § 530.30\(b\)](#), [Consent for a Senior Judge \(Form AO 82A\)](#)].

C. Intercircuit Assignments of Bankruptcy Judges.<sup>13</sup>

1. Intercircuit Assignment to a Borrowing Circuit. The chief judge of the borrowing circuit
  - must certify the need for a bankruptcy judge from another circuit to provide judicial services to a bankruptcy court of his or her circuit [[28 U.S.C. § 155\(a\) \(2012\)](#); [Guide, vol. 3, §§ 610, 630.10\(c\)](#)].
  - must submit notice of the proposed intercircuit assignment to the Intercircuit Assignments Committee and to the chief judge of the lending circuit, the chief judges of the lending and borrowing district and bankruptcy courts, and the circuit executives [[Notice of Proposed Intercircuit Assignment of a Bankruptcy Judge \(Form AO 82E\)](#); [Guide, vol. 3, § 620.20\(a\), \(b\)](#)].
2. Intercircuit Assignment from a Lending Circuit. The chief judge of the lending circuit must obtain the consent of both the bankruptcy judge to be assigned and his or her chief bankruptcy judge before the chief judge of the lending circuit offers intercircuit assignment assistance [[Guide, vol. 3, § 630.10\(e\)](#)].

D. Assignment of Judges to Special Cases.<sup>14</sup>

1. Cases Transferred by the Judicial Panel on Multidistrict Litigation to the District Court for Coordinated or Consolidated Pretrial Proceedings. Upon request of the Judicial Panel on Multidistrict Litigation, the chief judge of the circuit court of appeals may assign a circuit or district judge from his or her circuit to temporary service on a transferee district court within his or her circuit in order to assign transferred actions to that judge for the purpose of conducting coordinated or consolidated pretrial proceedings.<sup>15</sup>

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13. The establishment of intracircuit assignment procedures for bankruptcy judges has been left to the judicial councils of each circuit. [Guide, vol. 3, § 620](#). The Judicial Conference approved guidelines and procedures recommended by the Committee on Intercircuit Assignments for the intercircuit assignment of bankruptcy judges under [28 U.S.C. § 155\(a\)](#). [Guide, vol. 3, §§ 630, 630.10, 630.20](#).

14. Congress requires that the chief judge designate a panel of judges or a specific judge to hear certain matters, particularly those of general importance to the community. [Compendium, supra](#) note 4, at 21.

15. Circuit chief judges must authorize the transfer only if the panel's actions result in what amounts to an intracircuit assignment (i.e., the panel transfers civil actions involving one or more

2. Cases Challenging the Constitutionality of Apportionment of Congressional Districts or the Apportionment of Any Statewide Legislative Body. The chief circuit judge must designate two judges (at least one of whom must be a circuit judge), in addition to the district judge to whom the action was originally assigned, to hear and determine an action that challenges the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body, upon receiving notice from the district judge who was assigned the case and with whom a request for a three-judge panel was filed [[28 U.S.C. § 2284\(b\) \(2012\)](#)].
3. Cases Under the Voting Rights Act. The chief judge of the circuit court of appeals
  - a. Must immediately designate three judges in his or her circuit (at least one of whom must be a circuit judge and one of whom must be a district judge of the court in which the case was filed) to hear and determine a case filed by the Attorney General requesting a finding as to whether the district court's determination that a person has been deprived of a right or privilege to vote on account of race or color is pursuant to a pattern or practice of discrimination as required by subsection (e) of 52 U.S.C. § 10101, upon receiving a request from either party for a three-judge panel [[52 U.S.C. § 10101\(g\) \(2012\)](#)].
  - b. Must designate a district or circuit judge in his or her circuit to hear and determine the case if neither the Attorney General nor any defendant files a request for a three-judge court pursuant to 52 U.S.C. § 10101(g), upon receiving certification from the chief judge of the district in which a case is pending that no judge in the district is available to hear and determine the case [[52 U.S.C. § 10101\(g\)](#)].
  - c. Must designate a district or circuit judge in his or her circuit to hear and determine the case in any proceeding brought by the Attorney General under § 10101(c) to prevent any act or practice that would, or would attempt to, intimidate, threaten, or coerce any other person in order to interfere with the right

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common questions of fact pending in different districts to a district within the chief judge's circuit and the panel assigns such actions to a judge or judges commissioned to a court or courts within the chief judge's circuit other than the transferee district court). [28 U.S.C. § 1407\(b\) \(2012\)](#). If the chief circuit judge of the transferee circuit presents a certificate of necessity, the Chief Justice of the United States may temporarily assign a district judge from another circuit for service in the transferee district court. [28 U.S.C. § 292\(d\) \(2012\)](#). *See supra* section III.B (Assignment of Judges).

- of the person to vote or to vote as he or she may choose, upon receiving certification from the chief judge of the district in which a case is pending that no judge in the district is available to hear and determine the case [[52 U.S.C. § 10101\(g\)](#)].
4. Cases Alleging Restricted Access to Public Accommodations. The chief judge of the circuit court of appeals
    - a. Must immediately designate three judges in his or her circuit (at least one of whom must be a circuit judge and one of whom must be a district judge in the court in which the case was filed) to hear and determine a case brought by the Attorney General which alleges a pattern or practice of restricting a person's access to public accommodations and which the Attorney General certified to be of general public importance, upon receipt of a request from the Attorney General for a three-judge panel [[42 U.S.C. § 2000a-5\(b\) \(2012\)](#)].
    - b. Must designate a district or circuit judge of his or her circuit to hear and determine a public accommodations case which was filed by the Attorney General and for which the Attorney General did not request a three-judge panel, upon receipt of certification from the chief judge of the district in which a case was filed that no judge in the district is available to hear and determine the case [[42 U.S.C. § 2000a-5\(b\)](#)].
  5. Employment Discrimination Cases. The chief judge of the circuit court of appeals
    - a. Must designate a district or circuit judge from his or her circuit to hear and determine employment discrimination cases filed by the Equal Employment Opportunity Commission, by the Attorney General, or by or on behalf of a person alleging an unlawful employment practice under [42 U.S.C. § 2000e-2](#) or [§ 2000e-3](#), upon receiving certification from the chief judge of the district in which a case is pending that no judge in the district is available to hear and determine the case [[42 U.S.C. § 2000e-5\(f\)\(4\) \(2012\)](#)].
    - b. Must immediately designate three judges from his or her circuit (at least one of whom must be a circuit judge and one of whom must be a district judge in the court in which the case was filed) to hear and determine a case brought by the Attorney General alleging a pattern or practice of unlawful employment, upon receipt from the Attorney General of a request for

- a three-judge panel and certification that the case is of general public importance [[42 U.S.C. § 2000e-6\(b\) \(2012\)](#)].
- c. Must designate a district or circuit judge of his or her circuit to hear and determine a case alleging a pattern or practice of unlawful employment which was filed by the Attorney General and for which the Attorney General did not request a three-judge panel, upon receipt of certification from the chief judge of the district in which the case was filed that no judge in the district is available to hear and determine the case [[42 U.S.C. § 2000e-6\(b\)](#)].
6. Antitrust Proceedings to Enjoin a Corporate Acquisition. The chief circuit judge must designate and assign to a district judge for all purposes an action filed by the Federal Trade Commission or by the Assistant Attorney General to enjoin a proposed corporate acquisition, upon receipt of notification from the chief judge of the district court within his or her circuit in which the action was brought or within which the respondent resides or carries on business that the Federal Trade Commission or the Assistant Attorney General filed a motion for a preliminary injunction against consummation of the acquisition and certified that the public interest requires relief pendent lite [[15 U.S.C. § 18a\(f\) \(2012\)](#)].
  7. Municipal Bankruptcy Proceedings Under Chapter 9. The chief circuit judge must designate a bankruptcy judge to conduct proceedings in a Chapter 9 bankruptcy case filed in a district within his or her circuit, upon petition of a municipality that does not have its own officials [[11 U.S.C. § 921\(b\) \(2012\)](#)].
  8. North American Free Trade Agreement Cases.<sup>16</sup>
    - a. The chief circuit judge must authorize an Article III judge in his or her circuit to serve on a panel or committee convened

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<sup>16</sup> On October 1, 2018, the United States, Canada and Mexico agreed to a new trade deal replacing the 1994 North American Free Trade Agreement (NAFTA) with what will be known as the United States-Mexico-Canada Agreement (USMCA). The new deal won't go into effect right away because leaders from the three countries have to sign it and then Congress and the legislatures in Canada and Mexico have to approve it. The new trade deal with Canada and Mexico leaves certain provisions of the old North American Free Trade Agreement intact, including Chapter 19's special dispute process, allowing Canada, Mexico and the United States to challenge one another's anti-dumping and countervailing duties in front of a panel of representatives from each country instead of in a U.S. court. Heather Long, [U.S., Canada and Mexico just reached a sweeping new NAFTA deal. Here's what's in it.](#), The Washington Post, October 1, 2018. See [19 U.S.C. §§ 3431-3451 \(2012\)](#).

under the North American Free Trade Agreement and identified in 19 U.S.C. § 3432(a) [[19 U.S.C. § 3432\(a\)\(2\) \(2012\)](#)].

- b. The chief circuit judge must identify for the Chief Justice appropriate Article III judges within his or her circuit to be included on a roster of judges that the Chief Justice may submit to the Trade Representative for participation on binational panels, extraordinary challenge committees, and special committees established pursuant to provisions of the North American Free Trade Agreement [[19 U.S.C. § 3432\(b\)](#)].

#### IV. Duties Under the Criminal Justice Act<sup>17</sup>

- A. Attorney Fee Vouchers in Excess of Case Compensation Maximums in Noncapital Cases.<sup>18</sup> The chief judge of the circuit
  1. Must approve payment in excess of any maximum amount established under [18 U.S.C. § 3006A\(d\)\(2\)](#) to counsel furnishing extended or complex representation under a district court's plan for providing adequate representation to any defendant financially unable to obtain counsel. The court in which the representation was rendered, or the magistrate judge if representation was furnished exclusively before him or her, must certify that the representation given was in an extended or complex case and that the excess payment is necessary to provide fair compensation [[18 U.S.C. § 3006A\(d\)\(3\) \(2012\)](#)].<sup>19</sup>
  2. May delegate such approval authority to an active or senior circuit judge [*Id.* [§ 3006A\(d\)\(3\)](#)].

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17. Ensuring legal representation to indigent defendants is a traditional function of the judiciary. The Criminal Justice Act of 1964 (CJA) was designed to ensure the availability of legal representation for all persons charged with certain federal offenses. [18 U.S.C. § 3006A](#). It requires each of the ninety-four district courts (including the territorial district courts) to have a CJA plan that allows representation by a federal public defender or community defender organization or a private panel attorney. [18 U.S.C. §§ 3006A\(a\)\(3\), \(g\)\(1\), \(j\)](#). The chief circuit judge, the court of appeals, and the circuit judicial council have various responsibilities under the Act. [Compendium, supra](#) note 4, at 26. *See also* [Guide, vol. 7, pt. A: Guidelines for Administering the CJA and Related Statutes](#) (link is accessible by the general public because the Guidelines are posted on the AO's public website).

18. There is neither a statutory maximum for case compensation for appointed counsel nor provision for the chief judge of the circuit's review and approval of the case compensation amount in capital cases. [18 U.S.C. § 3599 \(2012\)](#); [Guide, vol. 7, pt. A, § 630.10.20](#).

19. *See also* [Guide, vol. 7, pt. A, §§ 230.23.10\(c\), 230.23.40](#).

- B. Vouchers for Fees of Investigators, Experts, or Other Service Providers in Excess of the Statutory Limits in Noncapital Cases.<sup>20</sup> The chief judge of the circuit
1. Must approve payment in excess of any maximum amount established under [18 U.S.C. § 3006A\(e\)\(3\)](#) to persons furnishing investigative, expert, or other services necessary for adequate representation to any defendant financially unable to obtain them. The court in which the representation was rendered, or the magistrate judge if the services were rendered in connection with a case disposed of entirely before him or her, must certify that the amount of the excess payment is necessary to provide fair compensation for services of an unusual character or duration [[18 U.S.C. § 3006A\(e\)\(3\)](#)].<sup>21</sup>
  2. May delegate such approval authority to an active or senior circuit judge [*Id.*].
- C. Vouchers for Fees of Investigators, Experts, or Other Service Providers in Excess of the Statutory Limits in Federal Death Penalty Cases and Federal Capital Habeas Corpus Proceedings. The chief judge of the circuit
1. Must approve payment in excess of any maximum amount established under [18 U.S.C. § 3599\(g\)\(2\)](#) to persons furnishing investigative, expert, or other services necessary for adequate representation to any defendant financially unable to obtain them. The court in which the representation was rendered, or the magistrate judge if the services were rendered in connection with a case disposed of entirely before him or her, must certify that the amount of the excess payment is necessary to provide fair compensation for services of an unusual character or duration [[18 U.S.C. § 3599\(g\)\(2\)](#)].<sup>22</sup>

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20. For all capital cases, the compensation maximum amounts for investigative, expert, and other services set forth in the [Guide, vol. 7, pt. A, § 310.20.10](#) are inapplicable. [Guide, vol. 7, pt. A, § 660.20.10](#).

21. See also [Guide, vol. 7, pt. A, § 310.20.20](#). If it can be anticipated that the compensation will exceed the statutory maximum, advance approval should be obtained from the court and the chief judge of the circuit (or the active or senior circuit judge to whom excess compensation approval authority has been delegated). See [Guide, vol. 7, pt. A, § 310.20.20\(b\)](#) & [app. 3A: Sample Request for Advance Authorization for Investigative, Expert, or Other Services](#).

22. See also [Guide, vol. 7, pt. A, § 660.20.20](#). If it can be anticipated that the payments for investigative, expert, and other services will exceed the statutory maximum, advance approval should be obtained from the court and the chief judge of the circuit (or an active or senior circuit judge to whom the chief judge has delegated this authority). See [Guide, vol. 7, pt. A,](#)

2. May delegate such approval authority to an active or senior circuit judge [*Id.*].
- D. Committee to Evaluate Incumbent Federal Public Defender or Recruit and Screen New Candidates.<sup>23</sup> Under the Criminal Justice Act, in an eligible district within his or her circuit, a chief circuit judge
1. May appoint a committee to recruit, screen, and assess the qualifications and potential for future performance of federal public defender candidates prior to the appointment of a federal public defender; or
  2. May appoint a committee to evaluate a federal public defender's performance prior to the reappointment of that current federal public defender [[18 U.S.C. § 3006A\(g\)\(2\)\(A\)](#); [Guide, vol. 7, pt. A, § 420.10.40](#)].<sup>24</sup>
- E. Annual Report of Attorney Compensation Exceeding 1,000 Hours. The chief circuit judge and the chief judge of each district court within the circuit must review the annual compensation report prepared by the AO's Defender Services Office, listing all attorneys who have appeared in the circuit's district courts and court of appeals and have claimed

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[§ 660.20.20\(d\)](#) & [app. 3A: Sample Request for Advance Authorization for Investigative, Expert, or Other Services](#).

23. Title [18 U.S.C. § 3006A\(g\)\(2\)\(A\)](#) directs the “court of appeals of the circuit” to appoint a federal public defender for a four-year term; remove the appointed defender before the end of his or her term for incompetency, misconduct in office, or neglect of duty; determine the compensation of the federal public defender; approve of the number of full-time attorneys appointed by the federal public defender; and submit a report on the appointment of counsel within its jurisdiction to the AO in such form and at such times as the Judicial Conference of the United States may specify. [18 U.S.C. §§ 3006A\(g\)\(2\)\(A\), 3006A\(h\)](#). Upon the expiration of his or her term, a federal public defender may, by a majority vote of the judges of the court of appeals, continue to perform the duties of the office until his or her successor is appointed, or until one year after the term's expiration, whichever is earlier. [18 U.S.C. § 3006A\(g\)\(2\)\(A\)](#).

24. The Judicial Conference advises that this committee should consist of persons knowledgeable in federal criminal defense issues, but should not include probation, pretrial services, law enforcement, or prosecutorial personnel. [Guide, vol. 7A, § 420.10.40](#). The committee's report and assessment, including any recommendations from the district court to be served as required by the Criminal Justice Act, should be considered by the court of appeals in determining whether to appoint or reappoint a particular individual as the federal public defender. [Guide, vol. 7A, § 420.10.60](#).

compensation for more than 1,000 hours of services at the end of the fiscal year [[Guide, vol. 7, pt. A, § 230.80](#)].

## V. Duties Under the Judicial Conduct and Disability Act

- A. Sources of Authority for Chief Circuit Judges' Duties. The [Judicial Conduct and Disability Act of 1980](#), 28 U.S.C. §§ 351–364 (2012), and the [Rules for Judicial-Conduct and Judicial-Disability Proceedings](#)<sup>25</sup> (JC&D Rules or the Rules) (*Guide*, vol. 2E, ch.3), establish the standards and procedures to determine whether a judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts or to determine whether a judge is unable to discharge the duties of office because of a mental or physical disability.
- B. Overview of Chief Circuit Judges' Duties. Chief circuit judges play a pivotal role in the process. They receive or initiate complaints relating to judicial conduct and disability and exercise several powers central to resolving such complaints. Chief circuit judges should refer to and rely on the [JC&D Rules](#), which are on the JNet. In brief, the process works as follows:
  1. The chief circuit judge initiates a complaint or receives a complaint [[JC&D Rule 5](#) and [Rule 6](#)].
  2. The subject judge receives a copy of the complaint [[JC&D Rule 8\(b\)](#)].
  3. The chief circuit judge reviews the complaint. The chief circuit judge may conduct a “limited inquiry” but “must not determine any reasonably disputed issue” [[JC&D Rule 11\(a\)](#) and [Rule 11\(b\)](#)].
  4. The chief circuit judge may take one of the following actions:
    - a. Dismiss the complaint on one of the grounds stated in [Rule 11\(c\)](#), for example, the complaint relates directly to the merits of a decision or ruling.
    - b. Conclude the complaint on the basis of informal resolution or corrective action by the subject judge [[JC&D Rule 11\(d\)](#)].
    - c. Conclude the complaint based on intervening events making remedial action impossible (e.g., resignation by the subject judge) [[JC&D Rule 11\(e\)](#)].

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25. For background information on the [Rules for Judicial-Conduct and Judicial-Disability Proceedings](#), see *infra* Appendix B.

- d. Appoint a special committee to investigate and report to the circuit judicial council [[JC&D Rule 11\(f\)](#)]. The chief circuit judge sits as a member of the special committee [[JC&D Rule 12\(a\)](#)]. [JC&D Rules 13–17](#) prescribe procedures for the special committee and its report.
  5. The special committee submits its report to the circuit judicial council, which may take one of several actions listed in [JC&D Rule 20](#). Possible actions range from dismissal of the complaint to sanctions against the subject judge. If the council finds that the subject judge may have engaged in conduct that might be grounds for impeachment, or that in the interest of justice the complaint is not amenable to resolution by the circuit judicial council, it must refer the complaint to the Judicial Conference.
- C. Amendments to the Judicial Conduct and Disability Rules. In 2019, in response to recommendations by the Federal Judiciary Workplace Conduct Working Group (see *infra* Part Three, section II.A), the Judicial Conference approved several amendments to the [Judicial Conduct and Disability Rules](#). Significant changes include the following:
1. Clarify that there is no “standing” requirement in order to file a complaint [[JC&D Rule 3\(c\)\(1\)](#)].
  2. Clarify that cognizable misconduct includes “unwanted, offensive, or abusive sexual conduct,” “treating litigants attorneys, judicial employees, or others in a demonstrably egregious and hostile manner,” “creating a hostile work environment for judicial employees,” and discrimination, which includes “intentional discrimination on the basis of race, color, sex, gender, gender identity, pregnancy, sexual orientation, national origin, age, or disability” [[JC&D Rule 4\(a\)\(2\)](#) and [Rule 4\(a\)\(3\)](#)].
  3. Clarify that confidentiality obligations do not prevent reporting misconduct [[JC&D Rule 23\(c\)](#)].
  4. Clarify that judges have an obligation to report to the relevant chief district or chief circuit judge “any reliable information reasonably likely to constitute judicial misconduct or disability” [[JC&D Rule 4\(a\)\(6\)](#)].
  5. Encourage greater transparency in disclosing information about judicial conduct and disability proceedings [[JC&D Rule 23\(b\)\(1\)](#) and [Rule 23\(b\)\(8\)](#)].
  6. Noting the availability of systemic evaluation procedures even when remedial action under the Act and JC&D Rules is unavailable and a complaint must be dismissed. Judicial councils

“have ample authority to assess potential institutional issues related to the complaint as part of their respective responsibilities to promote ‘the expeditious conduct of court business,’ [28 U.S.C. § 331](#), and to ‘make all necessary and appropriate orders for the effective administration of justice within [each] circuit.’ *Id.* at § [332\(d\)\(1\)](#).” [Commentary, JC&D Rule 11](#).

## VI. Duties Derived from the AO Director’s Delegation of Financial, Procurement, and Human Resources Authority to the Courts<sup>26</sup>

### A. Delegated Duties Subject to Internal Control Requirements.<sup>27</sup>

1. Duty to Establish Effective Systems for Internal Control of Delegated Administrative Functions. Chief judges of the circuit courts of appeals must establish, review, and administer effective systems for internal control of the judiciary’s administrative functions that have been delegated to them by the AO director (and redelegated to court unit executives), including the director’s financial, procurement, budget, property, and human resources functions, in order to provide reasonable assurance that

- judiciary assets are protected from fraud, waste, abuse, error, and loss;
- operations are efficient and effective;
- financial reports are accurate and reliable; and

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26. The director of the Administrative Office of the United States Courts (AO) acts under the “supervision and direction of the Judicial Conference” and serves as “the administrative officer of the courts.” [28 U.S.C. § 604\(a\)](#). As the administrative officer, the director is responsible for performing a broad range of functions and duties, some of which are enumerated in statutory provisions, but also must also perform “such other duties as may be assigned to him [or her] by the Supreme Court or the Judicial Conference of the United States.” [28 U.S.C. § 604\(a\)\(1\)–\(23\)](#), [604\(a\)\(24\)](#). Under the broad authority granted to the director to delegate any of these functions and duties to other officers and employees of the judicial branch, and to authorize their redelegation to others ([28 U.S.C. § 602\(d\) \(2012\)](#)), the director has delegated many responsibilities to officers and employees of the AO and the courts. The director has delegated his financial, procurement, and human resources authority to chief judges and court staff as the core of the judiciary’s national decentralization program. [Guide, vol. 1, § 520.20](#), [vol. 13, § 120.15](#). For a list of the director’s delegations and the terms and conditions associated with them, see [Guide, vol. 1, ch. 6 \(Delegations of the Director’s Authorities\)](#).

27. Pursuant to [28 U.S.C. § 602\(d\)](#), the director of the AO has delegated the authority to carry out a broad array of his administrative and management responsibilities to chief circuit judges (and to court unit executives as redelegated), subject to adherence to the internal control requirements defined in the *Guide*. [Guide, vol. 11, § 120](#).

- business practices comply with applicable statutes and policies [[Guide, vol. 11, §§ 110, 120](#)].
2. Oversight Responsibilities. The chief circuit judge must ensure that court unit executives are carrying out their responsibility to ensure that an appropriate internal control program is in place to protect assets, including funds and sensitive information, from fraud, waste, abuse, error, and loss [[Guide, vol. 11, § 140](#)]. Court unit executives must ensure that these programs include specific internal control measures, an internal control manual, and at least annual assessments [[Guide, vol. 11, §§ 140\(a\)–\(c\), 160, 180](#)].
- B. Delegation of Director's Financial Authority.<sup>28</sup>
1. Redelegate Authority to Spend Appropriated Funds. Chief judges of the circuit courts of appeals may redelegate to circuit executives and court unit executives (CUEs) the authority to manage and expend appropriated funds, not to exceed annual allotments and in conformance with allotment guidelines. Chief circuit judges
    - a. May retain some authority for the management and expenditure of funds appropriated to the judiciary, or delegate specific financial management responsibilities to another judge or to a judicial budget committee, or delegate all or specific financial management responsibilities to a CUE [[Guide, vol. 13, § 240.20](#)].<sup>29</sup>
    - b. May (or the local court committee of judges may) want to retain authority to review and approve budget requests; review annual spending plans for court units; review and approve interunit and interfund reprogramming requests; review and approve funding priorities; and review projected spending for

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28. The director of the AO is required to authorize and control the expenditure of funds appropriated to the judiciary. [31 U.S.C. § 1514 \(2012\)](#); [28 U.S.C. § 604\(a\)\(8\)](#). The director delegates authority for the management and expenditure of appropriated funds to chief judges and divisions within the AO. [28 U.S.C. § 602\(d\)](#). See generally [Guide, vol. 13: Finance and Budget](#); [vol. 11: Internal Control](#), chs. [2 \(Financial Management\)](#) & [7 \(Budget Management\)](#).

29. Redlegation of budget and financial management responsibilities by the CUE must be in writing, must be assigned to specific named individuals, and must be retained in the official records. [Guide, vol. 13, § 240.20.50\(b\)](#); [vol. 11, § 740](#). Additional guidance and tools to help chief circuit judges and court personnel with budgetary responsibilities to monitor administrative functions can be found in the [Court Budget Operating Manual](#) (AO May 2018); [Management Oversight and Stewardship Handbook](#) (AO July 2003); [Financial Management Handbook](#) (AO Feb. 2017); [Management in the Judiciary: Rules, Tools, and Tips of Good Stewardship](#) (AO 2013); and the [Judges Administration Manual](#), ch. 5 Personnel, Budget, and Financial Management Systems (AO Apr. 2018).

- the remainder of the fiscal year [[Guide, vol. 13, § 240.20.20\(a\)](#)].
- c. Must document a redelegation of financial management responsibilities to a CUE in the individual court unit's internal control manual and applicable court unit budget organization plan (CUBOP). Each court unit must maintain signed copies of the official delegation of responsibilities [[Guide, vol. 13, § 120.40](#)].
  - d. Despite redelegation, must ensure that the financial management responsibilities delegated by the AO director are being carried out [[Guide, vol. 13, §§ 120.35, 230, 260.20.20](#)], including approving for each court unit a current CUBOP that provides procedures governing the budget approval and reprogramming process, delineates the budget roles and responsibilities of court officials, and addresses the major elements of local budget management [[Guide, vol. 13, § 240](#); [vol. 11, § 740](#)].<sup>30</sup>
2. Concur with Appointment of Certifying Officer. The chief circuit judge must concur with the controller of the Administrative Office's appointment of certifying officers<sup>31</sup>—circuit and court unit executives delegated the responsibility of certifying the existence and correctness of facts cited on payment authorizations and supporting documents, the legality of proposed payments under the

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30. See also [Court Budget Operating Manual](#) (CBOM) ch. 4, §§ 4.3, 4.4 (AO May 2018). The chief circuit judge must approve a CUBOP for his or her circuit, submit a copy electronically through [InfoWeb](#), and certify annually that the CUBOP reflects the circuit's current delegations, budget, financial operations, and practices. *Id.* § 4.3. [Guide, vol. 13, § 240](#); [vol. 11, § 740](#). Detailed instructions and a "checklist" containing all the required CUBOP internal control elements are located in the Finance & Budget section in [InfoWeb, CBOM](#), § 4.3. For a concentrated overview of the chief circuit judge's roles and responsibilities regarding budget management, see the November 2008 video program [Understanding the Judiciary Budget Process](#), also available as a [DVD](#) and a companion print guide that includes a budget management checklist for chief judges. There are [sample CUBOPs](#) in the Policies and Procedures section of the [Compendium of Budget Decentralization Principles](#), which is located on the JNet under Financial Management, Budget, and Budget Decentralization.

31. [28 U.S.C. § 613\(b\) \(2012\)](#) (Certifying Officers). See also [Report of the Proceedings of the Judicial Conference of the United States \[hereinafter JCUS\], Sept. 1998, at 59](#) (To reduce concern that chief circuit judge's authority to manage his or her court will be negatively impacted by the 2000 amendment to 28 U.S.C. § 613 permitting the director of the AO to designate certifying officers in the judiciary, the JCUS approved a Budget Committee recommendation that the director of the AO should consult with the chief judge before designating additional certifying officers in a district court.)

appropriation or fund involved, and the correctness of computations [[Guide, vol. 13, § 120.50.20](#)].<sup>32</sup>

3. Sign Shared Services Arrangements.<sup>33</sup> The chief circuit judge must sign (or may delegate authority to a CUE to sign) the annual written agreement required of any court unit participating in a voluntary shared administrative services arrangement that is outside of district or circuit boundaries. The written agreement specifies the purpose of the shared administrative services arrangement and the amounts required by each participating court unit to maintain the arrangement [[Guide, vol. 13, § 250.35.10](#)].
4. Approve a Continuity of Operations Plan. The chief circuit judge must approve a Continuity of Operations (COOP) Plan<sup>34</sup> to provide a management framework for establishing organizational structure and operational procedures necessary to sustain essential functions in the event the court cannot continue normal judicial business operations because of a natural or man-made disaster [[Court Budget Operating Manual \(CBOM\)](#), ch. 5, § 5.6 (AO May 2018); [Guide, vol. 17, § 420](#)].

C. Delegation of Director's Procurement and Oversight Authority.<sup>35</sup>

1. Redelegation of Oversight and Procurement Authority. The chief circuit judge may redelegate to a Procurement Liaison Officer

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32. Court unit executives in their role as certifying officers may delegate to staff only the authority to act on their behalf to perform budget-related duties, such as coordinating budget development, reviewing allotments, reviewing the status of operating budgets, approving and recording obligations, approving payment vouchers, executing reprogramming transactions, and generating analytical reports. [Guide, vol. 13, § 240.20.50\(a\)](#). Certifying officers may not delegate their certifying officer authority, which includes the responsibility or the liability associated with improper payments. [Guide, vol. 13, § 120.50.20\(g\)](#). See also [Guide, vol. 13, ch. 13: Liability and Relief of Accountable Officers](#).

33. A number of court units participate in shared administrative services arrangements in which one court unit agrees to manage the funds and personnel necessary to provide certain goods or services to another court unit. Court units must request the AO Budget Division's approval prior to implementing the arrangement. [Guide, vol. 13, § 250.35.10](#).

34. See the JNet's [Continuity of Operations \(COOP\) Plan](#) page for instructional materials on developing court COOP plans, including the following: COOP Plan Templates, COOP Annex Templates, Federal Judiciary COOP Self-Assessment Guide and Tool; COOP Questionnaires; and COOP Test, Train and Exercise Program.

35. The director of the AO has delegated to chief circuit judges program oversight and procurement authority to obtain goods and services for the courts. [28 U.S.C. §§ 602\(d\), 604\(a\)\(10\), 604\(g\)](#). Chief circuit judges successively delegate this authority to procurement liaison officers and contracting officers. [Guide, vol. 14, §§ 120.10.10, 120.20.10, 120.20.40](#).

By statute, legal responsibility for mishandled funds rests with clerks of court and certifying officers [31 U.S.C. §§ 3302, 3528], however, the chief judge should play a large role in overseeing

(PLO) the authority to procure products and services and administer and manage the procurement program for the court of appeals<sup>36</sup> in compliance with the limitations and guidelines specified in the Contracting Officers Certification Program (COCP), including the provisions of the Procurement Integrity Act, [41 U.S.C. §§ 2101–2107 \(2012\)](#). The PLO has authority to redelegate procurement authority to acquire goods and services (but not procurement oversight responsibilities) to contracting officers (COs)<sup>37</sup> [[Guide, vol. 14, §§ 120.20.40, 140, 150](#)].

2. Levels of Procurement Authority. The chief circuit judge may adopt a process for subdelegating to PLOs and COs procurement authority within the limits described in Levels 1, 2, and 3 of the COCP [[Guide, vol. 14, §§ 120.20.10\(b\), 140](#)]. Each certification

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the budget and procurement processes so that problems can be averted. First and foremost, the chief judge should ensure that the highest quality financial professionals work for the court and are properly trained and kept up to date on Judiciary and federal appropriations procedures and policies.

[Compendium](#), *supra* note 4, at 74. See [Guide, vol. 14 \(Procurement\)](#) & [vol. 11 \(Internal Control\), ch. 3 \(Procurement\)](#). [Volume 14 of the Guide](#), which details the federal judiciary's procurement policies, is available to the public on the AO's public website. Additional resources for managing procurement in the judiciary include the [Financial Management Handbook](#) 33–43 (AO Feb. 2017); the [Procurement](#) page on the JNet (contains policies, publications, training courses, tools, and other information on the procurement program for the federal judiciary); and [Judiciary Small Purchase Procedures Manual](#) (AO April 2009) (provides “how-to” information on small purchase procedures).

36. Generally, chief circuit judges designate court unit executives as Procurement Liaison Officers (PLOs). The redelegation of a chief judge's procurement authority to a PLO must be done in writing using [Form AO 374 \(Delegation of Procurement Liaison Officer\)](#). [Guide, vol. 14, §§ 130.30.10, 130.40.10, 130.40.20](#). PLOs' oversight responsibility includes administering and managing the procurement program throughout their specific judiciary unit, complying with volume 14 of the *Guide*, Procurement Manuals, and Procurement Bulletins, and establishing an internal control program in compliance with the [Guide, vol. 11, ch. 3 \(Procurement\)](#). [Guide, vol. 14, § 130.30.10](#). Appointment of multiple PLOs for the same judiciary unit is not authorized. Although appointment as a PLO does not constitute authority to act as a contracting officer (CO), a chief circuit judge may appoint a PLO as a CO by issuing a separate delegation to the PLO using Form AO 375 (Procurement Liaison Officer's Appointment of Contracting Officer). A PLO may not appoint himself or herself as a CO. [Guide, vol. 14, §§ 130.30.20, 140.15.30](#).

37. Contracts may be entered into and signed on behalf of the judiciary only by COs, appointed in accordance with the requirements of the COCP. COs may bind the judiciary only to the extent of the authority delegated to them. COs must ensure that all requirements of law, judiciary policy, and regulations, including required approvals, are met when entering into contracts. Information on the limits of an individual CO's authority must be provided upon request. [Guide, vol. 14, §§ 120.20.40, 120.20.45, 130.30.10, 130.50.20](#). All COs must be appointed using [Form AO 375 \(Procurement Liaison Officer's Appointment of Contracting Officer\)](#). [Guide, vol. 14, § 130.50.20](#).

level is distinct with respect to the dollar amount of procurement authority that may be delegated, types of procurement actions that may be awarded, procurement methods that may be used, products and services that may be acquired, and training requirements [[Guide, vol. 14, §§ 120.40, 140.15.20, 140.20, 140.25, 140.30](#)].

3. Cancellations, Suspensions, and Limitations on Procurement Authority. Chief circuit judges may cancel, suspend, or further limit their delegations of procurement authority [[Guide, vol. 14, § 120.20.60](#)].
4. Ratification of Unauthorized Commitments. Chief judges of the circuit courts of appeals
  - a. Must provide a CO with a one-time delegation of authority to ratify an unauthorized commitment if (1) the action is within the procurement authority delegated to the chief circuit judge (or the PLO must provide the CO with authority to ratify if procurement authority was redelegated) and (2) the procurement meets all of the criteria required to approve ratification of an unauthorized commitment [[Guide, vol. 14, §§ 120.20.10\(b\), 160.15, 160.25 \(Criteria for Approving Ratification Requests\), 160.30](#)]. The PLO may not be the authorizing official for any ratification action for which the PLO is also the CO. [[Id. § 160.15](#)].
  - b. Must sign and approve (or the PLO must sign and approve if procurement authority was redelegated) a CO's submission to the procurement executive (chief of the AO's Procurement Management Division) requesting a one-time delegation of authority to ratify an unauthorized commitment (1) if the action is not within the procurement authority delegated to the chief circuit judge (or to the PLO if procurement authority was redelegated), and (2) if the procurement meets all the criteria required to approve ratification of an unauthorized commitment [[Guide, vol. 14, §§ 120.20.10\(b\), 160.15, 160.20, 160.25, 160.30](#)].
  - c. Must submit a report to the AO's procurement executive each month listing each request received for ratification of an unauthorized commitment and the final disposition of each request [[Guide, vol. 14, § 160.45](#)].

5. Other Procurement Authorities. Chief circuit judges
  - a. May exempt specific purchases of energy-consuming products from the statutory requirement that all such purchases are linked to products that comply with specific energy efficiency requirements [[42 U.S.C. § 8259b \(2012\) \(Federal Procurement of Energy Efficient Products\)](#)]; [Guide, vol. 14, § 220.60](#)].
  - b. May grant certain exceptions to competition requirements, providing written approval for the contracting officer (CO) to award a contract for which competition is required without providing full and open competition [[Guide, vol. 14, § 335.30](#)].
  - c. May approve and sign interagency agreements and memoranda of understanding to procure products and services from other federal agencies [[Guide, vol. 14, §§ 140.30.30\(h\), 550.30.30, 550.30.20](#)].

D. Delegation of Director's Personal Property Authority.<sup>38</sup>

1. Redelegate Authority to Manage and Dispose of Official Government Personal Property. Chief circuit judges may redelegate authority to manage and dispose of official government personal property directly to employees designated as custodial and disposal officers or to a court unit executive (CUE), who must appoint other employees to serve as custodial and disposal officers. The CUE may not serve in this capacity himself or herself, and custodial officers and disposal officers may not be the same person [[Guide, vol. 16, § 510.30](#)].<sup>39</sup>

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38. Under [28 U.S.C. § 602\(d\)](#), the director of the AO has authority to procure and maintain property on behalf of the courts, and he has delegated many of these authorities to the chief circuit judge. [28 U.S.C. § 604\(a\)\(10\)](#); [Guide, vol. 16, § 510](#). Additional information about property management can be found in [volume 16, chapter 5 of the Guide](#) and in the [Management Oversight and Stewardship Handbook](#), *supra* note 29, at 63.

39. Personal property is any tangible property that is owned or under the custody of a court or applicable judiciary agency and that is required for official use, except for real property (e.g., buildings, land). Examples of personal property include equipment, furniture, vehicles, supplies, customer-specific computer applications, and off-the-shelf computer applications. Personal property also includes (1) gifts that have been formally accepted by the director or a designee (*see* [Guide, vol. 16, § 520.10\(c\)](#)); (2) firearms, ammunition, safety equipment, and related items (*see* [Guide, vol. 8H, ch. 3](#)); and (3) legal research resources (*see* [Guide, vol. 21, ch. 2](#)). Personal property *does not* include personally owned items, including judges' robes; property incorporated into or permanently attached to real property (e.g., carpeting, window coverings, built-in bookcases, and cabinets); records of the judiciary; and intangible property (e.g., money, credit cards, software licenses) belonging to the government (*see* [Guide, vol. 16, § 520](#)).

2. Permitted Acquisition of Personal Property—Donation or Gift for Official Use Only. The chief circuit judge may “accept, hold, administer, and utilize gifts and bequests” of privately owned law-books and legal research materials given to the judiciary for the purpose of aiding or facilitating its work. Chief circuit judges may redelegate to the circuit librarian, by a memorandum to be kept on file by the librarian, the authority to accept gifts of privately owned legal research resources to use in a chambers or library collection [[Guide, vol. 21, § 230](#); [vol. 16, § 520.10\(c\)](#)].
  3. Management of Personal Property. The chief circuit judge
    - a. Must ensure that custodial officers are carrying out their personal property management responsibilities of accounting and safeguarding personal property, including maintaining an updated master personal property record (MPPR); taking custody and control of personal property; storing and securing personal property; tracking accountable property items; taking an inventory of property items (physical sighting); identifying excess property items and reporting to the disposal officer; reconciling property disposal records and the MPPR; and notifying the chief judge when an item has been lost, stolen, or damaged [[Guide, vol. 16, §§ 520, 530, 540, 555](#)].
    - b. Must ensure that disposal officers are carrying out their personal property management responsibilities of disposal of personal property, including ensuring that excess and surplus property items are accounted for until disposal; documenting steps followed for disposal; identifying excess property for disposal; and certifying the destruction in writing and changing the status of the item in the MPPR to “disposed” [[Guide, vol. 16, § 580](#)].
- E. Delegation of AO Director’s Job Classification and Compensation Authority.<sup>40</sup>
1. Request for Delegation of CPS Authority. The chief circuit judge may request a delegation of authority from the director of the AO

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40. The judiciary has two personnel resource management systems that are used to make decisions on job classification and salaries: the Judiciary Salary Plan (JSP) and the Court Personnel System (CPS). The salaries of judges’ chambers staff (chambers paralegal, judge’s secretary, and judicial assistant), court unit executives and their seconds in command, law clerks, court criers, and court interpreters are governed by the JSP, a comprehensive plan adopted in 1961 that includes positions that are established and classified by specific Judicial Conference decisions and that have designated target grades. The JSP establishes grade levels based on (1) the type of

to permit his or her court to make position classification, job qualification, and compensation decisions locally, under the Court Personnel System (CPS) [[Guide, vol. 12, §§ 615.20, 615.40.20\(k\)\(3\)\(A\)](#)], and may redelegate this authority to circuit and court unit executives, but only after the delegatee has completed the required CPS certification [[Guide, vol. 12, § 615.40.20\(k\)\(3\)\(A\), \(B\)](#)].<sup>41</sup>

2. Classification and Position Management Under the Judiciary Salary Plan (JSP). The chief judge of the circuit court of appeals
  - a. May appoint or promote an employee to a position covered under the Judiciary Salary Plan, for whom the chief circuit

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position held by an employee; and (2) the experience level of the employee. JSP positions are centrally managed and funded by the AO and are not a part of the courts' decentralized budget covering most other employees, unless an exception is established by the Judicial Conference. The AO director is responsible for JSP classification, compensation, and qualification, but any changes in classification must be approved by the Judicial Conference. [Guide, vol. 12, §§ 610.10, 615.20, 615.40.10](#); [Judges Administrative Manual \(JAM\), ch. 18, § 4](#) (AO Apr. 2018).

The CPS is a separate salary system that was adopted by the Judicial Conference in September 1993 and that governs the salaries of most court employees who do not fall under the JSP (e.g., clerk's office staff). CPS simplifies the job classification system and grade structure used in the JSP, and it contains a wider pay range for each position, giving the court manager more flexibility in setting and adjusting an employee's pay. No limitations are placed on spending for promotions or hiring decisions, as long as the court unit is able to fund its personnel actions from the salary dollars allocated through the Cost Control Monitoring System (CCMS). CCMS uses work measurement formulas to convert the approved work units into salary dollars in order to determine the annual salary cost ceiling for individual court units. [Guide, vol. 12, §§ 610.10, 615.20, 615.40.20](#); [Report of the Proceedings of the JCUS Sept. 2008, at 25](#); [JAM, supra at ch. 5, § 2](#).

The director of the AO has original authority under [28 U.S.C. § 604\(a\)\(5\)](#) to fix the compensation of employees of the courts whose compensation is not otherwise fixed by law. [Guide, vol. 12, § 615.40.20\(k\)\(1\)](#). Upon implementation of the new CPS system, the AO director offered each court a delegation of the authority to manage and control position classifications, qualifications, and compensation decisions locally, consistent with national requirements. Thus, unless a court obtains delegated authority, the AO director retains authority for classification decisions, and the AO's Court Human Resources Division (CHRD) will review all classification decisions (as well as compensation and qualification decisions) from courts without delegated authority. [Guide, vol. 12, §§ 615.40.20\(k\)\(2\), 615.40.20\(k\)\(3\)](#). Additional information about pay policies that were promulgated by the director of the AO and approved by the Judicial Conference can be found in [volume 12, chapter 6 of the Guide](#) and in [chapter 6 \(Pay\)](#) of the AO's [Human Resources Manual](#) (AO 2018).

41. Because CPS-delegated authority is vested in the court, not the incumbent chief judge of the circuit when the request for CPS delegation was made, a court does not need to request a new delegation if there is a change in chief circuit judge or court unit executive, except that the individual exercising delegated authority must have obtained CPS certification. [Guide, vol. 12, § 615.40.20\(k\)\(3\)\(B\)](#).

judge is the statutorily designated appointing officer,<sup>42</sup> at any grade level for which the individual qualifies, at or below the target grade (the maximum grade level attainable for a specific type of position) [[Guide, vol. 12, § 615.40.10](#)].

- b. May employ up to six individuals to fill the following six authorized positions during his or her tenure as chief circuit judge: one secretary or paralegal (JSP-11); up to four law clerks or assistant secretaries (JSP-10); and one additional secretary or paralegal (JSP-11) or law clerk [[28 U.S.C. § 712 \(2012\)](#); [Guide, vol. 12, § 615.50](#)].
  - (1) May temporarily promote his or her principal secretary or paralegal (if a paralegal is used in lieu of the authorized principal secretary position) from the JSP-11 level to the JSP-12 level for the duration of the judge's tenure as chief circuit judge [[Guide, vol. 12, § 615.40.10\(f\), 615.50](#); [Report of the Proceedings of the JCUS Mar. 2012, at 19–20](#)].
  - (2) May temporarily promote his or her assistant secretary from the JSP-10 level to the JSP-11 level if the assistant secretary's duty station is in a geographical location separate from that of the chief circuit judge until the judge reaches the age of 70 or completes a seven-year term as chief circuit judge, whichever happens first [[Guide, vol. 12, § 615.50](#)].
3. Temporary Retention of Chambers Staff for Unanticipated Judicial Vacancy. A chief circuit judge
  - a. Must make the determination that the vacancy in a judgeship is unanticipated in order for chambers staff to be retained for

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42. Court and FPDO employees are appointed by, and (except probation officers) serve at the pleasure of, a statutory appointing authority (an appointing officer). [Guide, vol. 12, § 510.30\(a\)](#). An appointing officer is vested by statute with authority to appoint and terminate employees for the positions specified within the statute. [Human Resources Manual, ch. 10, § 1.G.2](#) (AO 2018). For a list of appointing officers and the positions for which they are responsible, see the Statutory Appointment Authority Matrix (a three-column matrix that lists employees for whom an appointing officer, by statute, has the power to authorize all personnel actions—appointments, promotions, demotions, separations, reassignments, and leave). [Id. § 1, at 10–12](#). Although the chief circuit judge may redelegate CPS authority to circuit or court unit executives with CPS certification, absent explicit statutory permission, an appointing officer may not delegate his or her authority to appoint and terminate employees for whom he or she is statutorily responsible. [Id. § 1.G.2](#); [Guide, vol. 12, § 615.40.20\(k\)\(3\)\(A\), \(B\)](#).

- 90 days [[Guide, vol. 12, § 615.50.30\(a\)](#); [Report of the Proceedings of the JCUS Sept. 1996, at 61–62](#)].
- b. May certify to the circuit judicial council, when appropriate, that chambers staff who have been retained for 90 days following the unanticipated vacancy of a judge are necessary to be retained for one additional period of up to 120 days beyond the original 90-day period [[Guide, vol. 12, § 615.50.30\(b\)](#)].
  - c. Must sign a Personnel Action Request ([Form AO 193](#)) to retain staff temporarily following an unanticipated judgeship vacancy, identify the employees and the period of time that the employees will be retained, and submit Form AO 193 to the AO Human Resources Office (HRO), Court Human Resources Division (CHRD) [[Guide, vol. 12, § 615.50.30\(d\)](#)].
4. Annual Certification of Senior Judges' Workload. In order for senior judges to continue receiving the salary of the office from which they retired for the remainder of their lives and any post-retirement salary increases provided by Congress other than cost-of-living adjustments, the chief circuit judge
- a. Must certify annually that senior judges commissioned within his or her circuit who retire from regular active service but retain their appointed office pursuant to 28 U.S.C. § 371(b)(1) have met the workload requirements set forth in 28 U.S.C. § 371(e) and § 620.45.20(b) or (c) of the Judicial Conference's Rules for Certification of Senior Judges<sup>43</sup> [[28 U.S.C. § 371\(e\)\(1\)\(A\)–\(E\) \(2012\) & Historical and Revision Notes; Guide, vol. 12, §§ 620.45, 760.10.10\(c\)\(2\)](#). See also [Form AO 27](#).]
  - b. Must certify senior judges commissioned within his or her circuit who are unable to perform judicial or administrative duties to the extent required in § 620.45.20(b) and (c) because of

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43. To be certified under [§ 620.45.20 \(Rules for Certification of Senior Judges\)](#), a senior judge must perform either (a) judicial duties consisting of caseloads involving courtroom participation, substantial judicial duties not involving courtroom participation, or a combination of the two; (b) administrative duties equal to the full-time work of an employee of the judicial branch; or (c) a combination of such administrative and judicial duties if the judge has performed administrative duties for less than a full year but has satisfied the total workload requirement for certification by aggregating one-half of the administrative work performed with any judicial duties performed. A senior judge receives credit for three months' work if he or she actually puts in the equivalent of three months' work, or if he or she accepts assignments equivalent to one-quarter of the assignments of an average judge based on the district average, the circuit average, or the national average of assignments for active judges of the same court. [Guide, vol. 12, § 620.45\(b\)](#).

- a temporary or permanent disability, if the senior judge self-certifies his or her disability in writing under § 620.45.20(e), or if the senior judge is unable to self-certify his or her disability in writing but is disabled within the meaning of § 620.45.20(e)(1)<sup>44</sup> [[Guide, vol. 12, § 620.45.20\(e\)\(2\)](#); [28 U.S.C. § 371\(e\)\(1\)\(E\)](#)].
- c. May certify any senior judge who does not retire although he or she is eligible due to a permanent mental or physical disability, if a majority of the members of the circuit judicial council sign a certificate of disability and present it to the President with a request to appoint an additional or substitute judge pursuant to [28 U.S.C. § 372\(b\) \(2012\)](#) [[Guide, vol. 12, § 620.45.20\(e\)\(2\)](#)].
  - d. May make reasonable adjustments to [§ 620.45](#) (Judicial Conference's Rules for Certification of Senior Judges) as necessary to meet unusual or unforeseen circumstances, so long as the requirements of [28 U.S.C. § 371\(e\)](#) are satisfied [[Guide, vol. 12, § 620.45.40\(a\)](#)].
  - e. Must provide written notice of all certification of senior judges described in § 620.45.20 to the AO-HRO's Judges Compensation and Retirement Division (JCRD) and provide a copy to the senior judge [[Guide, vol. 12, § 620.45.30\(b\)](#)].
5. Waiver of the Salary Offset for Reemployed Civilian Retirees.<sup>45</sup>  
The chief circuit judge must approve and sign, before submission

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44. To be certified under § 620.45.20(e), a senior judge must be unable to perform judicial or administrative duties to the extent required in § 620.45.20(b) and (c) because of a temporary or permanent disability. For purposes of § 620.45.20(e), disability is interpreted to mean a physical, mental, or emotional incapacity. [Guide, vol. 12, § 620.45.20\(e\)\(1\)](#). Because a senior judge who is certified as permanently disabled in one year is deemed to be certified for each calendar year thereafter, he or she need not be certified in subsequent years. [Guide, vol. 12, § 620.45.30\(f\)](#).

45. When a federal civilian retiree who receives an annuity from either the Civil Service Retirement System (CSRS) fund (which includes the CSRS Offset) or the Federal Employees Retirement System (FERS) fund becomes reemployed, an amount equal to the annuity is normally deducted from his or her pay. [5 U.S.C. §§ 8344\(a\), 8468\(a\) \(2012\)](#). The AO director has authority to waive the deduction on a case-by-case basis for employees in positions for which it is exceptionally difficult to recruit or retain a qualified employee, or for temporary employees when necessary because of an emergency involving a direct threat to life or property or other unusual circumstances. [Id. §§ 8344\(j\), 8468\(g\)](#); [Guide, vol. 12, § 650.50.20](#). A request for waiver of the salary offset for a civilian retiree is intended to be a rare exception and requires the approval and signature of the appointing officer and the chief judge of the court in which the service is to be performed, before submission to the AO director. [Guide, vol. 12, §§ 650.50.10, 650.50.40](#). The chief circuit judge must approve this waiver for retirees appointed to a position (1) for which

to the AO director for authorization, a rare request for waiver of the salary offset when a court or federal public defender organization (FPDO) reemploys (appoints) a federal civilian retiree who receives either a CSRS or FERS annuity, to avoid the reduction in the employee's pay of an amount equal to the annuity [[Guide, vol. 12, § 650](#)].

6. Recruitment and Relocation Bonuses. The chief circuit judge must formally approve, or the chief circuit judge's designee must approve, the appointing officer's decision to pay an employee recruited for a CPS position the court determined was hard to fill in the absence of an incentive (a) a recruitment bonus if the employee was never formerly employed by any branch of the federal government; or (b) a relocation bonus if the employee is a current federal employee (in any branch of government) who must relocate to accept the position without a break in service [[Guide, vol. 12, § 655](#)].
7. Retention Bonuses. The chief circuit judge, or his or her designee, must formally approve the appointing officer's decision to pay a retention bonus from decentralized court funds (not funded by the AO) to an incumbent of a hard-to-fill CPS position. The court must first determine that (a) the unusually high or unique qualifications of the employee or a special need of the court for the employee's services makes it essential to retain the employee, and (b) the employee would be likely to leave the federal service in the absence of a retention bonus [[Guide, vol. 12, § 670](#)].
8. Back-Pay Determination for Unjustified or Unwarranted Personnel Action. If the chief circuit judge or his or her designee concludes, on behalf of the court, that an unjustified or unwarranted personnel action has had an impact on an employee's pay (including a decision based on an Employment Dispute Resolution (EDR) claim), the chief circuit judge or his or her designee must forward the case to the AO director for review and a back-pay determination [[Guide, vol. 12, § 690](#); [5 U.S.C. § 5596 \(2012\) \(The Back Pay Act\)](#)].

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appointment authority is vested with the court of appeals (e.g., bankruptcy judge, bankruptcy administrator, and federal public defender); (2) for which the chief circuit judge is the appointing officer; or (3) if the chief circuit judge is the chief judge of the court in which the service is to be performed. The salary offset cannot be waived for a justice or judge of the United States as defined in [28 U.S.C. § 451 \(2012\)](#), which includes judges of the courts of appeals and district courts. [5 U.S.C. §§ 8344\(j\)\(2\), 8468\(g\)\(2\)](#); [Guide, vol. 12, § 650.30](#).

## VII. Duties Under Policies Governing Human Resources Functions in the U.S. Courts<sup>46</sup>

- A. Fair Employment Practices for Judiciary as Employer: Personal Assistants for Individuals with a Disability. Chief judges of the circuit courts of appeals may employ or assign one or more personal assistants determined to be necessary to enable judges or employees with disabilities to perform their official duties, including a reading assistant or assistants for a blind employee and an interpreting assistant or assistants for a deaf employee [[5 U.S.C. § 3102 \(2012\)](#)].
- B. Employment by the Courts Contingent on Mandatory Background Checks and Investigations.<sup>47</sup> The judiciary's policy provides that appointment or promotion of employees, contractors, and volunteers of courts and FPDOs is provisional and contingent upon a satisfactory suitability determination on the individual based on a mandatory background check for all sensitive positions and a mandatory background investigation for all high-sensitive positions. The chief judge of the circuit court of appeals
  1. Must receive notice of significant negative employment suitability issues arising from a background check or investigation conducted by an appointing officer<sup>48</sup> with respect to candidates for the positions he or she is statutorily responsible for appointing [[Guide, vol. 12, §§ 570.40, 570.50.30\(c\)](#)].

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46. The authority for the chief circuit judge duties under the HR policies governing the federal courts included in this section derives from statutory provisions (most commonly in Titles 5, 18, and 28, United States Code), regulations (typically in Title 5, Code of Federal Regulations), and Judicial Conference decisions. Since the authority for chief circuit judge duties under the federal judiciary's compensation policies was delegated by the AO director, these duties were included in Part E of section VI. Unless otherwise noted with respect to a particular policy, the HR policies discussed in section VII are applicable to all courts (including the offices of circuit executives and bankruptcy administrators) and federal public defender organizations in the judicial branch, including all covered employees of these organizations with the exception of judges. [Guide, vol. 12, ch. 1](#). Additional information about human resources management can be found in [volume 12 of the Guide](#) and in the AO's revised [Human Resources Manual](#) (AO) (chapters dated separately as revised).

47. The judiciary's policy mandating background checks or investigations for employment by courts and FPDOs excludes all judges. [Guide, vol. 12, § 570.30](#). All covered positions, including positions occupied by volunteers or covered contractors, are considered sensitive unless designated as high-sensitive. High-sensitive positions involve duties and responsibilities that are especially critical and have a broad scope of authority. [Guide, vol. 12, § 570.50.2](#). For a list of the current high-sensitive positions, see the [Human Resources Manual, ch. 5, § 3.B](#).

48. See *supra* note 42.

2. Must approve an appointing officer's final employment suitability determination for his or her employees, based in part on the appointing officer's review and evaluation of any required background checks and investigations [[Guide, vol. 12, §§ 570.50.30\(d\), 570.50.45\(b\)](#)].
- C. Retirement Benefits for Judges. With respect to ensuring that an Article III judge meets the eligibility requirements for retirement provided in the statute governing the manner in which the judge has chosen to retire, chief judges of the circuit courts of appeals have the following duties and responsibilities:
1. Article III Judges Who Take Senior Status
    - a. Voluntary Certification of Permanent Disability
      - (1) Circuit or District Judge Within Chief Circuit Judge's Circuit. The chief circuit judge must sign a certificate of disability on behalf of a circuit or district judge who, upon becoming permanently disabled, wants to retire from regular active service but retain his or her judicial office (take senior status). The retiring circuit or district judge must certify his or her disability to the President in writing by presenting the certificate of disability to the President [[28 U.S.C. § 372\(a\)](#)].
      - (2) Chief Circuit Judge. If a chief circuit judge chooses to take senior status because of a permanent disability that prevents him or her from performing his or her duties, the chief circuit judge must certify his or her disability to the President in writing by presenting to the President a certificate of disability signed by the Chief Justice of the Supreme Court [[28 U.S.C. § 372\(a\)](#)].
    - b. Official Notification to Retiring Judge's Court of Intent to Take Senior Status.
      - (1) Circuit Judge Retiring. The chief circuit judge, along with the circuit executive, should receive written notification of a circuit judge's intention to leave regular active service and take senior status under [28 U.S.C. § 371\(b\)\(1\) \(2012\)](#) (age and length of service) or [28 U.S.C. § 372\(a\)](#) (disability) [[Guide, vol. 12, §§ 760.10.10\(b\)\(2\)\(B\), 760.10.10\(b\)\(3\)\(B\)](#)].
      - (2) Chief Circuit Judge Retiring. The chief circuit judge should provide to the judge next in line to become chief

circuit judge and to the circuit executive written notification of the chief circuit judge's intention to leave active service and take senior status under [28 U.S.C. § 371\(b\)](#) (age and length of service) or [28 U.S.C. § 372\(a\)](#) (disability) [[Guide](#), [vol. 12](#), [§§ 760.10.10\(b\)\(2\)\(B\)](#), [760.10.10\(b\)\(3\)\(B\)](#)].

- c. Annual Workload Certification Required to Receive Full Compensation During Retirement. The chief circuit judge must annually certify all judges who were commissioned in his or her circuit and subsequently retired from regular active judicial service under [28 U.S.C. § 371\(b\)](#) as having performed certain judicial or administrative duties described in [28 U.S.C. § 371\(e\)](#) and the Rules for Certification of Senior Judges [[Guide](#), [vol. 12](#), [§ 620.45](#)] in the preceding calendar year in order for the senior judges to receive post-retirement salary increases other than cost-of-living adjustments [[Guide](#), [vol. 12](#), [§ 760.10.10\(c\)\(2\)](#)]. A chief circuit judge's duties with respect to certification of senior judges is covered in greater detail in section VI.E.4 *supra*.
  - d. Prior Approval Required to Receive Income from Teaching. The chief circuit judge must approve a request to receive income from teaching from a senior circuit or district judge in his or her circuit *before* the senior judge receives any compensation for teaching, including teaching courses of study at accredited institutions and in continuing legal education programs [[Guide](#), [vol. 12](#), [§ 760.10.10\(f\)\(3\)](#)].<sup>49</sup>
2. Article III Judges Who Retire or Resign from Office
    - a. Official Notification to Judge's Court of Intention to Retire or Resign from Office Recommended
      - (1) Circuit Judge Retiring or Resigning from Office. The chief circuit judge, along with the circuit executive, should receive written notification of a judge's intention

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49. Although a senior judge must comply with statutory limitations on outside earned income and employment prescribed by the Ethics Reform Act of 1989 [[5 U.S.C. app. §§ 501–505 \(2012\)](#)], there is no statutory limit on teaching income for senior judges who have met the workload certification requirement of [28 U.S.C. § 371\(e\)](#) or for senior judges who have taken senior status based on disability under [28 U.S.C. § 372\(a\)](#), [5 U.S.C. app. § 502](#); [Guide](#), [vol. 3](#), [§ 840.30](#); [vol. 2C](#), [§ 1020.25\(b\)\(7\)](#); [vol. 12](#), [§ 760.10.10\(f\)\(3\)](#). In addition to the [Guide](#), [vol. 2C](#), [§ 1020](#), the Judicial Conference's [Regulations on Outside Earned Income, Honoraria, and Employment](#) are available on the [Judiciary Policies](#) webpage on the AO's public website.

- to retire from office under [28 U.S.C. § 371\(a\)](#) or resign from office before meeting the age and length-of-service requirements of 28 U.S.C. § 371 [[Guide, vol. 12, §§ 760.10.20\(b\)\(2\)\(A\), 760.10.30\(c\)\(2\)\(B\)](#)].
- (2) Chief Circuit Judge Retiring or Resigning from Office. The chief circuit judge should provide to the judge next in line to become chief circuit judge, as well as to the circuit executive, written notification of the chief circuit judge's intention to retire from office under [28 U.S.C. § 371\(a\)](#) or resign from office before meeting the age and length-of-service requirements of 28 U.S.C. § 371 [[Guide, vol. 12, §§ 760.10.20\(b\)\(2\)\(A\), 760.10.30\(c\)\(2\)\(B\)](#)].
- b. Matters That Cannot Be Completed Before Retirement or Resignation. The chief circuit judge, along with the Chief Justice (or other presiding judge if the chief circuit judge is retiring or resigning from office), should receive notification of any matters that cannot be completed before the effective date of a judge's retirement or resignation so that the matters can be re-assigned [[Guide, vol. 12, §§ 760.10.20\(b\)\(4\), 760.10.30\(c\)\(4\)](#)].
3. Bankruptcy Judges' Retirement Under the Judicial Retirement System (JRS)<sup>50</sup>
- a. Exceptions to Penalty for Early Separation. A bankruptcy judge who was under the age of 65 when he or she was not reappointed at the expiration of his or her judicial term will not have his or her Judicial Retirement System (JRS) non-disability annuity reduced under the penalty for early separation if
- (i) the bankruptcy judge notifies the chief judge of the circuit in which the bankruptcy judge is serving that he or she is willing to be reappointed to another term of office;

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50. The JRS is a pension plan available to full-time bankruptcy judges and magistrate judges under the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act, [28 U.S.C. § 377 \(2012\)](#). A bankruptcy judge or magistrate judge must make an election to participate in the JRS. The election is irrevocable and may be made at any time while the judge is in office as long as it is made at least thirty days before the date the judge leaves office. [Guide, vol. 12, § 760.10.40\(b\)](#). See also [Guide, vol. 12, § 760.10.50](#): Regulations of the Director Implementing the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988.

- (ii) notification is done in writing on Form PER 74 (Notice of Willingness to Accept Reappointment);
  - (iii) notification is received by the appropriate chief circuit judge no earlier than nine months and no later than six months before the expiration of the current term of office; and
  - (iv) the bankruptcy judge has served at least one full term of office (i.e., fourteen years) [[Guide, vol. 12, §§ 760.10.40\(b\)\(10\), 760.10.50\(e\)\(1\)\(C\)](#)].
- b. Establishing Eligibility for a Disability Annuity Under the JRS. The chief circuit judge must receive certification in writing from a bankruptcy judge who voluntarily leaves office on the sole ground of mental or physical disability, along with supporting documentation, that the bankruptcy judge is permanently disabled and unable to perform the duties of the office. The chief circuit judge must forward the certification, supporting documentation, and a recommendation to the AO director, who determines the bankruptcy judge's eligibility for a disability annuity, subject to review by the Judicial Conference [[Guide, vol. 12, § 760.10.40\(e\)\(4\)\(D\)](#)].
- D. Employee Recognition Awards.<sup>51</sup> Employee recognition awards are used to provide incentive to and recognition of employees, individually and as members of groups, for job performance and accomplishments in service to the judiciary. Chief judges of the circuit courts of appeals may
- 1. establish, and authorize in writing, an employee recognition program that defines the award categories and criteria with supporting justification and documentation, and specifies which units within a court may participate [[Guide, vol. 12, §§ 830.30, 830.65](#)].
  - 2. delegate authority to the circuit executive to (a) administer employee recognition programs based on established criteria; (b) ensure equity and integrity in program administration; (c) arrange for award ceremonies, as appropriate; and (d) maintain award data and supporting documentation [[Guide, vol. 12, § 830.30](#)].

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51. The authority for the judiciary's employee recognition program established by the Judicial Conference derives from [28 U.S.C. § 604\(a\)\(21\)](#), under which the director of the AO is authorized to "establish a program of incentive awards for employees of the judicial branch of the United States Government, other than any judge who is entitled to hold office during good behavior."

- E. The Judiciary's Leave Policy.<sup>52</sup> With respect to the judiciary's leave policy, chief judges of the circuit courts of appeals have the following duties and responsibilities:
1. Leave Approving. The chief circuit judge must approve annual and sick leave, and leave without pay, for all circuit executives, federal public defenders, and court unit executives of the court of appeals. Except for approval of the leave of chambers staff, chief circuit judges may delegate their leave-approving authority in writing for "good cause shown" [[Guide, vol. 12, §§ 920.10.40\(a\), 920.10.40\(c\), 920.20.10\(a\)](#)]. The chief circuit judge
    - a. Must receive quarterly leave usage reports for his or her review submitted by the delegated leave-approving official, if the chief circuit judge delegated leave approval authority for the leave of a circuit executive, a federal public defender, or a court unit executive [[Guide, vol. 12, § 920.10.40\(c\)](#)].
    - b. Must approve annual and sick leave, and leave without pay, for all members of his or her chambers staff [[Guide, vol. 12, § 920.10.40\(a\)](#)].
    - c. Must (1) advise employees of leave policies, procedures for requesting and documenting leave, and procedures for notifying a supervisor in the event of any unscheduled absence; and (2) approve or deny leave for subordinate employees in a consistent and equitable manner [[Guide, vol. 12, § 920.10.40\(b\)](#)].
  2. Time and Attendance Reporting. The chief circuit judge must establish a time and attendance system (manual or automated) that is capable of maintaining a leave account for each employee according to methods that conform to the guidelines established by the Government Accountability Office (GAO) [[Guide, vol. 12, § 930.10.20](#); see also [id. § 930.15](#) for a list of the minimum qualifications for a time and attendance system].
  3. Compensatory Time Off. The chief circuit judge may approve (or a unit executive or a designee of either the chief circuit judge or the unit executive may approve) exceptions to the Judicial Conference requirement that employees must generally use accumulated compensatory time off before using any accrued annual leave

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52. The judiciary's leave policy derives from the leave policy applicable to all branches of the federal government established by [5 U.S.C. chapter 63](#), and [5 C.F.R. § 630](#). The Office of Personnel Management (OPM) has general authority to publish federal government-wide leave regulations.

available to them [[Report of the Proceedings of the JCUS Mar. 1996, at 28](#); [Guide, vol. 12, § 940.20\(h\)](#)].

- F. Learning and Development/Training for Judges and Chambers Staff.<sup>53</sup>
1. Approval of Training Activities. The chief circuit judge must certify in writing that any proposed training activity is not offered by the FJC and is necessary to the proper performance of the trainee's duties before any of the court's funds allotted for learning and development can be expended for training or related travel for judges or chambers staff [[Guide, vol. 12, § 1115.40](#)].
  2. Approval to Exceed Allotted Funds. The chief circuit judge may request authorization from the AO director (or his or her designee) to exceed the amount of funds the court is allotted for all its judges' and chambers staff's administrative and operational learning and development training, and travel to that training, if the judge anticipates extraordinary learning and development requirements [[Guide, vol. 12, § 1125.20\(c\)\(1\)](#)].
- G. Workforce Management
1. Voluntary Separation Incentive Payments (VSIPs).<sup>54</sup> The chief circuit judge must approve the VSIP plan that a judge, federal public

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53. Although the Federal Judicial Center (FJC) is the courts' primary educational agency, court units and FPDOs are responsible for learning and development activities that they determine are necessary to meet local needs. [Guide, vol. 12, § 1110.20](#). The amount of funds available to each court to spend on learning and development activities for all its judges and chambers staff, including travel-related costs, is based on the number of authorized judgeships and chambers staff positions, multiplied by a per capita allowance (\$400 per employee), as published annually in the Court Budget Operating Manual (CBOM). [Guide, vol. 12, § 1125.10\(b\)](#); [CBOM, supra note 30, at ch. 2, § 2.3.2](#). Whether the court unit obligates this fixed amount of funds for learning and development from the court's allotment for recurring operational expenses is at the discretion of the local court unit or FPDO. [Guide, vol. 12, § 1125.10\(e\)](#). For detailed information on the usage of chambers training funds and calculating a specific court's annual allowance, see [Chambers Training Fund Fact Sheet](#) on the JNet.

54. A VSIP is not an employee entitlement but may be offered to an eligible employee at the discretion of a judge or court unit executive based on a VSIP plan that has been approved by the AO. [Guide, vol. 12, § 1220.30.10\(b\)](#). A VSIP program temporarily allows a chambers, circuit or court unit, or FPDO to increase voluntary separations by offering eligible employees a one-time payment to help these chambers or court units complete the organizational changes these units are undergoing. [Guide, vol. 12, § 1220.30](#). The AO director was granted authority to establish a VSIP program for the judiciary under the Homeland Security Act of 2002. [5 U.S.C. § 3521 \(note\)](#). The first VSIP program for judicial branch employees was established by the Judicial Conference in September 2003, and the Judicial Conference made VSIP authority permanent beginning in FY 2010. The decision to implement a VSIP program each fiscal year is made by the AO director on

defender, or circuit executive or court unit executive is required to submit to the AO for approval before offering VSIPs to eligible employees who voluntarily separate when a chambers, circuit, court unit, or FPDO is restructuring, reorganizing, or downsizing its workforce, or consolidating with another court unit [[Guide, vol. 12, §§ 1220.30, 1220.30.10, 1220.30.20](#)].

2. Voluntary Early Retirement Authority (VERA).<sup>55</sup> The chief circuit judge must approve the VERA plan that a judge, federal public defender, circuit executive, or court unit executive is required to submit to the AO for approval before offering VERAs to eligible employees when a chambers, circuit or court unit, or FPDO is undergoing substantial workforce restructuring, reorganizing, or downsizing [[Guide, vol. 12, §§ 1230.25, 1230.30.20](#)].
3. Furloughs. The chief circuit judge may (and a court unit executive may) exempt certain positions or employees from an emergency or non-emergency furlough, during which employees are placed in a temporary non-duty, non-pay status because of lack of work or funds, or other nondisciplinary reason [[Guide, vol. 12, §§ 1240.10, 1240.40\(d\)](#)].

- H. Transit Subsidy/Commuting. The chief circuit judge may establish programs to encourage employees to use means other than single-occupancy motor vehicles to commute to work, including the provision of

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the basis of business needs and in accordance with Judicial Conference policy. [Guide, vol. 12, § 1220.20](#).

55. Early retirement is not an employee entitlement. During a period designated by the AO director, early retirement may be offered to eligible employees at the discretion of a judge or court unit executive on the basis of an early retirement plan that has been approved by the AO. [Guide, vol. 12, § 1230.30.10](#). Under VERA, a chambers, circuit or court unit, or FPDO that is undergoing substantial restructuring, downsizing, or reorganization may temporarily apply lower retirement age and service requirements to encourage more voluntary separations to help complete organizational changes by offering immediate annuities before employees would otherwise be eligible, to increase the number of employees who are eligible for retirement. [Guide, vol. 12, § 1230.30](#). The authority for early retirement is established under [5 U.S.C. § 8336\(d\)\(2\) \(2012\)](#) for the Civil Service Retirement System (CSRS), and under [5 U.S.C. § 8414\(b\)\(1\)\(B\) \(2012\)](#) for the Federal Employees Retirement System (FERS). The AO must request and receive OPM approval before the judiciary may offer early retirement to its employees. OPM approval will stipulate the period of time during which the option will be available. [5 C.F.R. §§ 831.114, 842.213](#). In September 2005, the Judicial Conference authorized the AO director to implement the VERA program through fiscal year 2009, and the Judicial Conference extended VERA permanently beginning in fiscal year 2010. The decision to implement a VERA program each fiscal year will be made by the AO director on the basis of business needs and in accordance with Judicial Conference policy. [Report of the Proceedings of the JCUS, Sept. 2009, at 21; Guide, vol. 12, § 1230.20](#).

transit passes or vouchers to employees, non-monetary incentives, and space and facilities for bicyclists.<sup>56</sup>

## VIII. Duties Under the Judiciary's Travel and Relocation Regulations<sup>57</sup>

### A. Travel Regulations for Judges.<sup>58</sup>

1. Approval Authority. Chief circuit judges are the approval authority, when approval is necessary, for reimbursable travel by other circuit judges and chief district judges in the circuit [[Guide, vol. 19, §§ 210, 220](#)].
2. Reimbursable Travel.
  - a. Advance Authorization and Approval Not Required. Chief judges of the circuit courts of appeals may authorize a circuit judge or chief district judge to receive, without advance approval or authorization, reimbursement for official travel expenses, including transportation and subsistence, incurred while traveling
    - (1) to hold court in a place other than the judge's official duty station [[Guide, vol. 19, § 220.10.10](#)]; and to attend authorized meetings of the Judicial Conference or a committee thereof, the circuit judicial council or a committee thereof, the circuit judicial conference, and other

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56. The authority to establish programs to encourage commuting alternatives was delegated to chief judges as a procurement authority. [Memorandum from the Director of the AO to All Chief Judges, United States Courts \(Mar. 29, 2000\)](#); [Memorandum from the Director of the AO to All Chief Judges, United States Courts \(Sept. 6, 2006\)](#).

57. The AO director prescribes travel regulations for justices and judges of the United States with the approval of the Judicial Conference. The AO director is also authorized to regulate and pay the travel expenses of judges and judiciary employees, as well as those traveling at the invitation of the judiciary. [28 U.S.C. §§ 456, 604\(a\)\(7\)](#); [5 U.S.C. ch. 57](#). The General Services Administration (GSA) establishes per diem and subsistence allowance rates for the federal government, as well as government-wide mileage reimbursement rates. [5 U.S.C. ch. 57](#); [5 U.S.C. § 5704 \(2012\)](#). The AO director, with the approval of the Judicial Conference, establishes per diem and subsistence allowance rates for justices and judges of the United States. [28 U.S.C. §§ 456, 604\(a\)\(7\)](#).

58. See generally [Guide, vol. 19, ch. 2](#) (Travel Regulations for Justices and Judges). These regulations apply to the official travel of judges of the United States, including Article III judges, bankruptcy judges, judges of the United States Court of Federal Claims, judges of the territorial district courts, and United States magistrate judges, but not clerks of court who are authorized to perform magistrate judge duties. [Guide, vol. 19, § 210.20](#).

- groups as defined in the *Guide*, if the judge is commissioned to that court, or is a member of the conference, council, committee, or group conducting the meeting [[Guide, vol. 19, § 220.10.20](#)]; or
- (2) within the geographic boundaries of the court to which he or she is commissioned when necessary to discharge his or her administrative or supervisory responsibilities [[Guide, vol. 19, § 220.10.30](#)].
- b. Advance Authorization and Approval Required.<sup>59</sup> The chief circuit judge must authorize and approve in advance travel by a circuit judge or a chief district judge in order for the judge to receive reimbursement for official travel expenses, including transportation and subsistence, incurred while traveling to a place other than the judge's official duty station for the following:
- (1) to attend the investiture of a newly appointed justice of the Supreme Court or to attend the investiture of a newly appointed judge of the court of appeals [[Guide, vol. 19, §§ 220.30.10\(f\)\(1\), 220.30.10\(f\)\(2\)](#)];
  - (2) when a senior judge is commissioned by his or her court to travel a distance of more than seventy-five miles from his or her residence to hold court or to transact official business for that court [[Guide, vol. 19, § 220.30.10\(f\)\(3\)\(b\)](#)];
  - (3) to represent the court or a committee of the Judicial Conference at a meeting with federal, state, or local government agencies when such a meeting is outside the geographic boundaries of the court [[Guide, vol. 19, § 220.30.10\(k\)](#)]; and
  - (4) when the judge and the judge's dependents are advised by the United States Marshals Service to relocate from their residence to temporary lodging at or away from the judge's official duty station for reasons of security [[Guide, vol. 19, § 220.30.10\(l\)](#)].
3. Unofficial Travel Reimbursable Pursuant to Narrow Exceptions. A chief circuit judge may authorize reimbursement for generally non-recoverable expenses incurred for travel associated with certain

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<sup>59</sup> Advance authorization is not needed for personal travel paid at a judge's own expense or travel reimbursed by a source other than a federal judicial agency. [Guide, vol. 19, § 220.20](#).

events considered to be unofficial travel as provided in [5 U.S.C. § 5946](#) and [31 U.S.C. § 1345 \(2012\)](#), if such travel meets the requirements of the narrow exceptions described in the judiciary's travel regulations [[Guide, vol. 19, § 220.30.20\(a\)\(1\)](#)].

- a. The chief circuit judge may reimburse a judge in his or her circuit within the limits of the travel regulations for expenses incurred for travel associated with the designation of that judge as an official spokesperson for the judiciary at meetings or conventions of societies, associations, foreign governments, colleges and universities, schools, and other organizations [[Guide, vol. 19, § 220.30.20\(a\)\(2\)](#)].
  - b. The chief circuit judge may reimburse judicial nominees and new appointees whom he or she has invited to the circuit to attend orientation programs for the travel expenses they incur [[Guide, vol. 19, § 220.30.20\(c\)\(2\)](#)].
  - c. The chief circuit judge may reimburse one or more circuit judges for expenses incurred for travel associated with the designation of the judge or judges to represent the court at memorial services, funerals, portrait hangings, and courthouse groundbreaking and dedication ceremonies [[Guide, vol. 19, § 220.30.20\(d\)](#)].
4. Reporting of Governance and Education Travel.<sup>60</sup>
- a. The chief judge of the circuit court of appeals must receive on or before May 15 of each year a report from each circuit judge

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60. "Governance and education travel" means travel undertaken by a judge (1) that is not directly related to any case or cases assigned to the judge; (2) that involves judicial administration, training, education, or extrajudicial activities as permitted by law and encouraged by the Code of Conduct for United States Judges; and (3) for which the necessary transportation, lodging, and miscellaneous expenses incurred by the judge are paid (directly or by reimbursement to the judge) by another person or organization (including an agency of the federal government). [Guide, vol. 19, § 270.10.10](#). Examples of governance and education travel that must be reported by a judge (unless the judge pays for the expenses of the travel with personal funds and is not reimbursed in any way) include travel related to court governance; travel to attend educational seminars or programs sponsored by bar associations, professional societies, government agencies, universities, and law schools; travel undertaken under the auspices of or at the request of the executive or legislative branch of the U.S. government; and any other travel undertaken in the discharge of the duties and responsibilities of the judge's office that cannot be identified with a particular case or cases assigned to the judge. Examples of governance and education travel that are not reportable include (1) travel to a bar association meeting when the judge pays his or her own costs; (2) travel that does not involve the discharge of the duties and responsibilities of the judicial office, even if it is reimbursed by a third party; (3) travel undertaken by a chief judge in the discharge of his or her administrative or supervisory responsibilities; (4) travel undertaken by part-time magistrate

- in his or her court disclosing the judge's "governance and education travel" during the previous calendar year. Each circuit judge is required to prepare and file the report utilizing the Judges' Governance and Education Travel Reporting System in InfoWeb [[Guide, vol. 19, §§ 270.10.20, 270.10.30](#)].
- b. The chief circuit judge must prepare his or her own individual report disclosing his or her "governance and education travel" during the previous calendar year, and must transmit that report and those received from the circuit judges in his or her court to the director of the AO by June 1 of each year. The director must consolidate by circuit and district the reports submitted under this regulation in preparation for a report to Congress on or before July 15 each year [[Guide, vol. 19, § 270.10.30\(d\)](#)].
5. Relocation Allowances for Justices and Judges.<sup>61</sup> The chief judge of the circuit court of appeals
- a. Must make the determination, with the concurrence of the circuit judicial council, that a relocating circuit judge serving on his or her court, or a chief district judge appointed to his or her circuit, is entitled to applicable relocation allowances [[Guide, vol. 19, § 310.30.20\(a\), \(c\)](#)].
  - b. Must allow the Executive Committee of the Judicial Conference to make the determination of whether the chief circuit judge himself or herself is entitled to applicable relocation allowances [[Guide, vol. 19, § 310.30.20\(d\)](#)].
  - c. Must issue a written travel authorization indicating the specific allowances authorized when it is determined that a circuit

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judges and judges who retired or assumed inactive status in the reporting year; and (5) travel undertaken by judges who serve as directors of the AO, the FJC, or the U.S. Sentencing Commission as part of their directorship. [Guide, vol. 19, § 270.30](#).

61. See generally the [Guide, vol. 19, ch. 3](#) (Relocation Allowances for Justices and Judges). Under [5 U.S.C. Chapter 57](#) (Travel, Transportation, and Subsistence) and [41 C.F.R. §§ 302-1-302-17](#) (Relocation Allowances), the judiciary is authorized to pay the relocation expenses of a judge. Congress has delegated the authority to regulate relocation of federal government employees, including federal judges, to the administrator of the General Services Administration. The judiciary has limited discretion to revise the terms and conditions of relocation allowances so that they differ from those of executive branch agencies. The judiciary's relocation allowances for justices and judges, [Guide, vol. 19, ch. 3](#), apply to Article III judges, bankruptcy judges, judges of the United States Court of Federal Claims, judges of the territorial district court, and magistrate judges (but not to clerks of court and deputy clerks of court who are authorized to perform magistrate judge duties). [Guide, vol. 19, §§ 310.10, 310.20](#).

judge or chief district judge will be relocated at the judiciary's expense [[Guide, vol. 19, § 310.30.20\(f\)](#)].

- d. Must make a determination regarding allowable amounts for reimbursable expenses when it is determined that a judge is eligible to be relocated at the judiciary's expense [[Guide, vol. 19, § 330.10](#)].
  - (1) For chief circuit judges' duties in determining allowable amounts of travel and transportation expenses and applicable relocation allowances for sitting judges and new appointees who are federal government employees at the time of appointment, see the [Guide, vol. 19, §§ 330.10.10, 330.10.15, 330.10.20, 330.10.23, 330.10.25, 330.10.30, 330.10.35, 330.10.40, 330.10.45, and 330.10.50](#).
  - (2) Chief circuit judges may reimburse newly appointed judges who are not federal government employees at the time of appointment only for those travel and transportation expenses incurred in relocating to their first official duty station listed in the [Guide, vol. 19, §§ 330.20.10, 330.20.20, 330.20.30, and 330.20.40](#).

- B. Judiciary Staff Travel Regulations.<sup>62</sup> Under policies specific to staff (including chambers staff) travel, chief judges of the circuit courts of appeals have the following duties:
  1. Provide Written Authorization and Obligate Funds Prior to Official Travel by Judicial Branch Employees. In the chief circuit judge's role as an authorizing official, he or she
    - a. Must carry out the responsibility of providing advance written authorization for travel of subordinates, consultants, and contractors, and must determine that official travel is necessary

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62. See generally the [Guide, vol. 19, ch. 4](#) (Judiciary Staff Travel Regulations). These regulations are published by the director of the Administrative Office of the U.S. Courts (AO) pursuant to [28 U.S.C. § 604\(a\)\(7\)](#) and [5 U.S.C. § 5707\(a\)\(1\) \(2012\)](#), and they apply to employees of the judicial branch, including employees of the Federal Judicial Center (FJC), United States Sentencing Commission (USSC), Administrative Office (AO), uncompensated volunteers or interns who take the oath of office as employees, and, to the extent authorized by guidelines issued by the AO, personal attendants accompanying employees with disabilities. In addition, these regulations apply to consultants or experts employed intermittently; contractors, including contract court reporters and court interpreters; and applicants as specifically defined in the [Guide, vol. 19, § 410.20](#).

- and in the interest of the judiciary [[Guide, vol. 19, § 420.20.10\(a\)](#)].
- b. Must provide written authorization for his or her own chambers staff (law clerks, secretaries, or judicial assistants) to travel on official court business within and outside of the geographical boundaries of the home circuit [[Guide, vol. 19, § 420.20.10\(b\)\(1\)\(A\)](#)], unless such travel falls within one of the following exceptions for which prior authorization is not required:
    - (1) immediate staff members travel with the chief circuit judge within the home circuit to attend regular or special court sessions or authorized judicial meetings as defined in the [Guide, vol. 19, ch. 2 \(Travel Regulations for Justices and Judges\)](#) [[Guide, vol. 19, §§ 420.10, 420.30.10](#)];
    - (2) one or two chambers staff members travel outside the home circuit to attend a court session [[Guide, vol. 19, § 420.20.60\(a\)\(1\)](#)];
    - (3) more than two chambers staff members from the same court travel outside the home circuit to attend a meeting or course for learning and development as specified in the [Guide, vol. 19, § 420.40.10\(c\) \(To Attend Meetings or Conventions of Societies and Private Associations\)](#) [[Guide, vol. 19, § 420.20.60\(a\)\(2\)](#)].
  - c. May authorize (or may designate, in writing, others to authorize or approve) official travel for court unit executives,<sup>63</sup> pro se law clerks, death penalty law clerks, and land commissioners [[Guide, vol. 19, §§ 420.20.10\(b\)\(1\)\(A\), 420.20.10\(b\)\(1\)\(B\)](#)].
  - d. Must keep written delegations of authorizing authority to as high a supervisory level as practicable to ensure adequate oversight [[Guide, vol. 19, § 420.20.30](#)].
  - e. Must obligate funds for expected travel-related expenses once travel is authorized, prior to the initiation of travel [[Guide, vol. 19, § 420.20.10\(c\)](#)].

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63. Court unit executives (CUEs) include the following position titles: circuit executives; circuit librarians; chief circuit mediators; district court executives; clerks of court; bankruptcy appellate panel clerks; bankruptcy administrators; senior staff attorneys; chief probation officers; and chief pretrial services officers. [Guide, vol. 19, § 410.30](#).

2. Review and Approve or Designate an Official to Review and Approve Travel Vouchers for Judicial Branch Employees. In the chief circuit judge's role as an approving official, he or she
  - a. Must establish systems of review and control to provide reasonable assurance that travel is for legitimate business purposes and that the expenses approved for reimbursement are reasonable. This responsibility includes assigning the review of all travel vouchers for compliance with the travel regulations and for mathematical accuracy to an individual within the judicial organization who is expected to maintain expertise in the travel regulations and policies [[Guide, vol. 19, §§ 410.40.20, 420.20.20](#)].
  - b. Must approve (or may designate one or more other judges to approve) court unit executives' travel vouchers. The designated judges may further delegate in writing the authority to approve travel advance requests and travel vouchers of court unit executives in accordance with the [Guide, vol. 13, ch. 6 \(Travel Advances and Corrective Salary Payments\)](#), including the authority to approve specific types of travel expenses defined in the [Guide, vol. 19, §§ 410.30, 420.20.20\(c\)\(1\)](#). An approving official must keep designations of other approving officials to as high a supervisory level as practicable to ensure adequate oversight [[Guide, vol. 19, § 420.20.40](#)].
  - c. Must designate an official to approve the travel vouchers of the federal public defenders and bankruptcy administrators. The approving official may be another court unit executive or a court unit executive's deputy [[Guide, vol. 19, § 420.20.20\(c\)\(2\)](#)].
  - d. May opt to review and approve a report of completed travel, as an alternative to approving (or designating another judge to approve) a court unit executive's travel voucher or designating an official to approve the travel voucher of the federal public defender. If this alternative method is used, the chief circuit judge signs the report of completed travel and files a copy with the travel vouchers listed on the report, and he or she permits the disbursing officer to rely on the claimant's certification on the travel voucher that the travel was for official business purposes and the expenses claimed were proper [[Guide, vol. 19, § 420.20.20\(c\)\(2\)\(A\), \(c\)\(2\)\(B\)](#)].

3. Provide Authorization or Approval Pursuant to Special Provisions That Govern Travel by Certain Categories of Judicial Branch Employees and Contractors.
  - a. The chief circuit judge may reimburse employees for travel expenses they incurred to appear at the Judicial Conference, a circuit judicial conference, or a Judicial Conference committee meeting if their appearance was authorized by the director of the AO, or if they were invited to appear by the Chief Justice, the chief judge of a court of appeals, or the chair of the committee involved [[Guide, vol. 19, § 420.30.35](#)].
  - b. The chief circuit judge (or the court unit executive if authority was delegated) must provide travel authorization for an individual who is not a judiciary employee but was invited by the chief circuit judge to travel on behalf of his or her court as an attendant, expert, speaker, or participant at a conference or meeting. The individual may be reimbursed for travel expenses, including subsistence expenses, on an actual expense basis [[Guide, vol. 19, § 420.30.40](#)].
  - c. The chief circuit judge may provide approval for a judiciary organization to conduct a retreat, and for participating employees to be reimbursed for their travel and subsistence expenses, when the retreat is held outside the corporate limits of the duty station of some or all of the attendees [[Guide, vol. 19, § 420.30.65](#)].
  - d. The chief circuit judge may ask the director of the AO to pay or reimburse the cost of transporting a judiciary employee, the employee's immediate family, or both to and from their residence to an alternate location when a federal, state, or local law enforcement agency determines that the life of the judiciary employee is threatened as a result of his or her assigned duties [[Guide, vol. 19, § 420.30.80](#)].
4. Provide Authorization to Reimburse Court Employees for Unofficial Travel Expenses. The chief circuit judge in his or her role as an authorizing official may authorize an exception in specific circumstances to allow court employees reimbursement for travel expenses required to attend events that generally do not constitute the performance of official business [[Guide, vol. 19, § 420.40.10](#)].
  - a. The chief circuit judge may reimburse court employees for travel expenses required to attend meetings or conventions of societies and private organizations (1) if he or she designates

- a court employee to attend or participate in an official capacity as a representative of the judicial branch, or (2) if the appropriate judge, federal public defender, or court unit executive determines that an employee's attendance at portions of a meeting is essential for carrying out the purposes of the meeting [[Guide, vol. 19, § 420.40.10](#)].
- b. The chief circuit judge may reimburse court employees for travel expenses required to attend memorial services, funerals, portrait hangings, building dedications, groundbreakings, investitures, and functions of a similar nature only under the following conditions: (1) the chief circuit judge designates a court unit executive to attend an event as a representative of the court; (2) the chief circuit judge designates official representatives (not to exceed two) to attend the funeral or memorial service of a judge or employee of the judiciary to sustain morale and reinforce to court employees and others the significance of the deceased judge or employee to the judiciary; or (3) the chief circuit judge authorizes one or more employees to attend an event for the purpose of coordinating the logistics for the event [[Guide, vol. 19, § 420.40.20](#)].
5. Provide Authorization or Approval to Reimburse Court Employees for Transportation-Related Travel Expenses.<sup>64</sup>
    - a. The chief circuit judge (or another judge, a court unit executive, or both if authority to grant permission is delegated) must provide written authorization granting a court employee permission to take a government-furnished vehicle to the employee's residence to be used when conducting official business only [[Guide, vol. 19, § 440.50.60](#)].
    - b. The chief circuit judge may approve a written request from a disabled court employee for residence-to-work transportation, and may endorse the request and forward it to the director of the AO, who may authorize the request pursuant to [31 U.S.C. § 1344\(b\)\(9\) \(2012\)](#) if he or she determines that compelling considerations make the transportation essential in order to conduct judiciary business [[Guide, vol. 19, § 440.60](#)].

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64. An employee may be reimbursed for expenses related to transportation, such as common carrier fares, mileage expenses, automobile rental fees, and parking fees, within the limitations described in the *Guide*. [Guide, vol. 19, § 440.10](#).

6. Provide Authorization or Approval to Reimburse Court Employees for Subsistence Expenses<sup>65</sup> Incurred During Official Travel
  - a. The chief circuit judge, or the officials delegated the authority to authorize or approve travel, must carefully scrutinize the travel allowance or travel expenditures to ensure that they are appropriate before completing a travel authorization or approving a travel reimbursement voucher. Travelers should be authorized reimbursement for only those expenses necessary to conduct official business [[Guide, vol. 19, § 450.10\(b\)](#)].
  - b. Employees should generally be reimbursed under the lodgings plus M&IE method of reimbursement when travel requires an overnight stay. Therefore, to allow an employee reimbursement of actual expenses of subsistence up to the GSA per diem rate for the locality, the chief circuit judge (or the designated authorizing official funding the travel) must approve the actual expense method of reimbursement and must document the circumstances justifying actual expenses on the authorization prior to the time the travel of an employee who will be in a travel status for at least twenty-four hours takes place [[Guide, vol. 19, § 450.30.10](#)].
  - c. If the chief circuit judge, as the authorizing official funding the travel, or his or her designee determines that an employee's lodging expenses are expected to exceed the GSA maximum lodging rate for the location, the chief circuit judge may authorize reimbursement for the actual cost of lodging plus the applicable GSA locality meals and incidental expenses (M&IE) allowance, up to a maximum of 150% of the applicable GSA locality per diem rate [[Guide, vol. 19, § 450.20.40\(f\)](#)].
  - d. If the chief circuit judge is traveling with chambers staff or senior staff attorneys who were unable to secure lodging at the

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65. An employee may claim a subsistence allowance when the employee's travel involves an overnight absence from his or her official duty station. There are two alternative methods under which employees on official travel for twenty-four hours or more may be authorized reimbursement for lodging, meals, and incidental expenses incurred: (1) the lodgings plus method of reimbursement, under which an employee may be reimbursed for the actual cost of lodging, up to a specific daily GSA locality-based maximum allowable rate for the location where the employee is authorized to travel, plus a GSA authorized locality-based meals & incidental expenses (M&IE) allowance, and (2) the actual expense method, which allows reimbursement for itemized subsistence expenses up to a GSA authorized per diem rate for the locality where the employee is authorized to travel. [Guide, vol. 19, § 450.](#)

GSA maximum lodging rate for the location, and he or she is their appointing judge, the judge may ask the director of the AO for an exception with respect to their lodging expenses, allowing them to be reimbursed on an actual expense basis, up to 150% of the per diem allowance applicable to the locality [[Guide, vol. 19, § 450.20.40\(g\)](#)]. The chief circuit judge, as the appointing judge, must make the request for exceptions before the travel begins, and exceptions will only be granted in extraordinary circumstances [[Id. § 450.20.40\(g\)](#)].

- e. The chief circuit judge, or his or her designated authorizing official, may authorize an employee to be reimbursed for actual expenses in an amount not to exceed the maximum amount that judges may claim or 150% of the per diem rate for the locality, whichever is greater, when the employee is required to travel to attend a meeting of the Judicial Conference, its committees or subcommittees, a circuit judicial conference, a circuit judicial council committee meeting, or a district-wide judges' meeting [[Guide, vol. 19, § 450.30.40\(a\)](#)].
- f. When a court or court unit is conducting a retreat at a location that is the official duty station of some or all of the attendees, the chief circuit judge must provide authorization in order for employees to receive reimbursement for the actual cost of meals at the retreat, if their attendance at the meals is required by the court unit executive supervising the retreat [[Guide, vol. 19, § 450.30.80\(b\)](#)].
- g. The chief circuit judge, or his or her designated authorizing official, may restrict the subsistence allowances otherwise payable to a traveler by authorizing use of the actual expense method or by limiting or reducing the dollar amount of the per diem allowance. A chief circuit judge or the designated authorizing official must consider imposing such restrictions when factors are present, such as special accommodations made available for a particular meeting or conference or obtained at reduced rates; the inclusion of sleeping accommodations in transportation service; the inclusion of meals (other than a continental breakfast) as part of the meeting or activity; the furnishing of meals and/or lodging at no charge or a reduced charge by a federal government agency at a temporary duty station; and travel involving more than a one-month stay at a temporary duty station [[Guide, vol. 19, §§ 450.10\(d\), 450.40](#)].

- h. The chief circuit judge, or his or her designated authorizing official, may authorize an exception to the general rule that requires an employee to return to his or her official duty station or residence when the cost of maintaining the employee at a temporary duty station exceeds the cost of returning the employee. The chief circuit judge may authorize this exception when it would be advantageous to the judiciary to require the employee to remain at the temporary duty location for reasons of efficiency or effectiveness (e.g., when the time and/or distance involved would make it impractical for the employee to return home or would otherwise create an undue hardship for the employee) [[Guide, vol. 19, § 450.50.10\(b\)\(1\)](#)]. The chief circuit judge must document any exceptions to the policy in the travel authorization, including the constructive cost analysis [*Id.*].
- i. When an employee on official travel is incapacitated by illness or injury that occurs for reasons other than the employee's own misconduct, the chief circuit judge, or his or her designated authorizing official,
  - (1) may authorize the continued payment of subsistence to the employee for a period of not more than fourteen calendar days;
  - (2) may authorize continuation of subsistence payments to the employee for such longer period as is reasonable under the circumstances [[Guide, vol. 19, § 450.50.20\(a\)](#)];
  - (3) may authorize the employee to return to his or her official duty station, and in emergency situations may reimburse the employee for the cost of return transportation to his or her official duty station or residence by a mode of travel that the employee would not have ordinarily utilized, such as an ambulance, and may authorize transportation costs of a medically necessary attendant [[Guide, vol. 19, § 450.50.20\(b\)](#)]; and
  - (4) must approve a new travel authorization if he or she determines that resumption of the travel is in the judiciary's interest when the employee recovers [[Guide, vol. 19, § 450.50.20\(c\)](#)].
- j. When an employee must discontinue official travel as a result of a personal emergency, such as the death or injury of a fam-

ily member, or fire, flood, or other natural disaster at the employee's residence, the chief circuit judge, or his or her designated authorizing official,

- (1) may authorize appropriate claims for transportation and subsistence for return travel to the employee's official duty station [[Guide, vol. 19, § 450.50.30\(a\)](#)]; and
  - (2) may authorize transportation to and subsistence at an alternate location, followed by return travel to either the temporary duty station or the official duty station, whichever is most appropriate, if the employee must travel to an alternate location to deal with an emergency. The amount of transportation and subsistence expenses reimbursable in connection with travel to and from an alternate location may not exceed the amount of reimbursable expenses that were authorized for the original travel [[Guide, vol. 19, § 450.50.30\(b\)](#)].
7. Provide Authorization, Approval, or Further Requirements for Court Employees to File Claims for Reimbursement for Official Travel.
- a. The chief circuit judge may grant a court employee's request for an extension if the employee was unable to file his or her claims for reimbursement of travel expenses with the approving official within sixty days of return from travel in compliance with IRS rules, on grounds of compelling, extenuating circumstances [[Guide, vol. 19, § 460.10](#)].
  - b. The chief circuit judge, or his or her designated authorizing official, may require employees to submit receipts for individual travel expenses that are less than \$50. Receipts, paid bills, or similar documentary evidence showing proof of payment must be submitted for lodging and for any individual expenses (e.g., for transportation, meals, or parking) of \$50 or more incurred by an employee [[Guide, vol. 19, § 460.10.10\(a\)](#)].
  - c. The chief circuit judge, or his or her designated authorizing official, may require documentation of all telecommunication expenses [[Guide, vol. 19, § 460.20\(g\)\(3\)](#)].

## IX. Miscellaneous Duties and Responsibilities

- A. Sentencing Institutes. The chief judge of the circuit court of appeals may at any time make a request, through the AO director, for the Judicial Conference to convene institutes and joint councils on sentencing for the purpose of studying, discussing, and formulating the objectives, policies, standards, and criteria for sentencing those convicted of crimes and offenses in the courts of the United States [[28 U.S.C. § 334\(a\) \(2012\)](#)]. The chief circuit judge may invite district judges to attend these sentencing institutes under conditions which he or she thinks are proper and which will not unduly delay the work of the courts [[Id. § 334\(b\)](#)].
- B. Request for Continuance of a Special Grand Jury. The chief circuit judge may order continuance of the term of a special grand jury summoned by a district court pursuant to [18 U.S.C. § 3331\(a\) \(2012\)](#), upon receipt of an application requesting such continuance from the majority of the grand jury's members, if the district court fails to extend the term of that grand jury or enters an order for the discharge of that grand jury before the grand jury determines that it has completed its business [[Id. § 3331\(b\)](#)].
- C. Statistical Data from the AO. The chief circuit judge must receive semi-annual statistical data and reports as to the business of the courts within his or her circuit, prepared and transmitted by the AO director under the supervision and direction of the Judicial Conference of the United States [[28 U.S.C. § 604\(a\)\(2\)](#)].
- D. Teaching Exempted from Limitations on Outside Employment. Circuit judges, district judges, bankruptcy judges, and full-time magistrate judges who obtain prior approval from the chief judge of the circuit may engage in part-time teaching for compensation [[5 U.S.C. app. §§ 501–505 \(2012\) \(Title VI of the Ethics Reform Act of 1989\)](#); [Guide, vol. 2C, § 1020.35: Limitations on Outside Employment](#)<sup>66</sup>]. A chief circuit judge
  1. Must approve or disapprove a request for approval for compensated teaching that was submitted in accordance with the procedures established by the Judicial Conference prior to the commencement of any compensated teaching, based on whether (a) the proposed activity will be consistent with the Codes of Conduct,

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66. [Judicial Conference Regulations on Outside Earned Income, Honoraria, and Employment](#) are also available under Judiciary Policies on the AO's public website.

(b) the requester is current in his or her judicial work, and (c) the proposed activity is unlikely to affect adversely the ability of the court in which the requester serves to conduct its operations efficiently [[Guide, vol. 2C, § 1020.35\(d\)\(3\)](#)].

2. Must consult with the chief judge of the district court and, where appropriate, the chief judge of the bankruptcy court before deciding whether to approve a request for approval for compensated teaching from a district court judge or bankruptcy court judge [[Guide, vol. 2C, § 1020.35\(d\)\(3\)](#)].
3. Must make adjustments in the criteria for approval of a request for approval for compensated teaching from a senior judge to take account of the judge's senior status and decreased work assignments [[Guide, vol. 2C, § 1020.35\(d\)\(3\)](#)].
4. Must send reports of teaching requests and rulings made by the chief circuit judge during the twelve-month period ending June 30 to the Judicial Conference Committee on Codes of Conduct by July 31 of each year. That committee monitors these submissions and reports to the Judicial Conference [[Guide, vol. 2C, § 1020.35\(e\)](#)].

E. Litigation Involving Judges and Staff.

1. Compensation of Private Counsel by the AO.<sup>67</sup> Chief judges of the circuit courts of appeals must approve payment of a bill from private counsel requesting compensation for representing judges, court officials, court employees, or federal public defender employees of the circuit who were sued in their judicial or official capacities or in their individual capacities relating to the performance of their official duties as judges, officers, or employees of the federal judiciary. The defendant must forward the attorney's bill to the chief judge of the circuit. [[Guide, vol. 20, §§ 310.30, 350.30](#)].

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67. The AO director may exercise discretionary authority under [28 U.S.C. § 463 \(2012\)](#) to pay the costs of representation by private counsel in federal or state court litigation in which employees of the federal judiciary are named as defendants in their respective judicial or official capacities, or in their individual capacities relating to the performance of their official duties, as judges, officers, and employees of the federal judiciary. The AO director has delegated this authority to the General Counsel when (a) the DOJ has determined that it is unavailable to provide representation, or (b) upon receipt of an employee's representation request, the director or a designee determines that the DOJ would clearly face a conflict of interest if it were to authorize representation by an attorney for the government. [Guide, vol. 20, §§ 310.30, 340.10](#).

2. Approval Needed Prior to a Response to a Request for Testimony or the Production of Records in Legal Proceedings. The chief circuit judge must provide approval before former federal court of appeals judges or former members of a former judge's personal staff who are no longer court employees may comment, testify, or produce records in response to a request for testimony or the production of records in legal proceedings.
  - a. In the case of a request directed to an employee or former employee of a court office, the unit head of the particular office should, as provided by local rule or order, consult with the chief circuit judge of the court served by the particular office regarding the proper response.
  - b. In the case of a request related to the defender office's administrative function, the federal public defender should, as provided by local rule or order, consult with the chief judge of the court of appeals that appoints the federal public defender regarding the proper response. [[Guide, vol. 20, § 840\(b\)](#)].
- F. Appointment of Substitute Court Reporter. The chief circuit judge may appoint (or require that the district judge affected appoint) a substitute court reporter when the official court reporter is unable to complete his or her transcripts in a timely fashion [[Guide, vol. 6, § 440.60.10](#); [Report of the Proceedings of the JCUS Mar. 1975, at 8](#)].
- G. Information Technology and Security. The chief circuit judge must designate, in a signed memorandum kept on file with his or her court, a senior professional to serve as his or her court's Information Security Officer (ISO), who has primary, day-to-day responsibility for coordinating and facilitating information technology security issues within the court unit as well as information technology security issues that cross court unit boundaries and impact the circuit as a whole. The chief circuit judge must enter the name of the designated ISO in the InfoWeb [[Guide, vol. 15, §§ 310.20\(c\), 310.20.05, 310.20.07](#); and [vol. 11, § 640](#). See also [Guide, vol. 11, ch. 6](#) for the minimum internal control requirements necessary to preserve the confidentiality, integrity, and availability of the judiciary's information technology systems.]



## Part Three: Role of Chief Circuit Judges in Fostering Judicial Wellness and Promoting an Exemplary Workplace

This part highlights two areas suggested by chief circuit judges and court staff as important in leading and managing a circuit—judicial wellness and promoting an exemplary workplace, including collegiality. Every circuit has a unique culture and particular practices. How the chief judge of the circuit views and performs his or her responsibilities depends on the judge’s background, personality, and management style, as well as the traditions of the court. What practices can a chief circuit judge undertake to (1) enhance the workplace environment and (2) help ensure that colleagues are thriving and performing their judicial duties at the highest level? To learn about some of these practices, the Center surveyed circuit executives during the spring of 2017. We asked for their perspectives on how their chief circuit judges promote judicial wellness and collegiality.

### I. Judicial Wellness

There are many benefits to being a judge, including respect, honor, high status, and the opportunity to provide leadership and public service in the judicial system. At the same time, there are occupational challenges, including demanding caseloads, burnout, isolation, constant public scrutiny, threats to personal security, and, at some point, physical or mental decline. For some judges, there can also be depression or substance abuse problems. Coping with these problems may be difficult for some judges, who may fear shame, ridicule, or loss of privacy if their problems become public.

Judicial health and performance are often interrelated, and a judge’s health can adversely affect his or her performance. For example, what may be seen as inattention by a judge could be the result of a sleeping problem or a hearing deficiency.

Pursuant to the Judicial Conduct and Disability Act,<sup>68</sup> chief circuit judges have specific investigatory responsibilities regarding the conduct and disability of judges and staff of the courts of the circuit. Additionally, they have informal responsibilities for ensuring that their colleagues are functioning at the highest level and are not derailed by problems that might negatively impact their official performance. When a problem does arise, the chief circuit judge must gather the facts, assess the problem, and identify appropriate resources to help the individual resolve the problem. Examples of these resources are a trusted colleague, the circuit executive, a family member, and a medical professional. By being proactive, the chief circuit judge increases the likelihood of the affected individual receiving

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68. [28 U.S.C. §§ 351–364 \(2012\)](#).

the necessary assistance to resolve the problem. The chief circuit judge's intervention can also help ensure that the administration and quality of justice are not compromised.

In March 2011, the Judicial Conference approved a recommendation of its Committee on the Judicial Branch that circuit judicial councils consider establishing judicial wellness committees charged with

- (1) promoting health and wellness among judges by creating programs (educational or otherwise), policies, and/or practices that provide a supportive environment for the maintenance and restoration of health and wellness, and
- (2) providing information to judges on judicial retirement issues, including disability retirement.<sup>69</sup>

Several circuits have been proactive in developing their own judicial wellness programs to assist judges who may be experiencing problems, including temporary or permanent impairments.<sup>70</sup> The following are common features of circuit wellness programs:

- an active circuit-wide committee that reviews programs and activities, publicizes resources, and demonstrates sustained interest and support for judicial wellness;
- availability of a mental health professional who can counsel and assist, with assurance of confidentiality, judges and court employees seeking help or advice, including advice about the judges or court employees themselves or about dealing with possible problems with co-workers or colleagues;
- a wellness guide, website, and other resources that provide information about maintaining physical and mental fitness, and about identifying and treating or dealing with problems, such as unusual behavior, aging, alcohol or substance abuse or addiction, depression, and stress; and
- open and candid discussions about judicial wellness at judicial meetings, such as circuit conferences and court retreats.

An expert in the area of judicial wellness suggests that, “to improve the use of health and collateral services by judges and their families, certain key elements should be considered in the spirit of a[ny] Wellness Initiative.”<sup>71</sup>

1. The range of services should be quite broad, and include mental health treatment and education, as well as help with stress management, substance abuse

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69. [AO Annual Report 2011, Support to Judges](#): Conference-Recommended Judicial Wellness Committees (summary of AO support to Judicial Conference committee efforts to implement the Strategic Plan for the Federal Judiciary approved in September 2010).

70. See Appendix C for a description of the Ninth, Tenth, and Third Circuits' wellness programs.

71. Isaiah M. Zimmerman, *Helping Judges in Distress*, 90 *Judicature* 10, 15 (2006) (available at [http://www.judicialfamilyinstitute.org/~media/Microsites/Files/JFI/Resources/Zimmerman\\_901JudgesDistress.ashx](http://www.judicialfamilyinstitute.org/~media/Microsites/Files/JFI/Resources/Zimmerman_901JudgesDistress.ashx)).

and addiction, family relations, physical fitness, career satisfaction, aging, and retirement[,] among others.

2. Due to the strictures of the judicial role and its function in society, great care should be employed in the way that assistance is provided, taking into particular account the need for sensitivity, confidentiality, and privacy.
3. In accord with current best practices in the health sector, the approach best described as positive wellness should be employed. Outreach, supportiveness, and good organizational morale should characterize the network of services offered.<sup>72</sup>

In sum, medical experts define wellness as taking care of yourself, practicing health maintenance, including managing stress, and seeking help when necessary. To ensure a healthy and thriving court, it is highly recommended that the chief circuit judge encourage wellness and create a culture that fosters early recognition of treatment needs and taking action before a problem becomes a disability. Taking such action helps preserve the independence of the judiciary and promote public confidence in the courts. A wellness program can contribute immeasurably to the quality of life and work of judges and can help both their families and their colleagues.

## II. Promoting an Exemplary Workplace

### A. Federal Judiciary Workplace Conduct Working Group.

In his 2017 Year-End Report, the Chief Justice stated:

Events in recent months have illuminated the depth of the problem of sexual harassment in the workplace, and events in the last few weeks have made clear that the judicial branch is not immune. The judiciary will begin 2018 by undertaking a careful evaluation of whether its standards of conduct and its procedures for investigating and correcting inappropriate behavior are adequate to ensure an exemplary workplace for every judge and every court employee.<sup>73</sup>

The director of the Administrative Office established a working group, which found that “inappropriate conduct, although not pervasive in the Judiciary, is not limited to a few isolated instances.”<sup>74</sup> The working group made various recommendations to clarify standards of conduct, improve procedures, and enhance education about workplace conduct issues.

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72. *Id.* at 15.

73. Chief Justice John G. Roberts, Jr., 2017 Year-End Report on the Federal Judiciary 11 (2017).

74. Admin. Office of the U.S. Courts, Report of the Federal Judiciary Workplace Conduct Working Group to the Judicial Conference of the United States, June 2018, at 6–7.

The Judicial Conference has since approved amendments to the codes of conduct, Judicial Conduct and Disability Rules, and model employee dispute resolution plans. Key changes included making explicit a judge's duty to "practice civility, by being patient, dignified, respectful, and courteous, in dealings with court personnel, including chambers staff," Code of Conduct for United States Judges, Canon 3(B)(4), and to "take appropriate action upon receipt of reliable information indicating the likelihood that a judge's conduct contravenes [the Code of Conduct for United States Judges]." Code of Conduct for United States Judges, Canon 3(B)(6).

In addition to amending the codes of conduct and procedures for addressing allegations of misconduct, the Administrative Office established the Office of Judicial Integrity,<sup>75</sup> which is available to all employees, managers, and judges for advice and guidance about workplace conduct matters. As of fall 2019, most circuits have established their own similar offices or are in the process of establishing them.

In addition to exercising authority under the Judicial Conduct and Disability Rules (see Part Two, section V), chief circuit judges should be familiar with the model Employee Dispute Resolution plans in their circuit, and with other resources for assisting employees and addressing workplace conduct issues in their circuits.

#### B. Collegiality.

Collegiality in its broadest form is the "cooperative relationship of colleagues."<sup>76</sup> It promotes civility, dialogue, communication, respect, and friendship. For a court, collegiality is the relationships among individuals equal in rank, and it usually carries positive connotations of cooperativeness and joint efforts toward achieving similar goals. Without collegiality, a court can become fractured and less civil, which ultimately can impact the court's work.

Collegiality comes in many different forms. Appellate judges, who typically work in panels, need collegiality to decide whether to hear arguments or to write opinions or summary orders.

One of the most important responsibilities of the chief circuit judge is fostering and promoting an environment of collegiality and respect. The leadership style of a chief circuit judge and his or her actions set the stage for and can greatly facilitate collegiality. Building relationships with all of the court's constituents is important. What methods have chief circuit judges in the federal courts of appeals

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75. Office of Judicial Integrity, <http://jnet.ao.dcn/policy-guidance/office-judicial-integrity-workplace-conduct> (last visited Aug. 29, 2019).

76. Merriam Webster's Collegiate Dictionary (11th ed. 2003), at 244.

used to foster collegiality? The results of a 2017 survey of circuit executives conducted by the Center describe a number of approaches chief circuit judges have used.

Every court has its own culture and personalities. The chief circuit judge should strive to foster collegiality and lead by example, showing civility, respect, evenhandedness, openness, and inclusion. Chief circuit judges and circuit executives have suggested the following ideas that may help:

- Holding retreats or meetings to discuss issues or problems and addressing matters openly can help identify real issues and address them constructively and in a spirit of cooperation.
- Involving judges on committees to address court- or circuit-wide issues can engender cooperation.
- Holding regular social events, such as group receptions or dinners during court sittings, can help encourage collegiality, as can holding occasional court outings that may involve staff or family members.
- Having the chief circuit judge be visible and extend personal thanks and well wishes to colleagues can promote collegiality.

In conclusion, the chief circuit judge sets the tone at the top by engaging in behaviors that encourage civility and camaraderie. Collegiality contributes to a highly functioning court and, in turn, to a strong judiciary.



# Appendices

## Appendix A: Evolution of the Chief Circuit Judge Position

Congress created judicial circuits in 1789<sup>77</sup> and intermediate appellate courts for them in 1891,<sup>78</sup> but did not create the title *chief circuit judge* until 1948, when it revised previous judicial acts and included them in Title 28.<sup>79</sup>

The Judiciary Act of 1891, also known as the Evarts Act,<sup>80</sup> provided that if no Supreme Court Justice was present, the circuit judge would preside in order of seniority. The Act created a circuit court of appeals in each circuit to be held by three judges, some combination of the circuit justice, circuit judges (with one additional circuit judge authorized for each circuit), and district judges. The Act authorized each court to appoint a marshal and a clerk of court and “to establish all rules and regulations for the conduct of the business of the court within its jurisdiction as conferred by law.” It also provided that in the absence of the Supreme Court justice, “the circuit judges in attendance . . . shall preside in the order of the seniority of their respective commissions.”<sup>81</sup> Such a designation was a practical response to the expectation that Supreme Court justices would participate little in the judicial business of the courts of appeals.

The senior circuit judge, however, was also positioned to assume informal administrative responsibilities that Supreme Court justices had exercised when they traveled about the circuits, sitting with the district judges as members of the system’s major trial court, the circuit court, which convened in each district of the circuit. The justices exercised rudimentary administrative oversight when, for example, they admonished district judges to avoid leaks to the press, provided information about events in Washington, D.C., or designated judges to serve elsewhere in the circuit.<sup>82</sup>

The 1922 Judiciary Act<sup>83</sup> created the administrative role of the senior circuit judges by authorizing them to gather information from the district courts about

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77. Judiciary Act of 1789, 1 Stat. 73.

78. An Act to Establish Circuit Courts of Appeals and to Define and Regulate in Certain Cases the Jurisdiction of the Courts of the United States; and for Other Purposes, 26 Stat. 826 (1891).

79. 62 Stat. § 69 (1948).

80. Federal Judicial Center, *The U.S. Courts of Appeals and the Federal Judiciary*, <https://www.fjc.gov/history/courts/u.s.-courts-appeals-and-federal-judiciary> (last visited October 8, 2019).

81. An Act to Establish Circuit Courts of Appeals and to Define and Regulate in Certain Cases the Jurisdiction of the Courts of the United States; and for Other Purposes § 3, 26 Stat. 826, 827 (1891).

82. Russell Wheeler, *The Future of the Judicial Council of the Ninth Circuit—Until 1939, in Long-Range Planning for Circuit Councils* 7, 12 (Federal Judicial Center 1992).

83. An Act for the Appointment of an Additional Circuit Judge for the Fourth Judicial Circuit, for the Appointment of Additional District Judges for Certain Districts, Providing for an Annual Conference of Certain Judges, and for Other Purposes, 42 Stat. 837 (1922).

the state of the district courts' dockets and the need for additional judicial assistance, and to report that information to an annual conference that the statute directed the Chief Justice to convene. On the basis of these reports, the conference would prepare plans for the assignment and transfer of judges. To implement these plans, the statute authorized the senior circuit judge to designate district and circuit judges of the circuit, and district judges from other circuits (with the consent of the other senior circuit judge), to sit temporarily on other district courts.

Under the 1922 Act, the senior circuit judges, under the leadership of Chief Justice Taft and then Chief Justice Hughes, met annually—the meeting became known as the “conference of senior circuit judges.” This conference created a rudimentary communications and advisory mechanism for the federal courts.

Senior circuit judges' role shifted to governance in the aftermath of President Franklin Roosevelt's 1937 judicial reorganization proposals, the best known feature of which was an enlarged Supreme Court. However, Roosevelt also proposed a Supreme Court-appointed proctor to manage the federal courts, which was until then a Justice Department function. In 1939, Congress enacted a variation of the proposal, creating the Administrative Office of the U.S. Courts. “The Director,” the statute said, “shall be the administrative officer of the United States courts and shall have charge, under the supervision and direction of the conference of senior circuit judges, of” an array of administrative and support services for the courts, as well as the preparation and submission of the annual judicial branch requests for appropriations.<sup>84</sup>

The 1939 statute enhanced the administrative role of the senior circuit judge in two other ways. One section gave official status to circuit-wide conferences of the bench that some circuits had convened for over ten years. The Administrative Office Act directed the senior circuit judge to designate the time and place of an annual circuit judicial conference and directed the court of appeals of each circuit to adopt rules for the participation of the bar.<sup>85</sup>

A more consequential section directed the senior circuit judge to call, at least twice a year, “a council composed of the circuit judges [of the circuit] . . . at which council the senior circuit judge shall preside.” Again, this provision gave statutory status to previously informal arrangements whereby the senior circuit judge and other circuit judges had overseen the work of district judges outside the channels of litigation.<sup>86</sup> The senior circuit judge was to submit to the council quarterly reports, prepared by the director of the Administrative Office, on the state of the dockets in the district courts, so that the councils could issue what orders were necessary “[t]o the end that the work of the district courts shall be effectively and

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84. 53 Stat. 1223 (1939).

85. *Id.*

86. See, e.g., Peter G. Fish, *Guarding the Judicial Ramparts: John J. Parker and the Administration of Federal Justice*, 3 *Just. Sys. J.* 105 (1977).

expeditiously transacted.”<sup>87</sup> Subsequent statutes have altered the conferences, and more so the judicial councils, as to both membership and duties.

In 1948, Congress codified the various judiciary statutes into a revised Title 28, which, in section 45(a), denoted the circuit judge senior in service as the “chief judge of the circuit.”<sup>88</sup> According to the Reviser’s Notes, Congress adopted the term “chief judge” “in recognition of the great increase in administrative duties of such judges.”<sup>89</sup> Twenty years later came the idea of administrative assistants, in response to a report the Judicial Conference had commissioned by retired Administrative Office director Will Shafroth in the wake of the significant increase in appellate caseloads that had begun earlier in the decade. Mr. Shafroth recommended appointing administrative assistants in two circuits as a pilot project to test the utility of officials who could analyze “the methods of court administration in the circuit, [develop] improved methods of screening the cases, [study] ways of saving time of the judges for hearing and deciding cases, and, to the extent the Chief Judge desires, [assume] some of the administrative burdens now carried out by him.”<sup>90</sup> The Conference instead recommended that each chief circuit judge be authorized to hire an administrative assistant, a proposal that led to the enactment of the Circuit Executive Act in 1971, which gave the circuit council authority to hire a circuit executive.<sup>91</sup>

The next formal change affecting chief circuit judges came in 1982, when Congress modified the strict seniority rule for chief circuit judge selection to include an age limit of sixty-four at appointment as chief and a seven-year term in an effort to prevent chief circuit judges from serving very brief or very long terms.<sup>92</sup> The change had been recommended by the Commission on Revision of the Federal Court Appellate System in order to “minimize the impact of a chief judge who lacks administrative abilities, while allowing the chief judges who are good administrators sufficient time to have a beneficent effect on the functioning of their circuits.”<sup>93</sup>

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87. 53 Stat. 1223 § 306 (1939).

88. 62 Stat. 871 (1948).

89. Reviser’s Note, Epochal Legislation, New Title 28, United States Code, Judiciary and Judicial Procedure, United States Code Congressional Service, Appendix, at 1706 (1948).

90. Will Shafroth, *Survey of U.S. Courts of Appeals*, 42 F.R.D. 243, 289 (1968).

91. 84 Stat. 1907 (1971).

92. 96 Stat. 52 (1982).

93. Commission on Revision of the Federal Court Appellate System, *Structure and Internal Procedures: Recommendations for Change* 68 (1975).



## Appendix B: Background on the 2008 Rules for Judicial-Conduct and Judicial-Disability Proceedings

Until adoption of the Rules in 2008, chief circuit judges did not have an authoritative source for guidance when carrying out their responsibilities under the Judicial Conduct and Disability Act of 1980, [28 U.S.C. §§ 351–364 \(2012\)](#), to determine whether a covered judge had engaged in “conduct prejudicial to the effective and expeditious administration of the business of the courts” or was “unable to discharge all the duties of office by reason of mental or physical disability.” The Breyer Committee, appointed in 2004 by Chief Justice Rehnquist in response to criticism from the public and Congress regarding the effectiveness of the Act’s implementation, found that a major problem faced by chief circuit judges in implementing the Act was the lack of authoritative interpretive standards.<sup>94</sup>

On the basis of the Breyer Committee’s findings, the Committee on Judicial Conduct and Disability concluded that there was a need for the Judicial Conference to exercise its power under section 358 of the Act to fashion standards for guiding the various officers and bodies that must exercise responsibility under the Act [[28 U.S.C. § 358](#)]. To establish standards and procedures for implementing the Judicial Conduct and Disability Act, the Judicial Conference adopted the present [Rules for Judicial-Conduct and Judicial-Disability Proceedings](#) (JC&D Rules or the Rules), on March 11, 2008, and they took effect on April 10, 2008. The Rules were amended on September 17, 2015, published in final form in May 2016, and amended again on March 12, 2019.<sup>95</sup>

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94. Breyer Committee, *Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice*, 239 F.R.D. 116 (2006) (available under [Archives of the Committee on Judicial Conduct and Disability](#) on the AO’s [Judicial Conduct and Disability](#) webpage). The Rules were partly based on the [Illustrative Rules Governing Complaints of Judicial Misconduct and Disability](#), originally prepared in 1986 by the Special Committee of the Conference of Chief Judges of the United States Courts of Appeals, and adopted, with minor variations, by circuit judicial councils to govern complaints under the Judicial Conduct and Disability Act. The Illustrative Rules are no longer in effect.

95. *Judicial Conference Rules for Judicial-Conduct and Judicial-Disability Proceedings*, 248 F.R.D. 674, 724 (2008), reprinted in [Guide, vol. 2E, § 320](#) [Last revised (Transmittal 02-047) March 12, 2019]. Before they were adopted, the Rules and subsequent amendments were submitted for public comment pursuant to [28 U.S.C. § 358\(c\)](#). See Judicial Conference Committee on Judicial Conduct and Disability, [Transcript of the Sept. 27, 2007, Public Hearing](#) before the Judicial Conference adopted the [Rules](#) on March 7, 2008, and they took effect on April 10, 2008; Judicial Conference Committee on Judicial Conduct and Disability, [Transcript of the October 14, 2014, Public Hearing](#) before the Judicial Conference amended the [Rules](#) on September 17, 2015; Judicial Conference Committee on Judicial Conduct and Disability, [Video of the October 30, 2018, Public Hearing](#) before the Judicial Conference amended the [Rules](#) on March 12, 2019.

The Rules are mandatory<sup>96</sup> and consist of nationally uniform provisions governing the substantive and procedural aspects of misconduct and disability proceedings under the Act [[JC&D Rule 2\(a\)](#)]. They supersede any conflicting judicial-council rules, although circuit judicial councils may promulgate additional rules to implement the Act as long as those rules do not conflict with the Rules [[JC&D Rule 2\(a\)](#)].

The 2019 amendments to the Rules responded to recommendations provided in the June 2018 [Report of the Federal Judiciary Workplace Conduct Working Group](#), established in January 2018 by the director of the Administrative Office on instruction by Chief Justice Roberts to examine the “sufficiency of the safeguards currently in place within the judiciary to protect all court employees from inappropriate conduct in the workplace.”<sup>97</sup> The amendments to the Rules were part of a package of workplace conduct–related amendments approved by the Judicial Conference on March 12, 2019, which also included changes to the Code of Conduct for U.S. Judges and to the Code of Conduct for Judicial Employees.<sup>98</sup> The amendments to the Rules include provisions that make clear that misconduct includes

- engaging in unwanted, offensive, or abusive sexual conduct, including sexual harassment or assault [[JC&D Rule 4\(a\)\(2\)\(A\)](#)];
- treating judicial employees or others in a demonstrably egregious and hostile manner [[JC&D Rule 4\(a\)\(2\)\(B\)](#)];
- creating a hostile work environment for judicial employees [[JC&D Rule 4\(a\)\(2\)\(C\)](#)];
- intentionally discriminating on the basis of race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age, or disability [[JC&D Rule 4\(a\)\(3\)](#)];
- retaliating against complainants, witnesses, judicial employees, or others for participating in the complaint process or reporting or disclosing judicial misconduct or disability [[JC&D Rule 4\(a\)\(4\)](#)]; and

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96. [JC&D Rule 2\(b\)](#) provides an exception to the mandatory application of the Rules recognizing that unforeseen and exceptional circumstances may call for a different approach in particular cases:

A Rule will not apply if, when performing duties authorized by the Act, a chief judge, a special committee, a judicial council, the Committee on Judicial Conduct and Disability, or the Judicial Conference expressly finds that exceptional circumstances render application of that Rule in a particular proceeding manifestly unjust or contrary to the purposes of the Act or the[se] Rules.

97. Admin. Office of the U.S. Courts, *Report of the Federal Judiciary Workplace Conduct Working Group 1* (2018).

98. *See* Judicial Conference Approves Package of Workplace Conduct Reforms (AO March 12, 2019), at <https://www.uscourts.gov/news/2019/03/12/judicial-conference-approves-package-workplace-conduct-reforms>.

- failing to call to the attention of the chief district or circuit judge reliable information reasonably likely to constitute judicial misconduct or disability, with certain protections where the complainant requests confidentiality [[JC&D Rule 4\(a\)\(6\)](#)].

These amendments reflect the judiciary's commitment to maintaining a work environment in which all judicial employees are treated with dignity, fairness, and respect and are free from harassment, discrimination, and retaliation.<sup>99</sup> The amendments to the Rules also include provisions that make clear that confidentiality obligations under the Rules directed toward protecting the fairness and thoroughness of the complaint process, or in the Code of Conduct for Judicial Employees concerning the use or disclosure of confidential information received in the course of official duties, should never be an obstacle to reporting judicial misconduct or disability, and that specify that retaliation for disclosing misconduct is itself misconduct [[JC&D Rule 23\(c\)](#), [JC&D Rule 4\(a\)\(4\)](#)].

To fully comprehend the scope of one's duties and responsibilities with respect to misconduct and disability proceedings, a chief circuit judge must be aware of both the statutory duties under the Act and how those duties have been affected by the additional duties and responsibilities delegated to chief circuit judges under the Rules.

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99. In addition to recommending changes to the codes of conduct and the Rules, the Federal Judiciary Workplace Conduct Working Group recommended that the judiciary: 1) strengthen and streamline procedures for identifying and correcting misconduct and develop alternative, less formal options for employees to seek guidance and register complaints, and 2) expand training to prevent misbehavior and promote civility throughout the judiciary. Initiatives to implement these recommendations are ongoing at both the local and national level. See [Workplace Conduct in the Federal Judiciary](#) located under About Federal Courts on the AO's public website.

## Appendix C: Selected Circuit Judicial Wellness Programs

Below we highlight selected features of well-established judicial wellness programs in three circuits: the Ninth, Tenth, and Third.

### Ninth Circuit

The Ninth Circuit and its Judicial Council have been in the forefront of addressing judicial health. In 1999, then-Chief Judge Proctor Hug, Jr., established the Ninth Circuit Task Force on Judicial Disability as the first step in addressing disability and promoting wellness among the judges in the circuit. In 2001, the Office of the Circuit Executive, on the recommendation of the Task Force, established the Ninth Circuit's Private Assistance Line Service (PALS). PALS is a hotline staffed by a mental health professional<sup>100</sup> who provides confidential advice to all judges in the circuit, including the chief circuit judge, regarding a perceived or actual disability. The hotline is most often used by chief district judges, or another judge at the chief circuit judge's request, seeking advice on how to best approach a colleague about whom they have concerns. The hotline also receives calls from family members of judges, but only a few calls are from judges asking for assistance for their own issues or impairments.

In 2005, the Judicial Council established a standing committee, the Judicial Wellness/Disability Committee (now known as the Wellness Committee), whose main purpose is to devise, maintain, and offer programs that address both wellness and disability. As part of its mission to educate judges, the Wellness Committee publishes *A Wellness Guide for Judges of the Ninth Circuit Courts*. The guide covers such matters as recognizing altered behaviors, evaluating such behaviors, and responding to those behaviors. The guide also covers the impact of a judge's problem on his or her caseload, and it suggests possible solutions, such as permanent reassignment of cases in accordance with the random method used in the district, use of visiting judges, and temporary "caretaking" of cases by other judges of the court.

Other important areas addressed by the guide are communication and public relations. Specifically, guidance is provided on when judges should be told about an impaired colleague and what they should be told, as well as how to quell rumors in the legal community about an impaired judge.

The guide provides a list of resources for anyone seeking information on aging, alcohol and substance addiction, and wellness, including numerous articles, many of which were written by and for judges. The materials are available on the court's Judicial Wellness website, which is accessible to the federal judiciary nationwide via the Ninth Circuit's intranet site as well as the JNet.

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100. Dr. Richard Carlton, a psychiatrist, currently manages the Ninth Circuit hotline.

Finally, the Ninth Circuit's wellness program includes disability programs that attempt to address problems before they become formal discipline complaints. These programs address age and mental acuity issues in an open and non-judgmental way to reduce the stigma of aging and its associated problems. Many of these programs are offered at circuit judicial conferences.

### **Links to Ninth Circuit Online Resources**

[http://www.circ9.dcn/publications/PALS\\_Brochure.pdf](http://www.circ9.dcn/publications/PALS_Brochure.pdf)

[http://wellness.circ9.dcn/2015\\_Wellness\\_Guide.pdf](http://wellness.circ9.dcn/2015_Wellness_Guide.pdf)

<http://www.circ9.dcn/committees/wellness.aspx>

[http://www.circ9.dcn/committees/wellness/health/newsletters/CGH\\_Spring2017.pdf](http://www.circ9.dcn/committees/wellness/health/newsletters/CGH_Spring2017.pdf)

### **Tenth Circuit**

In June 2009, then-Chief Judge Robert Henry created an ad hoc committee, the Judicial Health and Assistance Committee (JHAC), to consider issues of judicial wellness and disability as well as formal and informal approaches to addressing judicial disabilities.<sup>101</sup> The ad hoc committee was composed of former and then-current chief judges, active and senior circuit and district judges, and magistrate and bankruptcy judges.<sup>102</sup> In addition, several non-judicial members participated, including the circuit executive and staff, and a medical director.<sup>103</sup>

Over an eighteen-month period, the committee reviewed the relevant literature, studied other judicial wellness programs, heard presentations from different types of experts, and considered an array of professional tools.<sup>104</sup> In addition, the court conducted two surveys of judges in the circuit. The first survey was sent to the circuit's chief district judges and "was conducted to evaluate whether there was a need for a judicial health program, and, if so, what type of program might be best."<sup>105</sup> The second survey was sent to all judges in the circuit "for the purpose of confirming the results of the survey of chief judges and [to] learn more about the types of health challenges [some] judges' face."<sup>106</sup>

The results of the surveys were insightful and revealed

that a significant number of judges (73%) have had concerns about their health or the health of a colleague. Frequent themes [were] concerns related to aging

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101. Report and Recommendations of the Tenth Circuit Judicial Health and Assistance Committee (JHAC) (March 2011) (on file with the author).

102. *Id.* at 1.

103. *Id.*

104. *Id.*

105. *Id.* at 17.

106. *Id.*

(such as difficulties in driving, memory loss or diminishment of cognitive abilities), as well as concerns arising from family issues, alcohol abuse and mental health issues.<sup>107</sup>

The respondents varied in how they responded to colleagues' health issues or performance deficits. Some approached their colleagues directly, while others brought their concerns to the judge's family or a mutual friend. Still others reported ignoring a colleague's health issue because they were uncomfortable raising it.

In 2011, JHAC launched JHealth, a wellness program, to support judges of the courts of the Tenth Circuit by providing educational resources and consultation on a wide variety of physical and mental health issues affecting judges, including stress, family issues, chronic illness or disability, aging, depression, anxiety, substance abuse, and burnout.

JHealth currently employs a certified medical professional,<sup>108</sup> on a contract basis, to provide judges with consultation and referral to treatment sources, free of charge. The program allows judges to self-refer and, in addition, third-party referrals may be made by colleague judges, a judge's family members, or court staff. If a judge chooses to participate in JHealth, all treatment information remains confidential unless the judge chooses to release it.

The JHealth website also provides users with a list of frequently asked questions. These questions include the following:

- What happens if I contact the consulting medical professional?
- Can consultation with the consulting medical professional be used against a judge in a judicial misconduct inquiry?
- What happens to the level of confidentiality if the chief circuit judge or Judicial Council requires a judge to consult with the consulting medical professional as part of a judicial misconduct matter?
- What kinds of reports does the consulting medical professional provide to the Judicial Health and Assistance Committee and the Judicial Council?

### **Links to Tenth Circuit Online Resources**

<http://jhealth.circ10.dcn/downloads/program-brochure.pdf>

<http://jhealth.circ10.dcn/faq/>

<http://jhealth.circ10.dcn/confidentiality/>

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107. *Id.*

108. Dr. Michael Gendel serves as the circuit's certified medical professional and has specialized in the field of professionals' health, including that of judges and lawyers, for over twenty-five years.

## Third Circuit

The Third Circuit Judicial Wellness Committee's mission statement states:

In recognition of the rigors of our judicial responsibilities, we encourage our colleagues to be mindful of their own and of their colleagues' wellness and health-related needs. We are committed to providing resources and support, with respect and discretion, to meet such needs and maintain the highest level of judicial performance.<sup>109</sup>

In carrying out its mission, the Wellness Committee regularly undertakes several endeavors, including the following:

- promoting judicial wellness in all courts within the circuit by providing resources, information, and education on health and disability issues at conferences and meetings, and electronically available resource lists;
- assisting judges in making decisions regarding seeking senior status or retirement;
- making available a consulting medical professional to provide confidential assessments, referrals, and guidance to self-referring judges, chief circuit judges, and concerned colleagues or immediate family; and
- working in liaison with national, circuit, and state committees exploring issues related to judicial health.<sup>110</sup>

The Third Circuit's current and past chief judges have made judicial wellness a priority. The topic appears frequently on the agenda at judges-only conferences. During these conferences, the confidential nature of the court's wellness program, especially any meeting with the consulting medical professional, is emphasized to encourage use of the program. When the medical professional's services are used, for example, the circuit executive receives a bill that reads "one hour with Judge 1, two hours with Judge 2." No judge is ever identified. Explaining to judges how these confidential assessments and referrals work often allays their fears about using the available resources, including the medical professional.

The Third Circuit's wellness program strives to improve the health and well-being of all staff, not only those who are suffering from a disability. It is difficult to determine the success of this program because, in many instances, the participants wish to remain anonymous, or because treatment or medical information is confidential unless the participant decides to disclose it. Nonetheless, what is important is that this program provides important resources that a chief circuit judge or a concerned party can use to help a colleague who needs assistance in addressing an impairment.

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109. Judicial Council of the Third Circuit, Judicial Wellness Committee, Mission Statement (on file with the author).

110. *Id.*



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