

**REPORT OF THE PROCEEDINGS  
OF THE JUDICIAL CONFERENCE  
OF THE UNITED STATES**

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***SEPTEMBER 23, 2003  
WASHINGTON, D.C.***

***JUDICIAL CONFERENCE OF THE UNITED STATES  
CHIEF JUSTICE WILLIAM H. REHNQUIST,  
PRESIDING  
LEONIDAS RALPH MECHAM, SECRETARY***

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## **ACCELERATED FUNDING**

On recommendation of the Committee, the Judicial Conference agreed to designate for accelerated funding in fiscal year 2004 the new full-time magistrate judge positions at Brooklyn, New York; Central Islip, New York; Chattanooga, Tennessee; and Baltimore or Greenbelt, Maryland.

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## **COMMITTEE ACTIVITIES**

The Committee on the Administration of the Magistrate Judges System reported that it decided to defer, but not withdraw, its position that service as an arbitrator or mediator by retired magistrate judges and bankruptcy judges should not be considered the practice of law under the Regulations of the Director Implementing the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act. The Committee also discussed possible additional criteria for the creation of new full-time magistrate judge positions and decided that the current Judicial Conference criteria are comprehensive and that the Committee's detailed review of each request ensures that only justified requests are approved. Further, the Committee considered an item on law clerk assistance for Social Security appeals that was also considered by the Court Administration and Case Management and Judicial Resources Committees, and requested that detailed materials be prepared on this subject for these committees' December 2003 meetings.

## **COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS**

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### **COMMITTEE ACTIVITIES**

The Committee to Review Circuit Council Conduct and Disability Orders reported that, in the absence of any petition before it for review of judicial council action under the Judicial Conduct and Disability Act, it has continued to monitor congressional activity in the area of judicial conduct and disability.

**REPORT OF THE JUDICIAL CONFERENCE COMMITTEE TO REVIEW  
CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS**

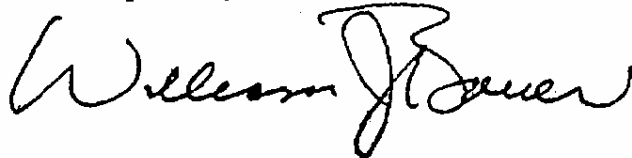
**TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE  
JUDICIAL CONFERENCE OF THE UNITED STATES:**

The Committee to Review Circuit Council Conduct and Disability Orders last met on August 30-31, 2001. Since that meeting the Committee has communicated by mail and telephone.

**PETITIONS FOR REVIEW**

The Committee has not received any petitions for review of judicial council action taken under 28 U.S.C. § 354 since the Committee's last report to the Judicial Conference. Nor are there any petitions for review pending from before that time.

Respectfully submitted,



William J. Bauer, Chairman  
Pasco M. Bowman  
Carolyn R. Dimmick  
Barefoot Sanders  
Stephanie K. Seymour

**NOTICE**

**NO RECOMMENDATION PRESENTED HEREIN REPRESENTS THE POLICY OF THE JUDICIAL  
CONFERENCE UNLESS APPROVED BY THE CONFERENCE ITSELF.**

**REPORT OF THE JUDICIAL CONFERENCE COMMITTEE TO REVIEW  
CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS**

**TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE  
JUDICIAL CONFERENCE OF THE UNITED STATES:**

The Committee to Review Circuit Council Conduct and Disability Orders last met on August 30-31, 2001. Since that meeting the Committee has communicated by mail and telephone.

**AMENDMENTS TO THE JUDICIAL CONDUCT AND DISABILITY ACT**

The 21<sup>st</sup> Century Department of Justice Appropriations Authorization Act, Division C, Title I, Subtitle C, §§ 11041-43 (Pub. L. No. 107-273, 11/2/02), amended the Judicial Conduct and Disability Act, the former 28 U.S.C. § 372(c), in several minor respects. For the most part the provisions of that Act have been preserved verbatim.

The statute makes essentially four changes in the provisions of the Judicial Conduct and Disability Act:

1. As a matter of form, the statute recodifies section 372(c) as sections 351 through 364 of title 28.

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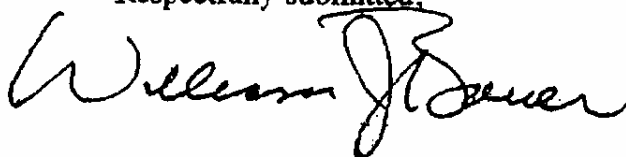
and Disability Act, 28 U.S.C. § 372(c)(6)(B), because of the judge's "intemperate, abusive and intimidating treatment of lawyers, fellow judges, and others." The sanctions consisted of (1) a public reprimand, (2) a one-year suspension from new case assignments, and (3) a three-year suspension from hearing cases in which certain listed attorneys appeared. The court of appeals had affirmed the district court's dismissal of the district judge's challenges to the public reprimand, and had ruled that the district judge's challenges to the one-year and three-year suspensions should have been dismissed as moot.

The denial of certiorari by the Supreme Court would appear to finally put an end to this long-running litigation.

#### **PETITIONS FOR REVIEW**

The Committee has not received any petitions for review of judicial council action taken under 28 U.S.C. § 354 (section 372(c)(6)) since the Committee's last report to the Judicial Conference. Nor are there any petitions for review pending from before that time.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William J. Bauer". The signature is written in a cursive, flowing style.

William J. Bauer, Chairman  
Pasco M. Bowman  
Carolyn R. Dimmick  
Barefoot Sanders  
Stephanie K. Seymour

judges to vote on the selection of chief pretrial services officers, disagreeing with the Criminal Law Committee's recommendation to the Judicial Resources Committee that legislation be sought to amend 18 U.S.C. § 3152(c) to make the selection process for chief pretrial services officers the same as the selection process for chief probation officers under 18 U.S.C. § 3602(c). The Judicial Resources Committee will consider both committees' views at its June 2004 meeting. The Magistrate Judges Committee also agreed to include in all future survey reports that analyze requests for new magistrate judge positions information on the space implications of any new positions, and, if available, the related costs of such requests.

## **COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS**

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### **COMMITTEE ACTIVITIES**

The Committee to Review Circuit Council Conduct and Disability Orders reported that, in the absence of any petition before it for review of judicial council action under the Judicial Conduct and Disability Act, it has continued to monitor congressional activity in the area of judicial conduct and disability.

## **COMMITTEE ON RULES OF PRACTICE AND PROCEDURE**

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### **COMMITTEE ACTIVITIES**

The Committee on Rules of Practice and Procedure reported that it approved for publication proposed amendments to Rules 5005 (Filing and Transmittal of Papers) and 9036 (Notice by Electronic Transmission) of the Federal Rules of Bankruptcy Procedure. The Committee also approved for later publication proposed style amendments to Civil Rules 16-37 and 45. Publication of these rules as well as proposed style amendments to Civil Rules 1-15 approved in September 2003 (JCUS-SEP 03, p. 37) have been deferred until all the civil rules have been revised, which is expected to occur early in 2005. The Advisory Committees on Appellate, Bankruptcy, Civil, and Criminal Rules are reviewing comments from the public submitted on amendments proposed in August 2003 to their respective sets of rules.

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## COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that it has devoted its priority attention to securing an immediate and substantial increase in judicial salaries, consistent with the Chief Justice's *2006 Year-End Report on the Federal Judiciary* (*see also supra*, "Judicial Compensation," p. 4). In other efforts to promote judicial independence, the Committee continues to take affirmative steps to enhance interbranch communications, as well as to maintain communications with the bar and the media. It also continues to give substantial attention to judicial benefits matters.

## COMMITTEE ON JUDICIAL CONDUCT AND DISABILITY<sup>1</sup>

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### JUDICIAL CONDUCT AND DISABILITY ACT STUDY COMMITTEE REPORT

In 2004, Chief Justice William H. Rehnquist appointed a committee, chaired by Associate Justice Stephen G. Breyer, to study the implementation of the Judicial Conduct and Disability Act of 1980. The Judicial Conduct and Disability Act Study Committee (the Breyer Committee) issued its report in September 2006, and the Executive Committee subsequently asked the Committee on Judicial Conduct and Disability to review and make recommendations to the Conference on any actions that should be taken concerning the report (*see supra*, "Miscellaneous Actions," pp. 6-7).

Conference Authority to Review Committee Decisions. The Breyer Committee recommended that the Conference consider clarifying the scope of the Conference's authority to review Judicial Conduct and Disability Committee decisions. Noting that its own authority is entirely derivative of the Conference's authority and that, therefore, any Committee decision is reviewable by the Conference, the Judicial Conduct and Disability Committee recommended that the Conference direct it to prepare for Conference consideration a rule, pursuant to 28 U.S.C. §§ 331 and 358(a), that clarifies the authority of the Judicial Conference to review on its own initiative any Judicial Conduct and Disability Committee decision, including orders

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<sup>1</sup>Prior to March 12, 2007, this Committee was known as the Committee to Review Circuit Council Conduct and Disability Orders (*see supra*, "Five-Year Self-Evaluation and Jurisdictional Review," p. 5).

granting or denying petitions for review in misconduct proceedings. The rule would also make clear that no complainant or judge who is the subject of a complaint would have any right to invoke such review. The Conference adopted the Committee's recommendation.

Other Breyer Committee Recommendations. In order to achieve the goals set forth by the Breyer Committee and fulfill its own mission, the Judicial Conduct and Disability Committee recommended that the Conference authorize and direct the Committee to develop, and present to the Conference for approval, comprehensive guidelines, and, as necessary, additional rules pursuant to 28 U.S.C. §§ 331 and 358(a), to implement the Judicial Conduct and Disability Act in a consistent manner throughout the federal court system. The Committee indicated that chief judges, circuit judicial councils, and circuit staff should be provided specific binding guidance on an array of difficult, substantive, procedural, and administrative issues identified in the Breyer Committee report. In addition, clerks' offices and circuit judicial councils should be required to transmit specified material to the Committee so that it has a sufficient basis for monitoring implementation. The Conference adopted the Committee's recommendation.

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## **JURISDICTION TO CONSIDER PETITIONS FOR REVIEW**

In its April 28, 2006 opinion, *In re Opinion of Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders*, 449 F.3d 106 (U.S. Jud. Conf. 2006), the Judicial Conduct and Disability Committee expressed the view that it does not have jurisdiction to review a circuit judicial council's affirmance of a chief judge's dismissal of a conduct and disability complaint where a special investigating committee under 28 U.S.C. § 353 had not been appointed. Believing, upon reconsideration, that such authority does exist, the Committee recommended that the Judicial Conference direct it to prepare for Conference consideration a rule, pursuant to 28 U.S.C. §§ 331 and 358(a), that explicitly authorizes the Committee on Judicial Conduct and Disability to examine whether a misconduct complaint requires the appointment of a special committee, upon dismissal of the complaint by the chief judge under 28 U.S.C. § 352(b), or upon the denial of a petition for review of the complaint by the circuit judicial council under 28 U.S.C. § 352(c). The Conference adopted the Committee's recommendation.



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## COMMITTEE ACTIVITIES

The Committee on Judicial Conduct and Disability reported that it continues to carry out its responsibilities with regard to considering petitions for review of final actions by circuit judicial councils on complaints of misconduct or disability of federal judges.

## COMMITTEE ON JUDICIAL RESOURCES

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### ARTICLE III JUDGESHIP NEEDS

Additional Judgeships. The Committee on Judicial Resources considered requests and justifications for additional judgeships in the courts of appeals and the district courts as part of its 2007 biennial judgeship survey process. Based on its review, and after considering the views of the courts and the circuit councils, the Committee recommended that the Judicial Conference authorize transmittal to Congress of a request for the addition of 13 permanent and 2 temporary judgeships in the courts of appeals, and for the addition of 38 permanent and 14 temporary judgeships, the conversion to permanent status of 5 existing temporary judgeships, and the extension of 1 existing temporary judgeship for an additional 5 years in the district courts. The Conference adopted the Committee's recommendations, agreeing to transmit the following request to Congress in lieu of any previously submitted Article III judgeship requests ("P" denotes permanent; "T" denotes temporary; "T/P" denotes conversion of temporary to permanent; "T/E" denotes extension of temporary):

#### COURTS OF APPEALS

First Circuit	1P
Second Circuit	2P
Third Circuit	2P
Sixth Circuit	1P
Eighth Circuit	2P
Ninth Circuit	5P, 2T