



56th Plenary Session
Minutes
June 14-15, 2012

I. June 14, 2012:

a. Introduction and Opening Remarks By Chairman Paul Verkuil

The first day of the 56th Plenary Session of the Administrative Conference of the United States (“Conference”) commenced on June 14, 2012 at 1:18 p.m., at the Main Conference Room of the Commodity Futures Trading Commission (CFTC), at Three Lafayette Centre, 1155 21st Street, NW, Washington D.C.

i. Introductory Remarks

The Conference’s General Counsel Shawne McGibbon welcomed attendees and made administrative announcements, which included noting that the Conference is a Federal Advisory Committee and that its proceedings are open to the public. Ms. McGibbon informed attendees that audio and video of the meeting were being streamed live over the Internet and that the progress of the meeting could also be followed on the Conference’s website.

Chairman Paul Verkuil called the meeting to order. Chairman Verkuil welcomed all the Conference members, guests and attendees and thanked CFTC for providing the meeting space.

ii. In Memoriam

Chairman Verkuil noted the recent death of John Payton, head of the NAACP Legal Defense and Educational Fund and Conference Public Member, on March 22, 2012. He introduced David Ogden, Mr. Payton’s friend and former law firm partner, to provide some memorial remarks.

Mr. Ogden reviewed Mr. Payton’s distinguished legal career and his contributions to the legal profession. Chairman Verkuil also noted Mr. Payton’s significant contributions as a lawyer and as a member of the Conference.

iii. Changes at the Conference

Chairman Verkuil introduced the members of the Council of the Administrative Conference. He then introduced the following new staff members at the Conference: Matt Wiener, the Conference’s new Executive Director; Gretchen Jacobs, the Conference’s new Research Director; Stephanie Tatham, Attorney Advisor and Amber Williams, Attorney Advisor.



iv. Further Introductory Remarks

The Chairman then highlighted the Conference's major activities since the last Plenary Session held in December. He noted that the Conference participated in a number of activities to implement recommendations previously adopted by the Assembly, including workshops, symposia, and panels. Ms. McGibbon then introduced a number of bylaw changes to the Assembly. The bylaw changes were approved by voice vote.

Chairman Verkuil then introduced Judge Robert Katzmann, Chief Judge of the U.S. Court of Appeals for the Second Circuit to provide introductory remarks. Judge Katzmann discussed the importance of agencies and statutory housekeeping and noted that he is looking at the question of what happens to statutory opinions after they are issued by courts. Judge Katzmann noted that this question may be a topic of possible study for the Conference.

The Chairman closed the introductory remarks by noting that the Plenary Session was the culmination of considerable work by members, researchers, staff and others. He then reviewed the rules of debate and voting at the plenary.

b. Initial Business

The Assembly adopted the minutes of the 55th Plenary Session by voice vote.

The Assembly approved the proposed Resolution Governing the Order of Business by voice vote.

c. Introduction to Recommendations

The Conference's Acting Director of Research Jeffrey Lubbers noted that he enjoyed serving in this role and thanked the membership and the staff of the Conference for their hard work on the recommendations. He briefly described the recommendations that the Assembly would be considering at the Plenary Session. He announced that all the recommendations came to the Assembly with the approval of the Conference's Council. He closed by explaining the process for debate and amendment of recommendations.

d. Consideration of Proposed Recommendation on Regulatory Analysis Requirements

H. Russell Frisby, Chair of the Conference's Committee on Regulation, introduced the proposed recommendation on Regulatory Analysis Requirements and thanked Reeve Bull, Staff Counsel to the Committee, for all of his hard work on the recommendation. Conference Consultant Curtis Copeland discussed the course of his research on the project.



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Chairman Verkuil then asked if there was any objection to adopting the manager's amendments to the recommendation.

Conference member Bridget Dooling proposed that a manager's amendment which changed the word "that" to "when" in paragraph four of the recommendation, be changed back to the original language. Mr. Frisby accepted this proposed friendly amendment and then without objection, the manager's amendments were adopted by voice vote.

Conference member Peter Strauss proposed an amendment to add the word "elimination" to the recommendation because federal administrators would appropriately consider elimination in addition to consolidation of regulatory requirements. After debate, the Strauss amendment was adopted by voice vote.

Conference member Sally Katzen proposed consolidating paragraphs three and eight of the recommendation because both paragraphs recommended that the Executive Office of the President review the current set of regulatory requirements. After debate, the Katzen amendment was adopted by voice vote.

The Assembly further discussed the recommendation and comments as well as suggested stylistic edits were made by Council member Judge Patricia Wald and Conference members Carol Ann Siciliano, Alan Morrison, Cynthia Farina, Robert Schiff, Don Elliot, Patrick Patterson, Megan Wallace and Susan Dudley. After the further discussion, the Assembly adopted the proposed recommendation, as amended, by voice vote.

The Assembly then took a short recess.

e. Consideration of Proposed Recommendation on Midnight Rules

Robert Rivkin, Chair of the Conference's Committee on Rulemaking, introduced the proposed recommendation on Midnight Rules and thanked Emily Bremer, Staff Counsel to the Committee, and Funmi Olorunnipa, Project Advisor to the Midnight Rules Project for all of their hard work on the recommendation. Conference Consultant Jack Beermann discussed the course of his research on the project.

Chairman Verkuil asked if there was any objection to adopting the manager's amendments to the recommendation. Without objection, the manager's amendments were adopted by voice vote.

Conference member Carol Ann Siciliano proposed changing the preamble and paragraph three of the recommendation to change the definition of the midnight rule period to "a rule issued



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after the Presidential election”. After debate, the Siciliano amendment was adopted by voice vote.

Conference member Robert Schiff proposed changing the word “consider” to “encourage” throughout the recommendation. After debate, the Schiff amendment was adopted by voice vote.

The Assembly further discussed the text of the recommendation and comments as well as suggested stylistic edits were made by Conference members Sally Katzen, Alan Morrison, Jim Chen, Cynthia Farina, Michael Herz, Glenn Sklar and Esa Sferra-Bonistalli as well as Council Members Ron Cass and Boris Bershteyn. After further discussion the Assembly adopted the proposed recommendation, as amended, by voice vote.

f. Consideration of Proposed Recommendation on Immigration Removal Adjudication

John Vittone, Chair of the Conference’s Committee on Adjudication, introduced the proposed recommendation on Immigration Removal Adjudication and thanked Funmi Olorunnipa, Staff Counsel to the Committee for all of her hard work on the recommendation. Conference Consultants Lenni Benson and Russell Wheeler discussed the course of their research on the project.

Chairman Verkuil asked if there was any objection to adopting the manager’s amendments to the recommendation. Without objection, the manager’s amendments were adopted by voice vote.

Chairman Verkuil then introduced Juan Osuna, Director of the Department of Justice’s Executive Office for Immigration Review. Mr. Osuna made remarks about the recommendation and his involvement during the process of considering the recommendation. Chairman Verkuil then introduced Ivan Fong, General Counsel for the Department of Homeland Security. Mr. Fong made remarks about the recommendation and his involvement during the process of considering the recommendation. Chairman Verkuil then introduced Megan Mack, Director of the American Bar Association’s Commission on Immigration and noted her staff’s involvement during the process. Ms. Mack made remarks and noted that the ABA supports a number of the recommendations made on immigration removal adjudication.

Next, general comments about the recommendation were offered by Conference members Richard Pierce, Paul Kamenar, Jim Tozzi, Nina Olson, Alan Morrison, Don Elliot, Cynthia Farina, Gillian Metzger and Council Member Judge Patricia Wald.



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Mr. Fong proposed an amendment to strike paragraph 10(b) of the recommendation noting that this technique for docket control would shift the balance authority between the Department of Homeland Security and the Department of Justice. Mr. Vittone, Ms. Benson, Mr. Osuna, Ms. Farina, Peter Strauss and David Frederick provided comments about Mr. Fong's proposed amendment. After debate and a voice vote which was inconclusive, a hand count was taken and the Fong amendment failed.

Mr. Fong then moved to amend paragraph 10 (b) of the recommendation to state that "EOIR shall evaluate the extent to which the exercise of this authority affects the efficiency and accuracy of removal adjudication". After debate and a hand count, this second Fong amendment failed.

Ms. Metzger then proposed amending paragraph 10 (b) of the recommendation to delete "or responded to" from the text in order to limit the application of the paragraph to only those situations when changes against a respondent have been admitted. After debate and a hand count, the Metzger amendment failed.

Mr. Fong then proposed modifying paragraph 21 to make it clear that the recommended discipline of attorneys appearing before immigration courts would not apply to government attorneys. After debate, this third Fong amendment failed by voice vote.

Before discussion on the recommendation continued, the absence of a quorum was noted and the Assembly adjourned until the following morning.

II. June 14, 2012:

a. Introduction and Opening Remarks By Chairman Paul Verkuil

The second day of the 56th Plenary Session of the Administrative Conference of the United States ("the Conference") commenced on June 15, 2012 at 9:17 p.m., at the Main Conference Room of the Commodity Futures Trading Commission (CFTC), at Three Lafayette Centre, 1155 21st Street, NW, Washington D.C.

i. Introductory Remarks

Chairman Verkuil opened the day's meeting by welcoming Conference members, guests and other attendees back to the Plenary Session and calling the session to order. Mr. Lubbers then discussed the Conference's pending and upcoming projects, including Social Security Disability Adjudication, Government in the Sunshine Act, Science and the Administrative Process, the Use of Third Party Inspections, the Federal Civil Penalties Inflation Adjustment Act



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and the Repeal of Section 1500. Mr. Lubbers also discussed other upcoming activities the Conference would engage in, including workshops, panel discussions and symposia. Ms. McGibbon then discussed the Walter Gellhorn Award and described the nominations process for the award. Chairman Verkuil then concluded by noting that a quorum was present and consideration of the Immigration Removal Adjudication recommendation could continue.

b. Continued Consideration of Immigration Removal Adjudication

Mr. Fong began the discussion by recapping the discussion on Thursday and Thursday's votes on amendments for the recommendation and noting that he would submit a separate statement on the recommendation. After Mr. Fong's comments, the Assembly adopted the proposed recommendation, as amended, by voice vote.

c. Consideration of Proposed Recommendation on Paperwork Reduction Act

John Cooney, Chair of the Conference's Committee on Administration and Management, introduced the proposed recommendation on the Paperwork Reduction Act and thanked Emily Bremer, Staff Counsel to the Committee, for all of her hard work on the recommendation. Conference Consultant Stuart Shapiro discussed the course of his research on the project.

Chairman Verkuil asked if there was any objection to adopting the manager's amendments to the recommendation. Without objection, the manager's amendments were adopted by voice vote.

Conference member Sally Katzen proposed amending paragraph one of the recommendation to add the words "and a 30 day comment period" and rearranging this paragraph to reflect this addition. Additional comments about this proposal were made by Conference members Carol Ann Siciliano, Neil Eisner, Martin Conrey and Jim Tozzi as well as by Mr. Cooney and Mr. Shapiro. After debate, the Katzen amendment was adopted by voice vote.

Conference member Alan Morrison proposed amending paragraph five to recommend that Congress delegate to the Office of Management and Budget the authority to give extensions and accordingly, he proposed changing the paragraph's language to "consider amending the PRA to permit OMB to define". After debate, the Morrison amendment was adopted by voice vote.

The Chairman recognized David Rostker from the Small Business Administration's Office of Advocacy to provide his thoughts on the recommendation. The Chairman also recognized Bob Coakley, who has worked extensively on Paperwork Reduction Act issues, to provide his thoughts on the recommendation. After further discussion, including suggested



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stylistic edits by members of the Conference, the Assembly adopted the proposed recommendation, as amended, by voice vote.

The Assembly then took a short recess.

d. Consideration of Proposed Recommendation on Improving Coordination of Related Agency Responsibilities

Miriam Nisbet, Chair of the Conference's Committee on Collaborative Governance, introduced the proposed recommendation on Improving Coordination of Related Agency Responsibilities and thanked David Pritzker, Staff Counsel to the Committee, for all of his hard work on the recommendation. Conference Consultant Jody Freeman discussed the course of her research on the project.

Chairman Verkuil asked if there was any objection to adopting the manager's amendments to the recommendation. Without objection, the manager's amendments were adopted by voice vote.

Conference Member Ivan Fong proposed amending paragraph one of the recommendation to include language intended to clarify that agencies, in the course of coordinating, should not only develop new policies but should also document already ongoing practices. After debate, the Fong amendment was adopted by voice vote.

Mr. Fong also proposed an amendment to paragraph four of the recommendation which sought to provide agencies flexibility by not requiring them to always contribute resources when coordinating with other agencies. Mr. Fong's second amendment was adopted as a friendly amendment by Ms. Nisbet and accordingly, no voice vote was taken.

The Assembly further discussed the text of the recommendation and comments as well as suggested stylistic edits were made by Conference members Jim Chen, Michael Herz, Robert Taylor, David Frederick, Paul Kamenar, Patrick Patterson, Council Member Judge Patricia Wald and Special Counsel Jon Siegel. After further discussion, the Assembly adopted the proposed recommendation, as amended, by voice vote.

e. Closing Remarks and Adjournment

Chairman Verkuil thanked the Conference membership, staff and guests for their attendance. He announced that the 57th Plenary Session would take place on December 6 and 7, 2012 in Washington D.C. Chairman Verkuil then officially adjourned the 56th Plenary Session of the Administrative Conference at 12:39 p.m.