

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

**September 19, 1995**

The Judicial Conference of the United States convened in Washington, D.C., on September 19, 1995, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Juan R. Torruella  
Chief Judge Joseph L. Tauro,  
District of Massachusetts

Second Circuit:

Chief Judge Jon O. Newman  
Judge Charles L. Brieant,  
Southern District of New York

Third Circuit:

Chief Judge Dolores K. Sloviter  
Chief Judge Edward N. Cahn,  
Eastern District of Pennsylvania

Fourth Circuit:

Chief Judge Sam J. Ervin, III  
Judge W. Earl Britt,  
Eastern District of North Carolina

Fifth Circuit:

Chief Judge Henry A. Politz  
Chief Judge Morey L. Sear,  
Eastern District of Louisiana

*Judicial Conference of the United States*

Sixth Circuit:

Chief Judge Gilbert S. Merritt  
Judge S. Arthur Spiegel  
Southern District of Ohio

Seventh Circuit:

Chief Judge Richard A. Posner  
Chief Judge Michael M. Mihm,  
Central District of Illinois

Eighth Circuit:

Chief Judge Richard S. Arnold  
Judge Donald E. O'Brien,  
Northern District of Iowa

Ninth Circuit:

Chief Judge J. Clifford Wallace  
Chief Judge Wm. Matthew Byrne, Jr.,  
Central District of California

Tenth Circuit:

Chief Judge Stephanie K. Seymour  
Judge Clarence A. Brimmer,  
District of Wyoming

Eleventh Circuit:

Chief Judge Gerald B. Tjoflat  
Judge Wm. Terrell Hodges,  
Middle District of Florida

District of Columbia Circuit:

Chief Judge Harry T. Edwards  
Chief Judge John Garrett Penn,  
District of Columbia

- 6) A prohibition against the private practice of law by employees of the organization (new Clause 21).

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#### **DEFENDER ORGANIZATION FUNDING REQUESTS**

The Committee on Defender Services is authorized to approve funding requests for defender organizations on behalf of the Judicial Conference. Since the March 1995 Conference session, the Committee approved a total increase of \$626,400 in the fiscal year 1995 budgets of federal public defender organizations, and a total increase of \$436,700 in the fiscal year 1995 grants for community defender organizations.

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#### **PANEL ATTORNEY COMPENSATION**

The Defender Services Committee, pursuant to the authority delegated to it by the Judicial Conference (JCUS-SEP 91, p. 57), approved a maximum rate of \$75 per hour for both in-court and out-of-court services of appointed counsel for the District of Maine, the Western District of Arkansas, the District of Nebraska, and the Eastern District of Virginia. This brings to 93 the number of districts for which an alternative CJA panel attorney compensation rate of \$75 per hour has been authorized. Due to funding limitations, alternative rates have been implemented in only 16 of these districts.

### **COMMITTEE ON FEDERAL-STATE JURISDICTION**

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#### **COURT OF FEDERAL CLAIMS**

The Committee on Federal-State Jurisdiction reviewed several legislative proposals which would significantly expand the jurisdiction and remedial powers of the Court of Federal Claims. The Committee recommended that the Judicial Conference:

- 1) Oppose legislative provisions that would grant the Court of Federal Claims authority to invalidate Acts of Congress or agency regulations;
- 2) Oppose legislative provisions that would authorize the Court of Federal Claims to grant injunctive and declaratory relief in any case over which the Court of Federal Claims has subject matter jurisdiction;

- 3) Oppose legislative provisions that would grant the Court of Federal Claims jurisdiction over "ancillary tort claims" in cases otherwise within the Court of Federal Claims' jurisdiction; and
- 4) Oppose legislative provisions that would repeal 28 U.S.C. § 1500 if the repeal is not accompanied by a provision for stay or transfer of duplicative claims. This represents a modification of a prior Conference position simply opposing repeal of § 1500 (JCUS-MAR 92, p. 22).

The Judicial Conference approved the recommendations of the Committee.

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#### **LEGISLATION TO MITIGATE LITIGATION**

S. 136, 104th Congress, would amend title 1 of the United States Code by adding a new section 7 that would "clarify the effect and application of legislation" by deeming all future law 1) to be prospective only; 2) not to create a private cause of action; and 3) not to preempt state law. The proposed section would further provide that these presumptions govern unless a law specifies otherwise by express reference to the rule of the new section intended to be negated. On recommendation of the Committee on Federal-State Jurisdiction, the Judicial Conference supported generally S. 136, the goals and focus of which are consistent with Conference policy (see JCUS-SEP 90, p. 61), and more specifically:

- 1) Endorsed the first presumption concerning prospective application and the second presumption regarding the creation of private causes of action;
- 2) Endorsed in principle the third presumption concerning the preemption of state law, but noted that constitutional concerns are raised that should be studied further; and
- 3) Suggested that the language "by express reference to the paragraph of this section intended to be negated" be deleted from the proposed section 7 so that the presumptions will apply unless a law simply "specifies otherwise."

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#### **REVIEW OF STATE LAWS ADOPTED BY REFERENDUM**

H. R. 1170, 104th Congress, would require three-judge panels to consider applications for interlocutory or permanent injunctions restraining the enforcement, operation, or execution of state laws adopted by referendum on the ground of unconstitutionality. Under the bill, the three-judge panels must expedite consideration