
REPORT
of the
PROCEEDINGS OF THE
JUDICIAL CONFERENCE OF THE
UNITED STATES

September 22-23, 1982

Washington, D.C.
1982

Tenth Circuit:

Oklahoma, Western 1
 Wyoming 1

Eleventh Circuit:

Alabama, Southern 1
 Florida, Southern 3
 Georgia, Middle 1

Total 43 + 8 temporary + 2
 temps. to be made
 permanent

The Conference also authorized the Committee to consider further the need for additional judgeship positions in the Court of Appeals for the Fifth Circuit, and any emergency requests from individual courts and to report thereon at the next session of the Conference.

UNITED STATES IMMIGRATION COURT

H.R. 5649 and H.R. 5771, 97th Congress, are identical bills to amend the Immigration and Nationality Act to create an Article I United States Immigration Court within the Executive Branch consisting of 50 trial judges, including the chief judge, and seven appellate judges all of whom are to be appointed by the President by and with the advice and consent of the Senate to serve for terms of 15 years and to receive the same salaries as circuit and district judges.

Jurisdiction would be exclusive in the trial division of the court relative to the determination of (a) exclusion cases, (b) deportation cases, and (c) rescission of adjustment of status cases. In addition, the trial division would determine all applications for discretionary relief properly raised in the proceedings, including those relating to bond, parole, habeas corpus, or detention of an alien in such proceedings. The powers of the district courts to issue writs of habeas corpus and extraordinary writs, and to order injunctive and declaratory relief, would be removed from these courts and made exclusive in the Immigration Court.

The appellate division of the court would hear and determine appeals from (a) final decisions of asylum officers, (b) final adjudicatory decisions of service concerning (1) administrative fines and penalties, (2) petitions for classification, (3) petitions to classify an alien as an orphan, (4) applications for the exercise of discretionary authority, and (5) final decisions of the judges of the trial division. Decisions of the appellate division would be reviewable by the United States Supreme Court (1) by appeal from a decision holding an Act of Congress unconstitutional, and (2) by writ of certiorari granted upon a petition in a case which did not originate before an asylum officer.

Although expressing concern over the constitutionality of several provisions in the bills, the Committee recommended that the Conference take no position on the merits of the legislation. If, however, the Congress determines that there is a need for a separate Immigration and Naturalization Court, then the Committee recommended that the Conference take a position consistent with its previously enunciated recommendations on the creation of a Social Security Court, or a Court of Veterans Appeals, under Article I of the Constitution; that is, that the court be created within the Executive Branch of Government, that appeals from decisions of the court not be mandatorily directed to the Supreme Court but handled in the same manner as appeals from the Tax Court (to the appropriate court of appeals), and that judicial review by the Article III courts be limited to the review of constitutional issues and questions of statutory interpretation. This recommendation was approved by the Conference.

SOCIAL SECURITY COURT

H.R. 3865 and H.R. 5700, 97th Congress, would create an Executive Branch Social Security Court under Article I of the Constitution to serve as a judicial forum to review (1) all decisions rendered under the old-age, survivors, and disability insurance programs, and (2) all final determinations under the supplemental security income program. The bills differ only in that H.R. 3865 would create an intermediate review board to affirm, reverse, remand, or modify an administrative law judge's decision before it becomes the final decision of the Secretary.

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

September 13, 2016

The Judicial Conference of the United States convened in Washington, D.C., on September 13, 2016, 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 Jeffrey R. Howard
Judge Paul J. Barbadoro,
District of New Hampshire

Second Circuit:

Chief Judge Robert A. Katzmann
Judge William M. Skretny,
Western District of New York

Third Circuit:

Chief Judge Theodore A. McKee
Chief Judge Leonard P. Stark,
District of Delaware

Fourth Circuit:

Chief Judge Roger L. Gregory
Judge Robert J. Conrad, Jr.,
Western District of North Carolina

Fifth Circuit:

Chief Judge Carl E. Stewart
Chief Judge Louis Guirola, Jr.,
Southern District of Mississippi

The Committee on Defender Services noted that federal defenders often represent clients from Indian Country based on charges previously brought in Tribal Courts and that requiring federal defender involvement in the administration of tribal justice could place conflicting demands on federal defender organizations and potentially create ethical issues. Accordingly, on the recommendation of the Committee, the Judicial Conference agreed to inform Congress that while it recognizes the need for increased defense representation services in Indian Country, legal training to support the right to effective counsel in Indian Country, and funding to support these functions, it opposes Section 109 of the Tribal Law and Order Reauthorization and Amendments Act of 2016 (S. 2920, as introduced on May 11, 2016), or similar legislation, that would create tribal liaisons and special assistant federal defenders, or any requirement for individual federal defender offices to assist with the administration of tribal justice, as this creates possible conflicts in their representational work involving cases arising from Indian Country.

COMMITTEE ACTIVITIES

The Committee on Defender Services reported that it met with the Ad Hoc Committee to Review the Criminal Justice Act Program and received a status update on the comprehensive, impartial review of the CJA program currently underway. The final report is expected to be completed in Spring 2017. The Committee also met with Deputy Attorney General Sally Quillian Yates and discussed issues of mutual interest and collaboration, as well as Department of Justice policies and practices that have a significant impact on Defender Services program costs. The Committee received an update on the status of the implementation of eVoucher as a national electronic CJA panel management and voucher processing system, recognized the efforts made to deploy the system nationally, and reaffirmed its position that receiving data from the eVoucher system remains a high priority for the Defender Services program.

COMMITTEE ON FEDERAL-STATE JURISDICTION

ARTICLE I IMMIGRATION COURT

The Committee on Federal-State Jurisdiction was asked to consider a draft legislative proposal to create an Article I Immigration Court consisting of an appellate division and trial-level courts that would be administered by the Administrative Office. The proposed court would be created by transferring

the adjudicatory responsibilities currently performed by the Executive Office for Immigration Review in the Department of Justice to the judiciary, including functions of the Board of Immigration Appeals.

The Judicial Conference has a long-standing position opposing, with limited exceptions, specialized courts in the judiciary (JCUS-SEP 90, p. 82; JCUS-SEP 86, p. 60; JCUS-SEP 62, p. 54). With regard to an earlier legislative proposal to create an Article I Immigration Court, the Conference took no position on the merits of creating such a court, but stated that if Congress determined that there is a need for a separate Immigration Court, “consistent with its previously enunciated recommendations on the creation of a Social Security Court, or a Court of Veterans Appeals, under Article I of the Constitution...the court be created within the Executive Branch of Government” (JCUS-SEP 82, pp. 63-64). Consistent with these positions, and noting specific concerns regarding the draft proposal, including whether the judiciary had resources available to handle the high volume of immigration cases, what effect removing Attorney General discretion over the adjudication of immigration cases would have on the adjudication process, and possible constitutional and administrative concerns, the Committee recommended that the Conference reaffirm its long-standing position that if Congress determines there is a need to create an Article I Immigration Court, such court be established in the executive branch, and further, oppose placement of an Article I Immigration Court in the federal judiciary or the administration of an Article I Immigration Court by the federal judiciary. The Conference adopted the Committee’s recommendation.

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported that it continued its discussion of legislation that would make changes in the manner in which courts review claims that non-diverse defendants have been fraudulently joined for the purpose of defeating diversity jurisdiction. The Committee also reviewed legislation that would reverse judicial doctrines that currently provide deference to certain decisions of administrative agencies. The Committee received an update on the progress of a project to update the 1997 *Manual for Cooperation Between State and Federal Courts*, engaged in a roundtable discussion of ways to enhance communication between the federal judiciary and state courts, and received a report on the Civil Justice Initiative sponsored by the Conference of Chief Justices and the National Center for State Courts.