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HANDBOOK FOR FEDERAL JUDGES' SECRETARIES

Federal Judicial Center
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This publication was developed in furtherance of the Center's statutory mission to develop and conduct programs of continuing education and training for personnel of the federal judicial system. The Center's educational programs are designed to allow the presentation of a variety of perspectives, and the statements, conclusions, and points of view in this handbook are not to be taken as official policies of the Center. On matters of policy, the Center speaks only through its Board.

TABLE OF CONTENTS

FOREWORD

This 1985 revision of the Federal Judicial Center's Handbook for Federal Judges' Secretaries is the third edition of the handbook first distributed in March 1980. It has been compiled as a useful reference for both new and experienced secretaries to federal judges. Also included in the handbook are suggested procedures that have been found effective by others in similar positions.

The handbook has been revised to reflect developments since the second edition was distributed in 1983, including statutory changes. Its loose-leaf format will accommodate the addition of future updates and specific material secretaries may wish to add. The dates on each page--and on the table of contents--will enable users to be certain that their handbooks include all materials distributed by the Center.

The handbook does not--and indeed cannot--incorporate the individualized policies and practices of each court and each judge. For that reason, secretaries should always check with the judges with whom they work.

Numerous individuals have contributed their efforts and expertise to the preparation of the present edition of the handbook. We at the Center are grateful to all those--especially

the secretaries themselves--who provided suggestions and who, after reviewing the draft, submitted valuable recommendations.

A. Leo Levin

ACKNOWLEDGMENTS

The 1980 edition of this handbook was compiled with the aid of members of the Federal Judicial Secretaries Association, particularly Winifred M. Moran. Kimberly S. Marsh, then secretary to the Honorable William O. Bertelsman, Judge, Eastern District of Kentucky, reviewed a draft of the 1983 revised edition and offered valuable suggestions. Several staff members of the Administrative Office of the United States Courts (as well as Ms. Marsh) offered additional suggestions for the 1985 edition.

Portions of the material are adapted from the Law Clerk Handbook (Federal Judicial Center 1977) by Anthony M. DiLeo, Esquire, and the Honorable Alvin B. Rubin, Judge, United States Court of Appeals for the Fifth Circuit. Section 8.000 (The Language and Process of Litigation) is an edited, expanded version of a narrative written by Loretta G. Whyte, clerk of the United States District Court for the Eastern District of Louisiana. The original narrative was published in the Federal Judicial Center's 1973 Orientation Manual for Secretaries to Federal Trial Court Judges. Some of this material is from the Glossary of Terms Used in the Federal Courts, prepared by the Administrative Office of the United States Courts.

1.000 INTRODUCTION

This handbook is intended to be a tool for secretaries to United States judges. Although it was written primarily for the newly appointed secretary, it will also serve as an aid to the experienced judicial secretary. In addition to providing brief background information on court organization and management, it describes procedures that judges' secretaries have found useful. Since the range of duties assigned to judges' secretaries varies considerably, the handbook describes only the basic responsibilities of judicial secretaries. Secretarial functions generally used in business, with which an experienced secretary will be familiar, are not covered. Moreover, because office guidelines differ and are established by the judges in each court, the procedures described in this handbook are merely suggestions.

In courts with several judges, a new secretary will find that other judges' secretaries are the best source of information on handling most problems that arise. They will be familiar with local court procedure, local rules, and other matters that apply to a particular court.

This handbook should be used in conjunction with the Judges' Manual, volume III of the Guide to Judiciary Policies and Procedures, published by the Administrative Office of the United States Courts, which contains much useful information on the

administration of the court system. Another useful supplement is the Federal Judicial Center's Law Clerk Handbook (1977); it provides more detailed explanations of judicial procedures and describes the law clerk's role. The law clerk(s) in the office should have a copy. A secretary may also wish to read The United States Courts: Their Jurisdiction and Work. This brief pamphlet, originally published in 1975 and revised and reissued in 1982, was written by Joseph F. Spaniol, Jr., former deputy director of the Administrative Office of the United States Courts. It is available on request from the Federal Judicial Center's Information Services. Finally, a secretary may wish to obtain a copy of Glossary of Terms Used in the Federal Courts, a pamphlet published by the Administrative Office and available from its Statistical Analysis and Reports Division.

1.100 The Secretary's Role

Although there are no statutorily assigned secretarial duties, the judge sets standards for and allocates responsibilities to the secretary to assist in the conduct of court business. As judges are engaged in their court activities during much of the working day, many leave the details of chambers management to the secretary; so it is important for the secretary to be aware of all activity in progress.

In the first weeks of employment, a new secretary must become acquainted with the various departments of the court. Guided tours of court offices can often be arranged through the

clerk of court. Meeting the supervisory personnel will be helpful to the new secretary in developing sources of information.

The secretary is generally the first member of a judge's staff whom an outsider meets. A pleasant, cheerful manner, together with a sincere effort to be helpful to other members of the staff and to visitors, will set the tone for good working relationships. Secretaries must also be sensitive to the many demands made upon judges and help to shield them from unnecessary encroachments on their time. Specific aspects of this problem are discussed in other sections of the handbook, especially those dealing with protocol and conduct.

1.200 Structure of the Federal Judiciary

The federal judicial system consists of the Supreme Court of the United States, created by Article III of the Constitution, and other courts created by Congress on the basis of Article III or Article I of the Constitution. Article III is concerned with the judicial power of the United States government, Article I with its legislative power.

The judicial system is divided into twelve regional circuits (eleven numbered and the District of Columbia circuit) and one national circuit (the Court of Appeals for the Federal Circuit). Each regional circuit includes one court of appeals and one or more district courts. Bankruptcy courts exist in each of the ninety-four districts as "units" of the district courts. No

circuit crosses state boundaries, and no district crosses circuit boundaries.

The system also includes several "national" courts (in addition to the Supreme Court), so designated because their jurisdiction is not restricted by geography. These other courts, whose jurisdiction is more restricted by subject matter than is that of the circuit courts of appeals and district courts, include the Court of Appeals for the Federal Circuit (a thirteenth court of appeals, based in Washington, D.C.), the Court of International Trade (based in New York City), and the United States Claims Court (also in Washington). (More information on these and certain other "national" courts is contained in section 6.000.)

The federal judicial system also has an administrative component, which is directed by the Judicial Conference of the United States, a twenty-five-judge body chaired by the Chief Justice that convenes twice a year to set overall administrative policy for the courts and to make decisions concerning the courts' budget and personnel. The Administrative Office of the United States Courts serves as the centralized administrative agency of the federal courts to carry out Judicial Conference policy. The Federal Judicial Center is the courts' national research and continuing education agency. Administrative policy for each circuit is made by the circuit judicial council, which is chaired by the chief judge of the court of appeals and includes both appellate and district judges.

1.300 Status of Judges

Judges serving in courts created under Article III of the Constitution are appointed by the president with the advice and consent of the Senate and may serve for life (unless removed from office through the impeachment process). Accordingly, they are referred to as "Article III" judges and said to have "life tenure." Article III judges are Supreme Court justices, judges of the thirteen courts of appeals, judges of the ninety-four district courts, and judges of the Court of International Trade. Although the judges are appointed to a particular court, there are provisions for them to sit by special assignment on other courts (except the Supreme Court). When doing so, they exercise the authority of a judge of that court.

Other judges serve in courts created to further Congress's legislative power under Article I of the Constitution. These judges, sometimes referred to as "Article I" judges, serve for fixed terms. Specifically, judges of the Claims Court, although appointed by the president with the advice and consent of the Senate, serve for fourteen-year terms. Bankruptcy judges are judicial officers of the district courts (see section 8.510) who are appointed by the respective courts of appeals; they also serve for fourteen-year terms. U.S. magistrates are also judicial officers of the district courts. They are appointed by the judges of the respective district courts to terms of eight years (full-time magistrates) or four years (part-time magistrates).

1.310 Chief Judges

There is a chief judge in each court of appeals, each district court with more than one judge, and each national court. The Chief Justice of the United States is appointed by the president, with the advice and consent of the Senate. The chief judges of the Court of International Trade and the Claims Court are designated by the president. Chief bankruptcy judges are designated by the district judges of the respective districts, or by the chief judge if a majority cannot agree.

The chief judge of each regional court of appeals, the Court of Appeals for the Federal Circuit, and each district court is determined according to a statutory formula, enacted in 1982, by which the judge senior in commission, sixty-four years or younger, becomes chief judge and normally serves in that position for a term of seven years or until attaining age seventy. These new provisions do not affect chief judges who held that office on October 1, 1982, the effective date of the statute. They are covered by the former rule and may serve as chief judge until they reach the age of seventy, even if they have served more than seven years in that position.

Chief circuit judges are responsible for the administration of the courts of appeals. They also preside at judicial council and conference meetings in their circuits; serve as one of the two circuit representatives to the Judicial Conference of the United States; assign judges in their circuits to temporary duty on other courts within their circuits; certify to the Chief Jus-

tice the need for temporary judicial assistance from outside the circuit or their consent for a judge to sit in matters outside the circuit; and supervise the circuit executives. (See sections 7.100 through 7.500 for an explanation of these terms.) More information on the work of the chief circuit judge can be found in Administering the Federal Judicial Circuits: A Survey of Chief Judges' Approaches and Procedures (Federal Judicial Center 1982).

Chief district judges are responsible for the administration of their courts as well. They usually supervise the clerk's office and the probation office, and oversee the work of the magistrates. They also appoint magistrates in those rare instances when the majority of judges in the district do not reach an agreement. In some district courts, chief judges appoint committees of judges to assist in administrative matters. They are assisted by the clerk of court and, in a few districts, by district court executives (appointed as part of a pilot program to test the feasibility of the concept).

The judicial power of the district court to decide cases is exercised by individual judges, who usually preside alone but on occasion may hold court in simultaneous sessions with other judges. District judges have no authority over the actual decision of cases assigned to any other judge of their court. A judge's authority, including that of the chief judge, extends only to the cases assigned to the judge personally for disposition under the court's case assignment system. More information on the work of the chief district judge can be found in Adminis-

trative Structures in Large District Courts (Federal Judicial Center 1981).

1.320 Senior Judges

A United States circuit or district judge may choose to retire from regular active service under a 1984 statutory formula referred to as "the rule of 80." This rule provides that judges between the ages of sixty-five and seventy may take senior status when the combination of their age and years of service totals eighty--for example, a judge sixty-seven years old who has served for thirteen years. When a judge elects to take "senior status" in this manner, the resulting vacancy is filled in the usual manner by presidential appointment and senatorial confirmation. Senior judges, though retired, continue to hold office under Article III of the Constitution, and they may continue to perform those judicial duties assigned by the court that they are willing and able to undertake. Senior judges' services have become vital as the workload of the courts has increased.

Senior judges may continue to perform judicial duties in their own courts or elsewhere within the circuit at the assignment of the chief judge or the judicial council of the circuit. The Chief Justice, working with the Judicial Conference Committee on Intercircuit Assignments, maintains a roster of senior judges who are willing and able to perform judicial duties outside of their own circuits.

Senior judges continue to receive the salary of their office

for the rest of their lives. Senior judges certified by their judicial councils as performing "substantial judicial work" are entitled to office staffs based upon actual workloads; the number of supporting positions is determined by the respective judicial council.

1.400 The Judge's Staff

1.410 Personal Staff

One or more secretaries and law clerks constitute the judge's personal staff; the allowable staff varies depending on the judge's particular position. Basically, district judges may employ one secretary and one law clerk, plus an additional employee who may be an assistant secretary, crier, or law clerk. A court of appeals judge may employ a secretary and an assistant secretary, and three others, such as law clerks and/or assistant secretaries. Chief judges of appellate courts and of district courts with five or more judges may employ one additional person, such as an assistant secretary or a law clerk. Finally, bankruptcy judges are allowed one secretary and one law clerk, and magistrates may employ one secretary and, depending on the magistrate's particular position, a clerical assistant or a legal assistant.

Because law clerks generally are employed for one- or two-year terms, it is the secretary who has the most continuity of employment. An efficient judicial staff works as a team. Each person has assigned duties, but each is aware of the need to as-

sist the others. To achieve maximum efficiency, there must be constant communication and cooperation.

The duties of the secretary are discussed throughout this handbook. The Federal Judicial Center's Law Clerk Handbook (1977) describes the law clerk's responsibilities. The crier (if one exists), in addition to having courtroom duties, may be assigned by the judge to perform office duties. This person can help in filing, reproducing materials, controlling supplies, performing messenger services, and other similar tasks auxiliary to the judge's work.

1.420 Courtroom Staff

Not all court employees who work closely with a particular judge are members of that judge's personal staff; some are members of his or her courtroom staff. In appellate courts, this courtroom staff may consist of a deputy clerk. In district courts, the courtroom personnel who serve the judge typically include a courtroom deputy and a court reporter to record the proceedings. A deputy marshal may also be assigned for security purposes on the basis of the risk criteria outlined in the March 1982 Report of the Attorney General's Task Force on Court Security.

The relationship between the judge's personal staff and courtroom staff should be an open one. The court aides have responsibilities in addition to those in the courtroom, and the secretary should advise them of the judge's schedule as far in

advance as possible. It is especially important to convey this information to a deputy clerk who performs calendaring and case management functions for a judge.

1.500 Other Personnel of the District Court

1.510 United States Magistrate

The office of United States magistrate was established by Congress in 1968 to assist the judges of the district courts in disposing of the judicial business of the courts. The jurisdiction of magistrates was expanded by the Congress in 1976 and 1979. The United States magistrate is a judicial officer appointed by the judges of the district court upon the recommendation of a merit selection panel, for an eight-year term in the case of a full-time magistrate and for a four-year term in the case of a part-time magistrate. The Judicial Conference of the United States determines the number of magistrate positions (subject to funding by the Congress) and, within prescribed limits, the salary of each position.

While the duties of magistrates vary considerably across the nation, part-time magistrates typically serve at locations away from the primary places of holding court and perform such duties as trial of petty offenses and other misdemeanors, conduct of initial proceedings in felony criminal cases, issuance of search and arrest warrants, and other preliminary duties in criminal cases.

Most full-time magistrates are located in the courthouse and

perform a broad range of judicial duties for the judges of the court in addition to the duties mentioned above. These additional duties may include conducting felony arraignments, taking grand jury returns, conducting pretrial conferences in both civil and criminal cases, hearing and judicial determination of nondispositive civil and criminal motions, hearing dispositive motions and preparation of recommended decisions on those motions, handling prisoner litigation and Social Security cases, conducting special master proceedings, conducting civil trials with the consent of the parties, and "such additional duties as are not inconsistent with the Constitution and laws of the United States."

A civil case tried by a magistrate may be appealed either to the district judge, if the parties so agree, or directly to the court of appeals. All other matters handled by a magistrate are reviewed by or appealable to a district judge.

1.520 District Court Executive

Several of the larger district courts have been authorized to appoint a district court executive to serve as a court executive for the entire district, exercising such supervisory and management tasks as the court may assign.

1.530 Clerk of Court

Each district court appoints a clerk of court, who, subject to the court's approval, appoints supporting personnel in numbers approved by the Administrative Office.

The primary responsibility of the clerk's office is keeping

track of, as the court directs, the cases that are filed with the court and assigned to particular judges. This involves handling a great deal of documents and other materials. Personnel of the clerk's office work with individual chambers in different ways that vary from court to court.

Except in courts with district court executives, the clerk serves as the court's chief operating officer, implementing the court's policies and reporting to the chief judge. Clerks' responsibilities are broad, including record keeping, procurement, and maintenance of monies collected by the court.

In most districts, there is a separate clerk of the bankruptcy court, who may be appointed by the bankruptcy judges of the district upon certification to the judicial council and Administrative Office that the court's business is sufficient to justify the appointment.

1.540 United States Probation Officer

Each judicial district has a chief United States probation officer, who, along with other probation officers, is appointed by the district court. The probation officers appoint the probation office's clerical staff.

Probation officers are responsible for the preparation of presentence investigations and the supervision of federal probationers and parolees. At the time of an offender's conviction, the court refers the defendant to the probation officer for a full report on the defendant's background, including his or her

prior record, employment, and health; the prosecutor's and the defendant's version of the offense; a financial statement; and an evaluation and recommendation by the probation officer. After conviction, the probation officer monitors the activities of the probationer for the sentencing court.

Probation officers are, by statute, also field agents for the United States Parole Commission, an agency of the Department of Justice. In this capacity, they supervise parolees for the Parole Commission and make reports to the commission regarding a parolee's adjustment. Probation officers also perform a variety of other duties as requested by district court judges. These duties may include the development of alternative sentences for a corporate defendant, the securing of a halfway house placement for a drug user, contact with protective services to arrange for the care of a criminal defendant's minor children, or the exploration of available outpatient facilities for a criminal defendant with mental health problems.

1.550 Pretrial Services Officer

Pretrial services are provided in every judicial district by pretrial services officers independent of the probation office or by probation officers charged with pretrial services responsibilities. Pretrial services officers provide a report on each criminal defendant prior to the first court appearance to assist the court in setting conditions of release.

These officers collect, verify, and evaluate all available

pertinent information concerning release of the defendant, and present the information to the court in an organized, objective manner. This information includes details regarding the defendant's prior record, family ties, employment, residence, financial resources, and health (including drug or mental problems) and any information concerning the defendant's potential danger to the community. The report concludes with a recommendation regarding release, suggesting the minimal conditions that will ensure the defendant's appearance at future court proceedings.

Pretrial services officers may also be charged with supervision of released defendants and are then responsible for verifying compliance with release conditions, reporting rearrests, and relating any danger the defendant may come to pose to the community. They also provide assistance with needed services and remind or inform the defendant of court dates.

All pretrial services activities and contact with a defendant must be documented. If the defendant is convicted, the information obtained by the pretrial services office is incorporated into the presentence report.

1.560 Special Master

A special master may be appointed by a district judge before whom a civil action is pending when circumstances are appropriate, particularly when complex issues or accountings are involved. U.S. magistrates are often appointed by a judge to serve as special masters. The term special master refers to one who is

designated to hear or consider evidence or to make an examination with respect to some issue in a pending case. The master reports to the court and may be appointed in either a jury or a nonjury case. Rule 53 of the Federal Rules of Civil Procedure states that referral to a special master "shall be the exception and not the rule." Any person with particular competence to consider a complex matter may be appointed. Masters are sometimes appointed, for example, to oversee the operation of correctional institutions after judges have declared that their facilities fall below constitutional standards.

1.600 Related Agencies and Personnel

1.610 United States Attorney

Each judicial district has a United States attorney, who is appointed by the president for a four-year term. If a vacancy exists in the office, the district court in which the vacancy exists may appoint a United States attorney to serve until the president fills the vacancy. Assistant United States attorneys are appointed by, and may be removed by, the attorney general.

The United States attorney, as a representative of the Department of Justice, is involved in all district litigation to which the United States is a party. This responsibility generally includes prosecuting all federal criminal offenses and prosecuting or defending for the government all civil actions to which the United States is a party, in addition to other special functions. Criminal cases account for more than 15 percent of

the total caseload of the United States district courts, and civil cases in which the United States is a party represent more than 25 percent of all cases filed in these courts.

In connection with their prosecutorial functions, United States attorneys or their assistants may be present during sessions of a federal grand jury, but may not remain while the grand jury is deliberating or voting. In some special situations, such as federal tax refund suits against the United States, the United States attorney may work with another attorney from the Department of Justice who has primary responsibility for prosecution or defense of the case.

1.620 Federal Public or Community Defender

The federal public defender is the head of an organization that, pursuant to the Criminal Justice Act (18 U.S.C. § 3006A), furnishes legal representation to any person who is unable financially to obtain adequate representation in felony or misdemeanor cases and certain other kinds of criminally related proceedings, such as habeas corpus proceedings and appeals. Such an organization may be established in any district, any part of a district, or any two adjacent districts or parts of districts that annually appoint counsel to represent at least two hundred persons. Federal defenders are not part of the court staff. The office serves a function separate from that of the courts; like the U.S. attorney, the federal defender represents litigants before the court. For administrative purposes, however, the defender orga-

nization is housed within the judicial branch, as a means of securing the defenders' budgets and handling other administrative matters.

A separate type of defender organization in some districts is a community defender office, an independent, nongovernmental unit funded by federal grant funds.

The federal defender is normally appointed for a term of four years by the court of appeals for the circuit, following the decision of the district court or courts to create such an organization. The federal defender may hire full-time attorneys, the number of which is approved by the judicial council, and other personnel, the number of which is approved by the director of the Administrative Office of the United States Courts. Courts that have a federal public defender or a community defender office usually appoint private attorneys, called "panel attorneys," in about 25 percent of the cases in which counsel is provided; panel attorneys are private counsel who have been appointed to represent defendants at a maximum rate of compensation established by the Criminal Justice Act. Private counsel must be appointed in those cases in which the public defender may have a conflict of interest.

1.630 United States Marshal

The United States marshal for each judicial district is appointed by the president for a term of four years. As with the United States attorney, the district court may appoint a marshal

to serve until a vacancy is filled by presidential appointment.

A United States marshal serves as marshal of the district court and of the court of appeals when it is sitting in that district. The marshal may execute all writs, warrants, and orders issued under the authority of the United States, including those of the courts. Complaints and summonses may also be served by the marshal in limited circumstances (see rule 4 of the Federal Rules of Civil Procedure), but most are served by mail.

In connection with their responsibility to execute process, marshals have custody of federal prisoners awaiting trial, sentence, or transportation to a penal institution after conviction. Marshals and the deputies they appoint are federal law enforcement officers and are authorized to carry firearms, and they may make arrests without warrant, within statutory and constitutional limits.

The marshal and the deputies provide security for federal judges and their staffs, both in court and in chambers, but security in adjunct court facilities is generally provided by contract security officers.

1.640 Federal Bureau of Investigation

The Federal Bureau of Investigation (FBI) is charged with the primary responsibility for detecting and investigating crimes against the United States. The FBI operates as a bureau of the Department of Justice, with headquarters in Washington, D.C., and

offices throughout the United States. It is headed by a director appointed by the president.

Each local office is headed by a supervising special agent whose staff includes special agents, secretaries, and clerical employees. Special agents of the FBI are often witnesses in federal criminal trials.

1.641 Other Investigatory and Law Enforcement Agencies

There are several other federal investigatory and law enforcement agencies that are assigned such special duties as protecting the president and investigating counterfeiting activities, narcotics law violations, and violations of the revenue, customs, and immigration laws of the United States.

1.650 Federal Bureau of Prisons

In sentencing a person, a federal judge may recommend the institution where the sentence should be served, but the attorney general designates the actual place of confinement. The order of commitment issued by the court merely commits the defendant to the custody of the attorney general.

The penal and correctional institutions maintained by the United States are a part of the Federal Bureau of Prisons, which is headed by a director appointed by the attorney general. Every judge has a pamphlet, Federal Prison System Facilities, that describes the facilities and programs at each institution; this pamphlet is available from the Department of Justice.

In addition to being responsible for the management and reg-

ulation of these institutions, the bureau must furnish suitable quarters, care, subsistence, and safekeeping for all persons held under the authority of the United States; provide for the protection, instruction, and care of all persons charged with or convicted of offenses against the United States; and give technical assistance to state and local correctional institutions and officials.

In most judicial districts, there is no federal holding facility for confining accused persons before trial or convicted persons after sentencing and prior to designation of the place of confinement. In those districts, federal prisoners are therefore confined under a contractual arrangement with a state institution. Defendants sentenced to imprisonment may either be taken in federal custody to a federal institution or be permitted by a judge to report voluntarily to the place of confinement. These procedures avoid interim detention in state institutions that may be crowded or otherwise undesirable. The latter procedure, that is, voluntary reporting to the place of confinement, is used only when it is likely that the prisoner will report on time, will not abscond, and will commit no criminal acts while in transit.

Further information can be found in Federal Prison System Facilities.

1.700 The Federal Judicial System Budget

The fiscal 1985 appropriations for the operation of all federal judicial system agencies, excluding the Supreme Court, are

slightly more than $961 million. With the exception of the budgets for the Supreme Court, the Court of Appeals for the Federal Circuit, the Court of International Trade, and the Federal Judicial Center, the judicial system's budget is administered by the Administrative Office of the United States Courts, under the supervision of the Judicial Conference of the United States. (For more information on these bodies, see sections 6.000, 7.100, 7.600, and 7.700.) The 1985 appropriations are distributed approximately as follows:

	Percentage
Court of Appeals for the Federal Circuit	1
Court of International Trade	1
Courts of appeals, district courts, and other judicial services	
Salaries of judges	8
Salaries of supporting personnel	38
Defender services	4
Fees of jurors and commissioners	5
Expenses of operation and maintenance of the courts	9
Bankruptcy courts--salaries and expenses	11*
Services for drug-dependent offenders	1
Space and facilities	16
Court security	2
Administrative Office of the United States Courts	3
Federal Judicial Center	1

*After fiscal 1985, there will no longer be a separate appropriation for bankruptcy courts.

2.000 CASE MANAGEMENT

2.100 Trial Court Calendar Systems

By statute (28 U.S.C. § 137), the district judges determine how to divide the judicial workload among themselves, and the chief judge is responsible for overseeing the allocation of workload. Systems used to assign cases to individual district judges fall into three general categories: the individual calendar, the master calendar, and systems that combine features of the two.

2.110 Individual Calendar System

In an individual calendar system, each case is assigned to a particular judge at the time it is filed; that judge then has complete responsibility for the case from its commencement to its termination. Most courts using this method have established a random case assignment system to ensure that the workload is distributed evenly among the judges and to prevent the litigants from being able to anticipate or influence the selection of the judge to whom their case is assigned. There are also standard procedures for reassigning cases in which the original judges disqualify themselves and for ensuring that all related cases are assigned to the same judge.

There has been a trend over the last fifteen years toward the individual calendar system in federal courts. Proponents of

the individual calendar system say that it focuses responsibility on each judge, assigning each a docket of cases to be processed from filing to termination. Others say that it is inefficient in a large court, where one judge may be idle while cases on another judge's calendar are waiting to be heard.

2.120 Master Calendar System

In a master calendar system, the cases are pooled. One or more judges hear all motions filed in a given calendar period. Other judges are assigned to trials, and on any given court day, cases that are ready for trial are distributed, usually by an assignment judge, to the other sitting judges. Any judge who finishes all assigned cases during a day when there are other cases requiring judicial action receives another case from the assignment judge. A case processed under a master calendar system is usually acted upon by several different judges as it moves through the court.

The adherents of this system suggest that it makes the most efficient use of judges' time in large courts. Its critics assert that it prevents the fixing of responsibility and encourages litigants to make repetitious contentions. Moreover, each time a ruling is required, a new judge must become familiar with the law and facts of the case.

2.130 Combination Calendar Systems

A few courts process cases on a pool basis (as in the master calendar system) up to a particular stage of the proceeding and,

from then on, treat them as individually assigned. For example, an assignment judge might allocate all preliminary matters among the sitting judges or magistrates up to the time of a pretrial hearing and then assign the case to one judge who would be responsible for it until termination. Other courts use a system of "backup judges," who stand ready to hold trials during periods when there are too many cases awaiting trial on a particular judge's calendar.

2.200 Appellate Court Calendar Systems

Appellate courts have systems similar to those of trial courts to assign cases, manage motions, and schedule hearings. Because appellate courts do not take evidence or use jurors, however, the processes are somewhat simpler.

Appellate courts typically sit in panels of three judges. That is, three judges of the court, randomly assigned, decide a case for the entire court. (The panel may include one senior judge, district judge, or visiting judge.) The parties may ask the entire court (the court en banc) to reconsider a panel's decision.

Ordinarily, a case is not assigned to a particular panel of judges until it is scheduled for oral argument. Once a case is assigned to a panel, all motions are acted upon by the hearing panel rather than by a motions panel.

In the most common method of scheduling appeals for oral argument, two persons are involved. One person, usually the

clerk, schedules the cases to be heard during a particular session of court without knowing which judges will be sitting. At the same time, someone else--usually the chief judge, a committee of judges, or the circuit executive--assigns the judges to a prearranged number of panels that will sit at that session, without knowing what cases will be heard or what cases will be assigned to which panel. Then the predetermined calendars of cases are assigned at random to the various panels. This process ensures that the workload is distributed evenly and that no person is able to influence the assignment of a case to a particular judge or panel of judges. Some courts use computer programs developed by the Federal Judicial Center to help them either assign cases to calendars or assign judges to panels.

Courts that sit in more than one location within the circuit make a serious effort to schedule a case for hearing at the location that is most convenient for counsel and parties. In the Ninth Circuit, for example, a case in which all counsel have offices in Seattle will be scheduled for hearing in Seattle if that scheduling will not unduly delay the final disposition of the case.

The person who schedules cases for a particular session follows the court's guidelines regarding the number and kinds of cases to be scheduled for each day. An effort is made to equalize the workload for each day of the session and, if more than one panel is sitting, to equalize the workload among the panels. In some circuits, the person making the assignments also sched-

ules cases with related issues or facts to be heard by the same panel.

2.300 Impact of the Speedy Trial Act on Calendaring

The Speedy Trial Act of 1974, which was amended in 1979, was adopted "to assist in reducing crime and the danger of recidivism by requiring speedy trials and by strengthening the supervision over persons released pending trial." Title 1 of that act (18 U.S.C. § 3161) has an important impact on the scheduling of criminal cases, with which a judge's secretary should be familiar.

The act requires each district court to adopt a plan for the disposition of criminal cases, and that plan should be the secretary's basic reference document about the act.

The act imposes a schedule for the handling of criminal cases. In so doing, it limits the judge's flexibility in managing the trial calendar. The act was implemented in phases, and since July 1, 1980, sanctions of dismissal have been invoked when the schedules were not met. The requirements of this schedule are as follows:

A prosecutor must file an indictment or information within thirty days after an accused person is arrested or served with a summons. A defendant is entitled to have the complaint dismissed if thirty days pass without an indictment or information being filed.

The trial of a defendant must commence within seventy days of the filing of an indictment or information or, if later, within seventy days of the defendant's first appearance before a magistrate or judge in the charging district. A defendant is entitled to have the indictment or information dismissed if seventy days pass and trial has not begun.

Unless the defendant gives his or her written consent, the

trial may not begin earlier than thirty days after he or she first appears through counsel or waives counsel and elects to represent himself or herself.

The act sets forth a number of reasons that may cause the schedules to be extended. These are referred to as "exclusions" or "excludable time" because the time consumed by certain events is "excluded" in computing the time limits. The exclusions cover events such as mental examinations, the pendency of pretrial motions, periods when the judge has matters under advisement, and periods when witnesses are unavailable. Determining how many days are excluded because of any of these events is a highly technical matter.

There is also an exclusion for a continuance granted by the judge if the judge makes a finding that the ends of justice served by granting a continuance outweigh the best interests of the public and the defendant in a speedy trial. A judge must then put reasons for that finding on the record. The judge may not grant such a continuance either on the grounds of general congestion of the court's docket or on the grounds that the prosecutor has not prepared diligently.

2.400 Scheduling Trials

Although the methods of scheduling trials vary considerably from court to court and from judge to judge, two methods are commonly used. Case scheduling is a vital part of the work of the court, and knowledge of the particular method used is vital to the secretary in each chambers. The first scheduling method in-

volves selecting a specific date for trial, which is often done during the preliminary or pretrial conference, when counsel and the judge can more easily make adjustments in their schedules.

The other common approach to trial scheduling involves setting several cases for trial simultaneously, using what are referred to as multiple-setting devices. One such device used in many courts is the trailing calendar or trailing docket. The court sets a trial calendar listing several cases to be tried beginning on a certain date, and the cases are tried in the order in which they are listed on the calendar. Counsel have the responsibility for maintaining contact with the court and with the attorneys whose cases precede theirs on the calendar so they will be ready to go to trial whenever the court reaches their case.

About 90 percent of all civil cases filed are settled without trial, and most criminal cases are disposed of by a guilty plea. Despite the benefits of settlement, when a settlement takes place a few hours or even a few days before a scheduled trial, it may disrupt the court's schedule. This leaves judges, and sometimes jurors, with unscheduled time. The trailing calendar and other multiple-setting devices are intended to alleviate problems caused by last-minute settlement by providing substitute cases to replace those that do not go to trial.

2.500 Scheduling Motions and Opinions in Appellate Courts

Motions are basically requests to the court for a particular ruling, often involving procedure in the case. Oral argument is

rarely allowed on motions in a United States court of appeals, and some courts authorize the clerk of the court to act upon routine procedural motions. Other motions are referred by the clerk's office to a motions panel, which, in some courts, is the panel that is currently sitting to hear cases and, in other courts, is a special panel appointed by the chief judge for a set period of time to decide all motions. In those courts in which all judges do not live in the same area, much of the processing of motions is accomplished by mail and telephone.

Although there is no statutory requirement that opinions be issued within a certain time or in any particular order, most judges assign priority to initial drafting of opinions on the basis of two general criteria: (1) the order in which cases were argued or in which briefing was completed and (2) the importance and urgency of the decision. Of course, the court will always have drafts of opinions in various stages of preparation. In addition, the length of time between preparation of the initial draft and issuance of the final opinion varies greatly and depends upon the number and complexity of the issues involved, the extent of revisions suggested by other members of the appellate panel, and whether concurring or dissenting opinions will be issued.

3.000 OFFICE PROCEDURES

Office procedures in trial courts differ from those in appellate courts. In a trial court, the daily processing of litigation, motion proceedings, settlement conferences, pretrial proceedings--all entail the secretary's active involvement with the daily calendar and with attorneys and court personnel.

In appellate courts, where the production of opinions is the major concern, secretaries function in a different way. Appellate judges are more insulated, hence contact with the public is greatly reduced.

The general duties of judges' secretaries are detailed below.

3.100 Judge's Chambers Calendar

A prime responsibility of the judge's secretary is to maintain a chambers calendar covering the judge's scheduled court proceedings and other activities.

In appellate courts, the deputy clerk in charge of scheduling advises the judge of panel assignments and hearing dates. These form the nucleus around which other engagements and commitments are scheduled. In trial courts, the secretary confers with the judge and then typically advises the courtroom deputy in charge of scheduling as to the dates on which trials and hearings

are to be set. The secretary also relays the judge's instructions regarding sequence and priority to the deputy. It is important that the secretary and courtroom deputy confer on calendar changes, since a trial court calendar frequently must be adjusted to accommodate continuances and emergency hearings.

Notification of counsel regarding scheduled appearances is the responsibility of the clerk of court, but the judge's personal staff may frequently be asked to contact counsel about forthcoming events.

Scheduling procedures differ among the various courts, and a new secretary must be informed of the local practice. For example, some courts schedule trials four days a week and reserve the fifth day for motions, sentencing, probation revocation hearings, and other miscellaneous proceedings. Other courts schedule the shorter hearings around the trials on a daily basis.

3.200 Case Management

Case management is a function of the judge, who often works closely with the clerk of court. Some case management functions are assigned to the deputy clerk or courtroom deputy assigned to a particular judge. The extent of the secretary's involvement in the monitoring of cases, briefing schedules, motions schedules, and other matters relati to calendar control is almost entirely dependent upon whether the court employs a courtroom deputy with calendaring responsibilities. In courts that do employ a deputy with such duties, the secretary's involvement will be minimal.

However, in courts that do not have a deputy operating at that level, the secretary's involvement may be somewhat greater.

Since maintaining multiple records is costly and inefficient, the secretary should establish and maintain a case management system only if absolutely necessary. The following four sections briefly outline suggested procedures that the secretary may wish to use if maintenance of a case management system is required by the judge.

3.210 Civil Cases

Upon notification that a case has been assigned to the judge, the secretary can make up a case status card, entering every major action taken thereafter on the card. This procedure is useful as a means of determining the current status of a case. Alternatively, the docket sheet can be reproduced and filed chronologically in a loose-leaf binder.

Within a specified number of days, a status hearing may be held. Notification of the hearing is made by the clerk's office. At each hearing, a date is set for the next step of the proceeding.

The chambers case records should periodically be compared with the clerk's records in order to adjust discrepancies and prevent cases from becoming dormant. A list of the status of pending cases should be made periodically in chronological order, showing case number, title, counsel, and status. This record can be kept in the form of a running list and updated as new assign-

ments are received. Cases should be removed from the list when the trial is terminated or some other disposition is made. In many courts, a listing of pending cases is provided automatically by the clerk's office by means of an automated case management system.

3.220 Criminal Cases

Upon notification of the assignment of a criminal case, the secretary can follow the same procedure with regard to setting up a system of control as in civil cases.

Arraignment is scheduled for a specified date, set by the court, after the grand jury returns the indictment. The deputy clerk gives notice to counsel and other interested parties such as the marshal, the public defender, and so on. A trial date is often established at the time of arraignment.

As in the procedure for civil cases, the chambers case records should periodically be checked against those of the clerk, and a list of the status of pending cases should be kept.

3.230 Civil and Criminal Motions

Motions are held by the deputy clerk until responses have been filed; they are then submitted to the judge's chambers and can be logged in by the secretary. The chambers procedure varies, but many judges require an analysis of motions by the law clerk, and it is customary to refer incoming motions directly to the clerk. An experienced judicial secretary can be helpful, however, in moving along certain procedural motions, such as mo-

tions for a continuance. For example, if the judge wishes, the secretary might highlight the relief sought in a short note and place the motion on the judge's desk for ruling. It is desirable that motions be ruled upon as promptly as possible, and the secretary should be alert to those that require expedited treatment, such as motions for bail review in criminal cases. If the judge wishes to hear oral argument, directions should be given to the deputy clerk to send notice.

The secretary should keep a status list of motions under consideration if such a list is not maintained by the courtroom deputy, and at any given time the secretary should be able to provide the judge with an up-to-date listing of all motions awaiting action.

Motions are ruled upon by fiat or by order. When the fiat method is used, the secretary should note the action in chambers records and promptly pass it along to the deputy clerk for filing. If an order is required, the deputy clerk is advised and gives notice to the prevailing counsel to present an appropriate order for the judge's signature. The motion is removed from the status list when final disposition occurs.

In trial courts on the master calendar plan and in appellate courts, the control of motions is a function of the clerk's office, and there is no need for motions record keeping within the judge's chambers.

3.240 Matters Under Advisement

Following court hearings, motions and cases are sometimes taken under advisement. A list of the status of such matters should be kept, and it is convenient to add them to the motions status list as well.

A new secretary to a district or bankruptcy judge, or to a magistrate, should be aware of the quarterly reports, requested under authority of the Judicial Conference Resolution of 1940, listing all matters under advisement for more than sixty days. As of September 1985, these reports are prepared by the circuit executive for distribution to the judicial council, the chief judges of the respective courts, the district court executives, and the Administrative Office. There are separate quarterly reports for the circuit and district courts, for magistrates, and for bankruptcy proceedings. The basis for the reports is information submitted by the judges, and reporting this information to the circuit executive on a quarterly basis is greatly facilitated by maintenance of an up-to-date list of matters under advisement. In some instances, the secretary may wish to call the judge's attention to a particular matter reaching the sixty-day maturity point.

3.300 Visitors

A prime responsibility of the judge's secretary is to evaluate, channel, and control the many external forces that make demands upon the judge's time. Some individuals do in fact require

access to the judge, but other business can often be disposed of by the secretary, the law clerk, or another court official. Finally, the judge's chambers may attract potentially dangerous persons seeking redress of perceived injustices; some may be disappointed litigants, especially those who file repetitive litigation pro se (i.e., by themselves, without lawyers).

The judge is the authority on the extent of his or her accessibility, and appointments are scheduled accordingly. Some judges request that appointments be made during out-of-court hours; other judges set aside a half-hour period each morning before court for seeing visitors on a first-come, first-served basis. The latter system avoids many scheduling problems, and most attorneys can be accommodated during that time.

Attorneys form the largest group of persons seeking appointments with a judge. Scheduled matters such as pretrial proceedings are set well in advance. Other court-related business is dealt with according to its importance and urgency. A secretary should ascertain from the attorneys the matters on which they want to confer, as well as the case names and numbers. The court record should be on the judge's desk at the time of the conference. The decorum of a judge's chambers requires strict impartiality toward all counsel.

The press constitutes another group seeking access to a judge. In addition, requests for appointments may come from persons with whom it would be improper for the judge to confer, such as criminal defendants or their relatives.

These situations may present problems for a new secretary, and it may be necessary to ask the judge for guidance as to how these types of visitors should be treated. Suggestions for handling these situations are that (1) the secretary elicit pertinent information from the individual, promise to relay the request to the judge, and respond later with a telephone call or (2) the secretary or law clerk interview the individual, answer questions, and perhaps direct him or her to a department of the court in which help is available. The secretary must exercise great discretion in trying to conserve the judge's time without offending the would-be visitor. At the same time, the secretary must be certain that questions, problems, and requests for information are handled promptly and efficiently.

3.310 Telephones

The basic rules of business etiquette apply to answering telephone calls in judges' chambers; that is, the telephone should be answered promptly and politely. A usual method of answering is "Judge Smith's chambers." The secretary should determine the identity of the caller and the nature of the call and then decide which calls should be directed to the judge and which can be handled by the secretary or law clerk. If the inquiry can be answered by the clerk's office, probation office, or some other court department, the call should be transferred. If the judge is the only person who can handle the call but is not available, then a written message should be taken identifying the

caller's name, telephone number, and court case number. If the judge is available and chooses to accept the call, the secretary should provide any supporting papers that might be useful during the conversation.

If, as the result of a telephone call, dates on the court calendar are affected, or if the subject matter is of importance, a record should be made by memorandum or correspondence.

Unless the judge directs otherwise, official long-distance calls are to be made only on the Federal Telecommunications System (FTS), which is a system of direct-dial lines leased by the General Services Administration. Long-distance calls by ordinary means result in additional billing by the telephone company directly to the judge's number. Each judge's secretary should have an FTS directory with instructions for use of the system.

Government telephones are to be used for official business only. In particular, personal long-distance calls are prohibited from being made on government telephones; if made, such calls will be charged to the employee, and a penalty or disciplinary action may be imposed. For further information on telephone regulations, see 43 Comp. Gen. 163, 165 (1963); 5 C.F.R. § 735.205 and 41 C.F.R. § 101-37.105-4 (relating to executive agencies); and GAO General Regulation No. 121 (1955) (government telephones may be used for unofficial purposes only in emergency situations when no public facility is immediately available).

3.400 Files

3.410 Judge's Files

Secretaries may have to set up a new filing system for a newly appointed judge or revise an outmoded or unwieldy filing system. Both can be cumbersome tasks, but they can be approached, after consulting with the judge, by breaking down the contents of the files into units. The main categories are chronological, subject, and alphabetical. Following are two examples of filing systems that have proven useful in judges' chambers.

System A. The files are broken down into the following categories:

1. Chronological reading file--contains copies of outgoing correspondence
2. Personal correspondence--alphabetical with special folders created for the judge's activities that generate regular correspondence
3. Case-related correspondence--filed by case number
4. Miscellaneous correspondence--alphabetical
5. Subject file for court and court-related matters:
   a. Intracourt, such as clerk's office, other judges, magistrates, circuit executives, etc.
   b. Administrative Office
   c. Judicial Conference of the United States, circuit judicial council, circuit judicial conference, etc.
   d. Supplies, services, travel, etc.
   e. Special projects, such as committees, filed chronologically
6. Opinions, memorandums, and orders filed chronologically or by case number, with an alphabetical index if desired. If regular use is made of this file, it is helpful to have the law clerk provide head notes for each opinion and to maintain a card index.

System B. The files are broken down into four main categories:

1. Administrative--files dealing specifically with court-related activities, such as Administrative Office memorandums, Judicial Conference notes, memorandums between judges, assignments, requisitions, and so on, all arranged chronologically within the folders
2. Cases
3. Legal subjects
4. Personal.

A master index is kept, either in a loose-leaf notebook or on cards, with a folder assigned to each of the four categories.

Both systems have worked well for judges' secretaries and can be adapted to an individual judge's needs.

Supplementary to the maintenance of a filing system is the question of how long to keep the filed material. The amount and volume of activity in the judge's chambers will serve as a guide to the length of time to retain files in current status. The practice of creating new files annually is followed in some judges' chambers, but this is discretionary. Experienced secretaries suggest a ten-year retention period for case-related correspondence, assignments and calendars, and diaries showing case schedules. Unless the judge instructs otherwise, copies of papers provided for the judge's use, the originals of which are filed in the official court record, need not be retained after the judge has finished with them.

In September 1982, the Judicial Conference of the United States adopted a records disposition schedule, and the Adminis-

trative Office provides detailed schedules for the disposal of files. These schedules are available in the office of the clerk of court. A judge's files may be transferred to a records center by arrangement with the clerk of court.

3.420 Court Files

The clerk of court is the official responsible for the custody and care of court records. Court records should be kept in the court repository except when in active use by a judge or staff member. The judge's secretary becomes involved in this process when a court file remains in the chambers for several days and newly filed papers are received. Official documents should be placed in the folder or fastened into the binder as soon as possible after receipt.

Although all new case documents should generally be submitted to the clerk of court for filing before being presented to the judge, such unfiled papers are nevertheless sometimes given to the judge before being given to the clerk. If possible, this practice should be discouraged and the papers should be forwarded to the clerk of court for filing as soon as possible. In courts that assign a deputy clerk to the judge, that clerk is responsible for filing and processing the documents. The clerk of court or deputy clerk is also responsible for transporting records to the place where court is held.

The form of the record differs in trial and appellate courts, and a new secretary should ask the clerk to explain the

record-keeping system. Understanding which portion of the record contains a certain document will save valuable time.

3.500 Correspondence

3.510 Dictation and Outgoing Mail

Taking dictation from the judge and its subsequent transcription are daily tasks of the secretary. The judge's dictation covers a range of work, but much of it is connected with the issuing of opinions, memorandums, and orders. Accuracy and precision are especially important in legal papers, just as in citation checking.

When correspondence relates to a court case, copies must be forwarded to all counsel of record, and those receiving copies should be noted on all copies. Depending on explicit instructions from the judge, a copy may be forwarded to the clerk of court for filing or placing in the record.

3.511 Penalty Mail Privilege

Official court business is subject to the penalty mail privilege, as specified in 39 U.S.C. § 3201. Basically, "penalty mail" is mail sent with government envelopes or labels bearing the legend "Official Business, Penalty for Private Use." The courts prepay the U.S. Postal Service for the penalty mail privilege at the time official envelopes or labels are printed. Charges vary with the size of the envelope.

An official label with the penalty mail imprint currently

costs the court system $1.20 and should be used only on bulky packages, never on envelopes.

Envelopes with the penalty imprint are not to be used for hand-delivered or interoffice mail. The Administrative Office suggests that an ample supply of nonimprinted envelopes be maintained for that purpose.

3.520 Incoming Mail

The secretary receives and opens incoming mail, decides which pieces the judge's staff can handle and which should be referred to a department of the court, and presents the remainder to the judge. The remainder should be placed on the judge's desk as soon after delivery as possible.

Before referring mail to other individuals, the secretary should scan the mail in order to be aware of the content should inquiries arise. If background information is needed for the judge's mail, it should be placed with the mail on the judge's desk.

Some case-related correspondence from attorneys can be handled by the secretary and law clerk. Correspondence related to rescheduling matters will constitute one group, and if the judge or court rules require formal motion, the attorney should be promptly advised by the judge or a designee so that a resubmittal in proper form can be made. Motions and responses are supposed to be filed with the clerk of court before they reach a judge's chambers, but it is sometimes necessary for the judge's staff to

assume responsibility for the filing because motions and responses may be mailed directly to the judge's chambers. As previously noted, this practice should be discouraged, but the secretary should be aware that it may occur from time to time.

Memorandums of law, proposed findings, and other legal papers received from counsel should be submitted directly to the judge. It is advisable for the secretary to confer with the law clerk when this type of material is received, since, in almost all instances, it will relate to cases under advisement. Current decisions and advance sheets on newly decided cases should be given to the judge for review before they are placed in the chambers library.

Requests for excuse from jury duty should be referred to the judge or to the appropriate person in the clerk's office, depending upon the district court's jury selection plan and the stage of the proceedings at which the request is made.

3.521 Prisoner Correspondence

Prisoners write a judge for a variety of reasons. Their correspondence will generally fall into one of four categories: pleas for a reduction of sentence; habeas-corpus-type complaints (i.e., complaints that they were improperly convicted); civil rights complaints about their treatment in a penal institution; and pleas for intercession with the Parole Commission.

If a prisoner is represented by a lawyer, his or her problems are handled similarly to those of any other litigant. Where

prisoners represent themselves, a law clerk must exercise special care when reading the correspondence to determine whether they are requesting legal relief. This is especially true for letters that apparently request a reduction of sentence but do not clearly articulate that desire. A good rule is to assume that the writer is requesting a reduction of sentence, consistent with the principle that pro se pleadings should be liberally construed. If the letter is still unclear, the matter should be taken up with the judge.

If the correspondence is to be treated as a petition or complaint, it should be handled according to court policy for prisoner litigation, when there is such a policy. In general, it should be sent to the clerk's office for processing and filing. Some courts have a specific law clerk, deputy clerk, or judicial officer designated to handle prisoner litigation, and the matter should then be forwarded to that individual for screening. If there is no such designated person, the judge may instruct that he or she or the law clerk will review the petition or complaint prior to filing.

Some prisoners request transfers to other penal institutions. Because the judge has no authority in this area, when this type of request arrives, the secretary should discuss it with the judge. In most instances, the policy of the judge will be to refer the matter to the Federal Bureau of Prisons.

If a prison inmate requests other relief measures that the court cannot grant, the following procedure applies: Either the

law clerk or the secretary should respond and recommend that the person communicate with a lawyer. The prisoner should be told that federal law prohibits judges from giving legal advice and that a lawyer will be better able to handle the grievance.

3.600 Editing and Proofreading

The need for accuracy in every document issued by the court cannot be overemphasized. Although the editing of opinions usually falls to the law clerk, a judge's secretary must be alert to errors of grammar and punctuation. Proofreading of opinions is essential, and the secretary and law clerk must assist each other in this task. The opinion writer has the primary responsibility for the accuracy of all citations, but a secretary can be helpful in checking the details of volume, page number, year of decision, and citation format.

3.700 Library

Judges are provided with a chambers library of basic legal reference books, the details of which can be found in the Administrative Office's Judges' Manual (volume III of the Guide to Judiciary Policies and Procedures). Advance sheets, pocket supplements, slip opinions, replacement volumes, or inserts for loose-leaf services will arrive regularly in the mail. If these additions are put away daily, the chore of maintaining the library will not be too burdensome. If they are left to accumulate, it becomes more difficult to place them in the proper order, and the library will be incomplete and unreliable. Respon-

sibility for the daily upkeep of the chambers library is often given to the law clerk, but the judge's secretary, who has more continuity of employment, may want to oversee its maintenance. The circuit librarian of each circuit will be glad to assist secretaries with the procurement and disposal of any legal reference material.

Each book received for the official library must be rubber-stamped to identify it as property of the United States. Books should leave the chambers only for courtroom use, and a record should be kept of the borrowers.

3.710 Reference Books

A standard dictionary and a law dictionary are essential items in a judge's chambers. Webster's Third New International Dictionary and Black's Law Dictionary are suggested references. A new secretary should make frequent use of a law dictionary in order to understand the legal terminology in daily use. Roget's International Thesaurus and the Merriam-Webster Pocket Dictionary of Synonyms may also be useful.

A secretary's handbook is another essential tool; a good one is Taintor and Monro's Secretary's Handbook, 9th revised edition, published by Macmillan.

The latest edition of A Uniform System of Citation (the 13th edition, issued in 1981), published by the Harvard Law Review Association, has an important place on the desk of a judge's secretary. The United States Government Printing Office Style Man-

ual also contains helpful and useful information.

Most secretaries are required to help edit opinions; for that purpose, the following aids are recommended. (However, on matters of style, such as capitalization, use of abbreviations, or citation format, secretaries should follow judges' preferences.)

The Complete Plain Words, Sir Ernest Gowers, Penguin Books.

The Elements of Style, 2nd edition, W. Strunk & E. B. White, Macmillan Paperbacks.

A Dictionary of Modern English Usage, 2nd edition, H. W. Fowler, Oxford University Press.

The Chicago Manual of Style, 13th edition, University of Chicago Press.

An almanac can be a handy reference work as well. There are several good ones available, for example, the New York Times Encyclopedic Almanac.

3.720 Directories

A directory of court personnel is essential in a judge's chambers. If the clerk of court does not provide a directory, the judge's secretary should compile one as a reference to persons in the various court departments. A district court directory should include personnel in the district court, bankruptcy court, magistrate's office, clerk's office, and probation office; the United States marshal; the United States attorney; public defender services; and personnel in the respective court of appeals. Court of appeals directories should include all offices

in the circuit at the circuit and district levels.

Directories provided by the Administrative Office of the United States Courts are the United States Court Directory (published semiannually) and the Directory of United States Probation Officers. The Administrative Office of the United States Courts Telephone Directory (published semiannually) contains the names and telephone numbers, by organizational unit, of all Administrative Office and Federal Judicial Center personnel, and is helpful in determining which person to contact with a particular request or problem.

The Federal Judicial Center automatically provides newly appointed district and appellate judges with certain printed materials, including materials from past seminars and other works that new judges have found helpful, such as catalogs of the Center's publications and media library. The Center also provides newly appointed district judges with an "Orientation Checklist" of items that might be discussed with the chief judge.

3.800 Other Record Keeping and Forms

3.810 Electronic and Photographic Record Keeping

The application of technological advancements to the courts promises more efficient record keeping and more rapid retrieval of information. Automation of legal research, trial transcription, and case control; microfilm and microfiche record-keeping processes; long-range electronic transmission of documents; and the high-speed printer have all greatly assisted the courts'

record-keeping systems. In recent years the federal courts have made great strides in adapting modern technology and equipment to their needs.

The Administrative Office operates a systemwide statistical gathering and reporting network. In addition, automated management information systems have been developed by the Federal Judicial Center, and various applications are now in operation, under the auspices of the Administrative Office, in a number of district courts and some appellate courts. Further, jury selection processes have been automated, and word-processing equipment now facilitates the editing and revising of typed material, with increased productivity.

3.820 Statistics

The clerk of court is required to submit statistical information to the Administrative Office of the United States Courts. This information is compiled into reports that are published annually or more frequently and distributed to all judges. Many judges wish to have their secretaries check their records against the clerk's reports for accuracy. Accurate record keeping in the chambers makes this process easier.

3.830 Form Orders and Standard Forms

Clerks' offices have samples of orders covering various factual situations and generally maintain supplies of form orders and other standard forms, such as instructions to counsel. New secretaries will find referral to past practices of an experi-

enced judge helpful in drafting orders. A compilation of sample orders is a useful tool.

3.840 Appointment Forms

The judge's secretary is responsible for the preparation of papers appointing new members of a judge's personal staff. Procedures for the appointment of these employees are given in the Judges' Manual (volume III of the Guide to Judiciary Policies and Procedures), published by the Administrative Office. The appointment form number is AO-79, and this form, with related papers, should be forwarded to the payroll certifying officer. In most instances, this officer will be the clerk of court.

3.850 Jury Instructions

The drafting of jury instructions is the task of the law clerk, but the judge's secretary must have the instructions typed and ready for use at the appropriate time.

A secretary should consult with the judge as to how long and in what circumstances the jury instructions are to be retained. Instructions on intricate legal issues and points should be retained for future use.

Generally, judges keep their standard instructions in loose-leaf notebooks; therefore, it is relatively easy to insert special instructions when needed.

3.900 Supplies, Equipment, and Furniture

The ordering of supplies may be the task of the judge's secretary. The Judges' Manual (volume III of the Guide to Judiciary Policies and Procedures) contains the Administrative Office's supply regulations. Specific procedures for supplies acquisition are established by each court's supply liaison officer (the clerk of court or the court executive).

Authority for the local purchase of office equipment, such as dictation or typing equipment, is requested by submitting AO form 19 to the Administrative Office. The Judges' Manual contains the Administrative Office's equipment regulations.

Furniture and furnishings are acquired through the court's furniture liaison officer (the clerk of court or the court executive). The Judges' Manual contains the Administrative Office's furniture regulations.

4.000 GENERAL ADMINISTRATIVE MATTERS

4.100 Qualification Standards for Secretaries

Listed below are the qualification standards for secretaries to judges, as approved by the Judicial Conference of the United States. Grades corresponding to those established by the Classification Act of 1949 have been made applicable to court personnel by the Judicial Conference.

To qualify for the position of secretary to a federal judge, a person must be a high school graduate or the equivalent and must have the following experience:

JSP Grade Level	Years of General Experience	Years of Specialized Experience	Total Years of Experience
4	1	0	1
5	2	0	2
6	2	1	3
7	2	2	4
8	2	3	5
9	2	4	6
10	2	5	7
11	2	8*	10

NOTE: One year of the required experience (specialized, if that is required at the grade level) must have been at, or equivalent to, the next lower grade in the federal service.

*Includes four years as a secretary in a federal court, three of which must have been at grade JSP-10.

General Experience

Progressively responsible general clerical or secretarial experience that provided a good knowledge of office clerical practices such as filing, telephone usage, and typing.

Specialized Experience

Progressively responsible secretarial experience that involved responsibility as the principal office assistant to a supervisor who dealt with law-related matters (such as might be found in a law, insurance, or real estate office).

Educational Substitutions

Education in a college, university, or secretarial school of recognized standing may be substituted for a maximum of one year of general experience on the basis of 30 semester (or 45 quarter) hours equaling nine months of experience.

A bachelor's degree from a college or university of recognized standing may be substituted for two years of general experience. Preferably, such a degree should have included courses in law, government, public or business administration, or related fields.

Education in a legal or paralegal curriculum may be substituted for a maximum of two years of specialized experience on the basis of one full academic year (30 semester or 45 quarter hours) equaling one year of experience. Less than one full year of study is credited on a pro rata basis.

4.110 Within-Grade Increase Plan

The within-grade increase plan for employees of the courts provides that an employee may be advanced to a higher step within a grade if he or she performs satisfactorily in the position. The within-grade increase plan provides for a one-step within-grade advancement at the beginning of the next pay period following the completion of

1. each 52 calendar weeks of service in salary steps 1, 2, and 3;

2. each 104 calendar weeks of service in salary steps 4, 5, and 6; and

3. each 156 calendar weeks of service in salary steps 7, 8, and 9, until the maximum salary step of the grade is reached.

In addition, the employee must receive an annual efficiency rating of "good" or better. Cards for rating purposes are mailed to court offices annually, in sufficient time to permit completion of the evaluation process on or before the employee's one-year anniversary date from the last promotion or within-grade increase.

Another plan, one for "quality step increases," also allows promotion to a higher step than the regular sequence on the basis of an employee's superior performance. Such quality step increases require a special outstanding recommendation from the employee's supervisor, and the employee must have served at least one year with the judiciary and must have completed at least twelve months of full-time employment at the same grade before such a recommendation can be made. Finally, an employee who has received a quality step increase is not eligible for another until three years has passed from the date of the first increase.

4.200 Sick Leave and Annual Leave

Pursuant to Judicial Conference resolution, all new secretaries of circuit and district judges appointed on or after September 30, 1983, including those appointed on a temporary basis or on a part-time basis with an established tour of duty, are to be placed under the Leave Act. Employees under this leave system may accumulate and carry forward from one year to the next as

many as thirty days (240 hours) annual leave, for which they will be paid in a lump sum when they retire or leave the government. There is no limit on the amount of sick leave an employee may accumulate, and accumulated sick leave is included in the computation of annuity. Further information concerning the leave system for employees covered under the Leave Act is contained in 5 U.S.C. §§ 6301-6323.

Information pertaining to the leave system for judges' secretaries who were appointed prior to September 30, 1983, and who did not opt to be placed under the Leave Act on or before January 8, 1984, can be found in the Judge's Manual, exhibit XII-D (in volume III of the Guide to Judiciary Policies and Procedures). In addition, see 5 U.S.C. §§ 6301-6323.

4.300 Employee Benefits

Three categories of employee benefits--health insurance, life insurance, and retirement--are discussed below. Questions regarding other benefits, such as Social Security coverage, unemployment compensation, and so on, should be addressed to the Personnel Division of the Administrative Office.

4.310 Health Insurance

Immediately upon beginning work, a judge's secretary is given the opportunity to enroll in a Federal Employees Health Benefit (FEHB) plan. If one elects to participate in the FEHB program, biweekly premiums are deducted directly from one's salary. Normally two options are offered--high and low; high and low options

differ in the kinds and extent of coverage provided. Each employee must determine his or her own health care needs and select a plan and option accordingly. The amount of the premium will also be based on the type of enrollment (i.e., self only or self and family). Numerous health plans are available, and a description of each is provided in the health insurance brochure entitled Enrollment Information and Plan Comparison Chart, which is published annually. Additionally, the individual insurance carriers publish brochures discussing the specific health benefits coverage they offer. These and other FEHB materials are available through the office of the clerk of court.

4.320 Life Insurance

At the time of appointment, the secretary is asked to elect or waive life insurance coverage. The Federal Employees Group Life Insurance (FEGLI) is an optional program available to virtually all federal officers and employees. Coverage consists of "Basic Life" and three additional options; purchase of basic insurance is a prerequisite to purchase of any of the optional coverages. If the employee fails to elect or waive life insurance, basic life insurance coverage becomes automatic. Deductions for this coverage are withheld from salary on a biweekly basis. Further information concerning the life insurance program is contained in 5 U.S.C. §§ 8701-8716.

4.330 Retirement Benefits

Secretaries who were appointed on or after January 1, 1984, are subject to Social Security (FICA) taxes. Additionally, such employees are presently covered under a transitional civil service retirement plan with reduced deductions taken from their salary. This transitional plan is due to expire unless changed or permanently implemented by law before January 1, 1986. Secretaries appointed before January 1, 1984, are covered by the Civil Service Retirement System, and statutorily prescribed deductions are taken from their salary.

4.400 Security

Federal courts have found it necessary to ensure the safety of court personnel and property through security measures both in the courthouse and in the courtroom. New court employees should become familiar with the security practices in their courthouse. Every district court has a court security committee that includes, among others, the U.S. marshal and the chief district judge or their designees; this committee prepares the court security plan. All requests for security measures should be directed to the marshal.

4.410 Work After Hours

The court building is not open to the public at night or on weekends. An employee can gain entrance to the building after hours or on weekends by entering through a designated door, signing his or her name, and noting the time on the register. Secu-

rity officers usually learn to recognize personnel within a short time, but they still may ask for identification. Some building managers prepare building passes to assist personnel in identifying themselves when entering at other than normal business hours.

4.500 Reimbursement for Expenses of Official Travel

4.510 General Policies and Guidelines

Court employees are reimbursed for food, lodging, and related expenses incurred during authorized travel. The rules generally provide (except in the case of judges) for reimbursement either of a flat daily subsistence allowance ("per diem"), regardless of actual expenses, or of actual expenses not in excess of a fixed statutory dollar amount, in which case itemization is necessary. Although judges are entitled to claim the statutory maximum regardless of the travel location (if they itemize their expenses), the reimbursement rate for other employees, including judges' secretaries, who claim actual expenses varies according to a list of "high-rate geographical areas" distributed by the Administrative Office. This variable rate applies to a secretary even when traveling with the judge.

The director of the Administrative Office is authorized by law to issue travel regulations for judges and judicial employees. The Administrative Office's Travel Regulations for United States Justices and Judges, approved by the Judicial Conference at its September 1980 meeting, is available in pamphlet form from the Audit Branch of the Financial Management Division of the Ad-

ministrative Office. Some major elements of the regulations are summarized below; secretaries should also refer to the regulations themselves, however, and should direct any questions to the Audit Branch. Instructions for the preparation of form 28, Travel Voucher for Justices and Judges of the United States, are in the next section (4.520).

Judges are authorized to certify their own travel claims, which are to be submitted to the clerk of court for disbursement locally. However, when judicial travel is authorized by the Federal Judicial Center, a copy of the claim should be submitted to the appropriate division of the Center. Judges may also apply for the advance of travel funds from the clerk. Government Transportation Requests (GTRs) should normally be used for securing transportation by common carrier, although the regulations authorize the use of credit cards or cash, for which the judge can then be reimbursed. Because judges' travel plans may change while in travel status, they may wish to carry one or more blank GTRs, with appropriate travel numbers indicated, for use instead of credit cards or cash in securing alternate travel arrangements. (It bears mention that GTRs are issued to judges, not their secretaries, but it is conceivable that a situation could arise in which a secretary could be held personally accountable for the GTRs' safekeeping. GTRs, in other words, are accountable documents and must be safeguarded.)

The regulations specify the types of travel for which judges may be reimbursed; in some cases, prior authorization is re-

quired. No prior authorization is required for travel to hold court or otherwise conduct judicial case-related business, to visit penal institutions or youth centers, or to attend "prescribed meetings to conduct other business of the judicial branch." Other travel must be cleared with the chief circuit or district judge, or the director of the Administrative Office, as appropriate. Nonmember travel to a Judicial Conference committee meeting is not reimbursable without a specific invitation. Travel to testify before a congressional committee is reimbursable if the testimony is at the request of the Judicial Conference or the committee; voluntary appearance before a congressional committee is not reimbursable. Travel to attend investiture ceremonies of other judges is reimbursable for certain judges.

Travel to Federal Judicial Center educational programs is reimbursable, but requires prior authorization of the Center. The Center also provides reimbursement for travel to state-federal judicial councils, but this too requires prior Center authorization. The Center distributes travel authorizations in advance to judges and others for these purposes.

Expenses are not reimbursable for travel to private association meetings and conventions (unless the judge has been designated a spokesperson for the judiciary by the appropriate judicial branch authorities), nor for travel to judicial nominating panels and commissions, to Senate confirmation hearings, or to memorial services and other such ceremonies. Neither judges' nor

applicants' travel is reimbursable in connection with interviews of prospective law clerks.

The regulations prescribe the types of travel expenses (including tips, ground transportation, etc.) for which reimbursement may be sought, and specify the types of transportation to be used. Air transport is most commonly used, and first-class accommodations may be used "for reasons of security, health, physical impairment, unavailability of less than first-class accommodations, or any other reason deemed necessary for the expeditious conduct of official business."

The regulations provide detailed information on claiming reimbursement either for actual expenses or for expenses on a per diem basis and on the expense items that may and may not be claimed under either type of claim. The Federal Courts Improvement Act of 1982 amended 28 U.S.C. § 456 to include additional provisions for judges' travel expenses. These provisions authorize judges on official travel status for fewer than thirty days to claim either per diem or actual expenses within the statutory maximum. They also expressly permit judges on travel status to attend court or transact official business (under an assignment authorized under chapter 13 of title 28) for a continuous period longer than thirty calendar days to claim actual expenses of subsistence beyond the statutory maximum, in accordance with regulations prescribed by the director of the Administrative Office and

approved by the Judicial Conference. Claims for such expenses must be submitted on form 28.

4.520 Preparation of Judges' Travel Vouchers

Form 28, Travel Voucher for Justices and Judges of the United States, must be used by all justices and judges of the United States for reimbursement of travel expenses. These vouchers are to be submitted to the district clerk's office for payment. Instructions for preparing the voucher are presented below.

Items to be completed by the traveler:

Payee - Enter the name of the person who completed the travel.

Title - Enter the title of the person who completed the travel.

Official Station - Enter the official duty station of the traveler.

Certification - In this section, enter the reason for the travel, the location of the travel, the payee's signature, and the date the voucher was prepared.

Travel Advance - Use only if the traveler was issued an advance. Enter in this section the amount of the traveler's outstanding travel advance; the amount, if any, to be applied from this voucher; and the balance outstanding.

Amount Claimed - Enter on this line the amount claimed, supported by "Schedule of Amounts Claimed" located on the back of form 28. The schedule of amounts claimed should include the date, subsistence itemization or per diem allowance, transportation, and other expenses and appropriate totals.

Transportation Request Issued - This section should be completed if a Government Transportation Request (GTR) has been issued. Information required in order to complete this section is:

Request Number - GTR number.

Agent's Valuation of Ticket - Actual value of the ticket.

Initials of Issuing Carrier - For example, "U.A." for United Airlines.

Mode, Class of Service, and Accommodations - For example, "Y" for coach class.

Date Issued - The date the GTR was issued.

Points of Travel - The starting and ending points of travel.

Items to be completed by the disbursing officer:

Voucher Number - Enter the voucher number assigned.

Paid by - Enter in this block the name of the district court that paid the voucher, its disbursing office symbol number, the number of the check used to pay the voucher, the date the voucher was paid, and the fiscal year/common accounting number to which the disbursement was charged.

Under the amount-claimed section:

Differences - In the event the disbursing officer finds a discrepancy in the preparation of the voucher, the voucher should be returned to the judge for correction. The judge should then enter the adjustment.

Applied to Advance - Enter on this line the amount requested by the traveler to be liquidated from the advance. This amount is obtained from the "To be Applied" section of the travel advance.

Net to Payee - Enter on this line the amount that will be paid to the traveler. This is determined by subtracting any adjustments and/or advance liquidations from the "Amount Claimed" section.

4.600 Continuing Education and Training

Various forms of continuing education and training are available to personnel of the judicial system, including secretaries. The Federal Judicial Center (see section 7.700) is responsible for developing such programs, and many courts have developed

local training programs to complement those offered by the Center. The Center has sought to have one or more training coordinators appointed in each court to arrange seminars and workshops using local resources or those available from the Center.

It is a policy of the Board of the Federal Judicial Center that the Center does not sponsor seminars and workshops exclusively for secretaries to judges; local seminars for judges' secretaries may be arranged, with the judges' approval, if they require no travel and are held on weekends or at other times when the judges are not in chambers. Certain resources of the Center, however, are available to improve secretaries' job skills and promote their professional development. This handbook is one example. Secretaries may also apply to the Center for tuition and other expenses for courses at local colleges and universities; funding is available, however, only for courses that are directly related to the secretary's job. Courses of general interest, even if related to the work of the legal system, are typically not considered to be "job related" under Center standards. Further information on tuition support is available from the Center's Division of Continuing Education and Training (Specialized Training Branch, FTS 633-6332) and is included in a Center pamphlet entitled Self-Development Information.

Training on word-processing equipment is usually provided as part of the purchase of new equipment; other word-processing training is normally the responsibility of the Administrative Office's Office Systems Branch. Secretaries will find that in-

structional manuals, as well as help from other secretaries familiar with the particular word-processing equipment in the court, often prove more satisfactory than special courses at a remote location.

The Center also maintains a library of videocassettes, audiocassettes, and films that cover a wide range of subjects, including the organization and procedures of the federal courts, office skills, and related matters. The Center's Educational Media Catalog describes these resources and indicates how they can be ordered; every judge's chambers has been provided with a copy. Secretaries are encouraged to borrow items in the catalog of interest and use to them.

4.700 Emergencies

The secretary can insert here any material regarding emergencies, such as fire or medical problems.

5.000 PROTOCOL AND CONDUCT

The secretary can insert here any general material regarding protocol and conduct.

5.100 Professional Conduct of a Judge's Secretary

Above all, a secretary must observe the strictest principles of confidentiality concerning everything that involves the judge's decision-making process, particularly drafts of opinions, and all statements or events related to judicial proceedings that take place outside of open court.

All attorneys should be accorded impartial and equal treatment by the judge's secretary. While it may be tempting to do a special favor for a friend, it is improper for the judge or any staff member to be anything less than absolutely impartial toward all parties involved in a case and their counsel.

Many judges feel that there should be as little contact as possible between a judge's staff and representatives of the media, who often inquire regarding a pending case. The secretary should determine the policy of the judge on such inquiries and conform to it. Some judges may refer all inquiries to the clerk of court; other judges may direct the secretary or law clerk to distribute opinions or judgments that have been made public and filed. When in doubt as to the judge's policy, the clerk or sec-

retary should say, "I'm sorry, I can't discuss that matter with you, but I will speak with the judge as soon as possible and ask for instructions."

5.200 Political Activity

According to canon 7 of the Code of Judicial Conduct, as adopted by the Judicial Conference of the United States, federal judges should refrain from political activity. Likewise, the Judicial Conference has barred (by resolution of September 1943) federal court employees from engaging in political activity, including candidacy for office or other activities forbidden to executive branch employees by the Hatch Act (5 U.S.C. §§ 7321-7327) and the implementing regulations of the Office of Personnel Management (found in 5 C.F.R. § 733).

Thus, a judge's secretary, like the judge, is entitled to personal political views, but must refrain from active political involvement. Furthermore, the secretary must never reveal the judge's political views or attribute to the judge any position on a partisan political issue.

5.300 Precedence of Judges

Title 28 of the United States Code establishes the order of precedence of the federal judiciary. The order of precedence becomes important to the secretary when a listing of the judges attending a circuit conference, a committee meeting, or other official function has to be prepared.

The basic order of precedence is given below, but the United

States Court Directory is a convenient reference for determining the order of precedence that obtains in a particular court.

1. Chief circuit judge
2. Other circuit and senior circuit judges according to the seniority of the date of their commissions or, for those who have the same date of commission, according to their seniority in age
3. Chief district judge
4. Other district and senior district judges according to the seniority of the date of their commissions or, for those who have the same date of commission, according to their seniority in age
5. Bankruptcy judges
6. U.S. magistrates.

Exceptions and qualifications to the above list are as follows: (1) The circuit justice precedes the chief circuit judge. (2) If the commission of a district judge extends over more than one district, that judge is considered junior to all district judges in the district(s) other than that in which the judge resided at the time of appointment. (3) Judges assigned to a court other than that to which they were originally appointed are to be listed and/or seated according to the seniority of the date of their commissions among the judges of that other court.

The following is a more general guide for other functions:

1. The Judicial Conference of the United States:
   a. Chief Justice of the United States
   b. Circuit and district judges, listed in numerical order of circuits, with the chief judge of the circuit listed first, followed by the district judge representative of the circuit

c. Chief judge of the D.C. Circuit and the district judge representative from Washington, D.C.

d. Chief judge of the United States Court of Appeals for the Federal Circuit

2. Committees and subcommittees of the Judicial Conference of the United States:

a. Chairman of the committee or subcommittee

b. Circuit judges listed alphabetically

c. Senior circuit judges listed alphabetically

d. District judges listed alphabetically

e. Senior district judges listed alphabetically

f. Judges of any of the other national courts listed alphabetically

g. Bankruptcy judges and magistrates listed alphabetically

h. Nonjudicial personnel listed alphabetically.

3. Judicial conference of the circuit:

a. Circuit justice (or Chief Justice of the United States if in attendance)

b. Other associate justices listed by seniority

c. Chief judge of the circuit

d. Circuit judges in active service in accordance with the method of determining precedence within the court (see first list)

e. Senior circuit judges in accordance with the method of determining precedence within the court (see first list)

f. District judges listed either

(i) by district in accordance with the regular order of precedence within that district, with districts listed alphabetically first by state, then by district, or

(ii) alphabetically by group, i.e., chief judges arranged alphabetically, followed by judges in active service arranged alphabetically, followed by senior judges arranged alphabetically.

In general, persons who are not judges are listed after all judges, in the same order of precedence as that followed for judges (e.g., a person employed at the circuit level would be listed before someone employed at the district level). The exception to this occurs in certain special committees with judge and nonjudge members, such as those concerned with the federal rules. In such instances, the chairman of the committee is listed first, and the members, judicial and nonjudicial, are then listed alphabetically.

Within any court, a committee established to handle a particular segment of the administration of the court may be chaired by a judge who is junior in commission to one or more judicial members of the committee. In listing the committee, the chairperson is shown first, and then the other members of the committee are listed in the normal order of precedence.

6.000 NATIONAL COURTS

6.100 United States Court of Appeals for the Federal Circuit

As established by the Federal Courts Improvement Act of 1982, the United States Court of Appeals for the Federal Circuit consummates the merging of the Court of Claims and the Court of Customs and Patent Appeals. Consisting of twelve judges, this Article III court is similar in structure to the twelve other courts of appeals, but its jurisdiction is national and is defined in terms of subject matter rather than geography. Its judicial authority includes, substantially, all of the national appellate jurisdiction of the two courts absorbed in the merger. It handles all appeals of federal contract cases brought against the United States in the district courts and appeals from the Court of International Trade, the Claims Court, the Patent and Trademark Office, the Merit Systems Protection Board, and other statutorily defined agencies and commissions. In addition, it hears patent appeals from all United States district courts. Judges in this court may be assigned by the Chief Justice to sit in another federal appeals court.

6.200 United States Claims Court

As noted earlier in section 1.300, the United States Claims Court is an Article I court that retains most of the trial juris-

diction previously held by the former Court of Claims. The Claims Court has national jurisdiction over any claim against the United States founded upon the Constitution, upon any act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States or any claim for liquidated or unliquidated damages in nontort cases. Suits against the government for monetary damages must be tried in the Claims Court if the amount in controversy exceeds $10,000, except in tax refund claims, which may be brought either in the district court or in the Claims Court. Examples of the jurisdiction of the Claims Court are claims for compensation for the taking of property, claims arising under construction and supply contracts, claims by military personnel for back pay and retirement pay, and claims for refund of federal income and excise taxes. There is no monetary ceiling on the court's jurisdiction.

The Claims Court also has trial jurisdiction over claims by Indian tribes. Review of decisions of this court may be sought in the United States Court of Appeals for the Federal Circuit.

The sixteen judges of the court are appointed by the president, with the advice and consent of Congress, for fifteen-year terms. The president also designates one of the sixteen to serve as chief judge. Cases heard by the Claims Court may be tried by a single judge, who may preside alone and may hold either regular or special sessions of court at the same time as other sessions are being held by other judges. Although its principal offices are in Washington, D.C., the Claims Court may hold court at such

times and in such places as it may fix by rule of court.

The duties of secretaries to judges of the Claims Court are similar to those described for district court judges' secretaries.

6.300 United States Court of International Trade

The Court of International Trade began in 1890 as the Board of United States General Appraisers. Its name was later changed to the United States Customs Court and, in November 1980, to the United States Court of International Trade. The court's principal offices are located in New York City, but it has the authority to hear cases at any port of entry in the United States.

The Court of International Trade has exclusive jurisdiction over civil actions arising under the tariff laws of the United States, including those involving the appraised value of imported merchandise; classification, rate, and amount of duties chargeable; exclusion of merchandise from entry or delivery; liquidation or modification of any entry; and refusal to pay a claim for drawback. Under its recently expanded jurisdiction, the court may try cases with or without juries.

Most cases heard by the Court of International Trade may be tried by a single judge; for exceptional cases, the chief judge may designate a panel of three judges. Secretaries to Court of International Trade judges have duties similar to those of district court judges' secretaries.

6.400 Temporary Emergency Court of Appeals

The Temporary Emergency Court of Appeals, created by Congress in 1971, has jurisdiction over all appeals in cases arising under the Economic Stabilization Act, the Emergency Petroleum Allocation Act of 1973, and regulations issued thereunder.

Judges serving on this court are designated by the Chief Justice from the roster of U.S. circuit and district judges. The court must by law have at least three judges sitting; as of September 1982, twenty-four judges were assigned to sit on the court. Cases are normally heard by a panel of three judges. Court may be held in Washington, D.C.; St. Paul, Minnesota; Atlanta, Georgia; Houston, Texas; San Francisco, California; and such other places as may be designated by the chief judge.

The court maintains a clerk's office in Washington, D.C.

6.500 Railway Court

The Railway Court was created by Congress in the Regional Rail Reorganization Act of 1973. The court has exclusive jurisdiction over all proceedings arising out of the "Final System Plan" developed by the United States Railway Association for restructuring bankrupt railroads in the Northeast. The court resolves problems arising from the transfer of private railroad property to the Consolidated Railroad Corporation (Conrail). It has the mandate to ensure that the consideration given in exchange for such property is fair and equitable, in conformity with constitutional requirements of due process.

The court is composed of three federal judges chosen by the Judicial Panel on Multidistrict Litigation. The court is authorized to exercise the powers of any district court in its area of jurisdiction, and decisions of the court may be appealed directly to the Supreme Court.

The court sits in Washington, D.C., and maintains its own administrative staff.

6.600 Judicial Panel on Multidistrict Litigation

The Judicial Panel on Multidistrict Litigation was created by act of Congress in 1968 to coordinate or consolidate civil pretrial proceedings in cases involving common questions of fact that are pending in different districts. The panel consists of seven district and circuit judges appointed by the Chief Justice, no two of whom may be from the same circuit. The panel usually sits en banc (in its entirety), and a concurrence of four members is required for any panel action. Proceedings for transfer may be initiated by motion of any party or by the panel on its own initiative. The panel maintains a clerk's office in Washington, D.C., and holds hearings in cities throughout the United States.

7.000 MANAGEMENT OF THE FEDERAL JUDICIAL SYSTEM

From the adoption of the Judiciary Act of 1789 until the 1870s, individual judges were the sole administrators of the federal judicial system. The Office of the Attorney General of the United States then began to exercise some centralized management functions. These included minimal bookkeeping, reporting, and the use of management auditors to check the financial efficiency of the courts.

Chief Justice William Howard Taft took steps to have the judiciary assume some of its own management responsibility by calling together the chief judges of each circuit. This conference was formalized in 1922 when Congress created what is now called the Judicial Conference of the United States. The Conference is the chief policymaker in matters of federal judicial administration.

At the recommendation of the judiciary in 1939, Congress created the Administrative Office of the United States Courts, circuit judicial councils, and circuit judicial conferences to assist further in the management of the courts. It assigned the primary management tasks to the circuit judicial councils and assigned coordinating and housekeeping responsibilities to the Administrative Office. In 1967, Congress created the Federal Judicial Center to serve as a training and research agency for the

improvement of the administration of the courts.

The next step in the development of the present management structure was the creation in 1971 of the position of circuit executive. One executive is authorized in each circuit to exercise such administrative powers and perform such duties as may be delegated by the circuit judicial council.

7.100 Judicial Conference of the United States

The Judicial Conference of the United States is the administrative policy-making body of the federal courts. It has specific statutory responsibility (28 U.S.C. § 331) for making a comprehensive survey of the administration of the federal courts, preparing plans for assignment of judges to circuits or districts as necessary, recommending changes to the general rules of practice and procedure in effect in federal courts, and in limited circumstances, hearing judicial discipline matters brought to it from the judicial councils. Many additional duties are assigned by statute to the Administrative Office, which is to carry them out under the Conference's direction.

The Chief Justice of the United States presides over the Conference; its membership also includes the thirteen chief judges of the circuits and one district judge from each of the twelve regional circuits (excluding the Court of Appeals for the Federal Circuit), elected by the judges of the respective circuits.

The Conference is required to meet annually, but tradition-

ally two meetings are held each year. The Conference uses committees to study and report on issues in each major area of concern to the Conference; its various standing and special committees meet as needed during the year.

7.200 Circuit Judicial Councils

The circuit judicial councils (28 U.S.C. § 332) have been assigned major managerial responsibilities within the federal judiciary. Each judicial council is, by statute, responsible for the effective and expeditious administration of the business of the courts within its circuit. Until October 1981, each council consisted of all active circuit judges within the circuit. Legislation passed in 1980 requires each council to include at least some district judge members; the number of circuit and district judges on any council is determined by the active circuit judges, subject to formulas governing the respective numbers of each. The 1980 legislation also directed each council to establish procedures to receive complaints from members of the public about the behavior or fitness of judges and magistrates in the circuit. Such complaints are received by the chief circuit judges, who, after investigation, may bring them to the attention of the council. The council, in turn, may take corrective action or impose sanctions. Review by the Judicial Conference is also authorized.

The councils are required to meet at least twice a year, but some meet more frequently; their meetings are presided over by the chief judge of the circuit. The circuit executive may be ap-

pointed to serve as secretary at council meetings. For further information, see Administering the Federal Judicial Circuits: A Survey of Chief Judges' Approaches and Procedures, published by the Federal Judicial Center in 1982.

7.300 The Chief Justice of the United States

The Chief Justice of the United States is the chief administrative officer of the federal judiciary, a role that stems in part from the fact that, as the title implies, the Chief Justice is not merely the Chief Justice of the Supreme Court, but the Chief Justice of the United States. The Supreme Court, in addition to its adjudicative responsibilities, must approve and forward new rules of procedure for congressional review. It must also approve and forward changes to existing rules of procedure governing the conduct of cases in the federal courts, which are developed initially by the Judicial Conference and its committees. The Chief Justice, of course, plays a leading role in these determinations.

In addition, the Chief Justice has many other statutory responsibilities, including chairing the Judicial Conference of the United States.

As the principal spokesperson for the federal judiciary, the Chief Justice accepts a limited number of speaking engagements to address significant needs for improving the administration of justice, and is regarded as the voice of the federal judiciary by

the Congress, the American people, bar associations, and international legal organizations.

The Chief Justice has an administrative assistant to aid in the increasingly complex duties of the position of chief administrative officer of the judiciary. The administrative assistant consults with the Chief Justice on numerous matters lying outside the area of case decision making, such as appointments to the Judicial Conference of the United States, the Board of the Federal Judicial Center, and special commissions appointed by the three branches of the federal government. The administrative assistant also provides support in reviewing priority issues for inclusion in the Chief Justice's various addresses, helps the Chief Justice in long-range planning for the judiciary, and serves as a liaison with the many organizations interested in judicial administration.

Finally, the administrative assistant helps the Chief Justice with internal management of the Supreme Court, including recruitment, supervision, and overseeing of budget preparation. Among the recent innovations in management of the Supreme Court are the computerization of case processing, development of new personnel policies and employee training programs, and space reorganization.

7.400 The Circuit Executive

Each circuit judicial council is authorized to appoint a circuit executive (28 U.S.C. § 332(e)) to assist the judges in carrying out their administrative and managerial responsibili-

ties. Circuit executives must be appointed from a list of individuals certified by the Board of Certification, which consists of three members elected by the Judicial Conference of the United States, in addition to the director of the Administrative Office of the United States Courts and the director of the Federal Judicial Center. The standards for certification take into account experience in administrative and executive positions, familiarity with court procedures, and other special training.

Depending upon the needs of a particular council, it may delegate to its circuit executive any administrative powers and duties including:

a. administrative control of nonjudicial activities of the court of appeals;

b. administration of the court of appeals personnel system;

c. administration of the court of appeals budget;

d. maintenance of a modern accounting system;

e. property control and space management;

f. conduct of studies relating to the business and administration of the courts within the circuit and preparation of appropriate recommendations and reports to the chief judge, the circuit council, and the Judicial Conference;

g. collection, compilation, analysis, and reporting of statistical data;

h. liaison with other courts and organizations; and

i. arrangement of and attendance at meetings of the judges of the circuit and the council.

The circuit executive is under the immediate supervision of the chief judge of the circuit.

7.500 Circuit Judicial Conferences

The basic judicial administration statute enacted by Congress in 1939 directs each chief circuit judge to call an annual circuit conference, to be attended by all active circuit, district, and bankruptcy judges (28 U.S.C. § 333). Selected members of the bar are invited to attend and participate.

The chief judge of the circuit presides at the conference, whose statutory purpose is to consider the business of the courts and to develop means of improving the administration of justice within the circuit.

Typically, a conference lasts two to three days. During most conferences there is an executive session, attended only by the district and circuit judges. Additional sessions may be held for members of the bar, either by special invitation or at open meetings. During these sessions, speakers present formal programs, and circuit problems and processes are discussed.

7.600 Administrative Office of the United States Courts

The Administrative Office is the third of the organizations (the other two being the circuit judicial councils and conferences) created by Congress in 1939 to assist in the management of the federal judicial system (28 U.S.C. § 601 et seq.). This office provides administrative support for all federal courts except the Supreme Court. It also serves the Claims Court and the Court of International Trade. The director and deputy director of the Administrative Office are appointed by the Supreme Court.

The Administrative Office provides staff services for the committees of the Judicial Conference and gathers information at their request. Special surveys and reports are also made upon request of the judicial councils or the chief judge of a district court.

The Administrative Office has seventeen divisions and offices, which are presented below; the staffs of these divisions are listed in the Administrative Office Telephone Directory.

1. Administrative Services Division: Provides space, facilities, equipment, records, forms, and supplies for the efficient handling of the work of the federal courts.

2. Financial Management Division: Bears responsibility for the formulation, execution, and presentation of the budget; maintenance of a centralized accounting system; disbursement of appropriated funds; and administrative examination and settlement of claims for travel and all other expenses, including fees of jurors and claims under the Criminal Justice Act.

3. Personnel Division: Administers a comprehensive personnel program and maintains a payroll system for the federal judiciary. Under authority delegated by the director, it fixes the grades and salaries of all supporting personnel of the courts whose salaries are not otherwise fixed by law.

4. Systems Services Division: Evaluates the effectiveness of existing automation and computer systems and develops new systems when required.

5. Statistical Analysis and Reports Division: Provides

current statistical information on judicial management and business in the federal courts, as well as numerous specialized reports, some required by statute.

6. Bankruptcy Division: Is charged with general administrative assistance to the bankruptcy system. It provides staff assistance to the bankruptcy committee of the Judicial Conference and consults with bankruptcy judges and clerks on programs, policies, systems, and procedures.

7. Probation Division: Assists the director in establishing policies and procedures for the operation of the probation system in the United States district courts and for the provision of pretrial services to those courts. It regularly informs the Judicial Conference about the status of the probation system and recommends to the Conference legislation that will improve the administration of the system. The division is also charged with the general supervision of all probation officers within the system.

8. Magistrates Division: Conducts surveys, both general and special, to determine the need for magistrate services and makes recommendations on the number, locations, and salaries of magistrates to the Judicial Conference, the judicial councils, and the district courts. The division also develops procedures and systems for the conduct of the business of the magistrates, carries out directives of the Judicial Conference, and assists in developing legislative proposals.

9. Clerks Division: Provides organizational, management,

and training assistance (in conjunction with the Federal Judicial Center) to the offices of the clerks of court and allocates deputy clerk positions.

10. Criminal Justice Act Division: Directs the Administrative Office's activities under the Criminal Justice Act and prisoner transfer treaties (18 U.S.C. § 4109).

11. Office of the General Counsel: Renders legal opinions and advice with respect to statutes and rules affecting judicial administration. The office works directly with the various committees of the Judicial Conference and provides direct staff support to several of these committees.

12. Office of the Inspector General: Bears responsibility for reviewing and reporting on the management and operations of the offices of all federal district, circuit, and national courts.

13. Legislative Affairs Office: Monitors legislation affecting the judiciary. Pursuant to the direction of the Judicial Conference, it coordinates the presentation of Conference views on pending legislation, prepares written materials and testimony for hearings, keeps abreast of all pending legislation affecting the judiciary, and notifies the judiciary of the current status of legislation.

14. Office of Library and Legal Research Services: Advises court personnel on computer-assisted legal research (CALR) services available to the judiciary. It also assists in the selection of desirable locations for new libraries, in determining

library requirements such as architectural layouts, and furniture and shelving, and in acquiring microform readers and printers, a lawbook collection, and library personnel.

15. Office of Court Security: Acts as a liaison between the judiciary and the United States Marshals Service on matters relating to the security of the courts. The office supports and assists the Marshals Service by arranging for the transfer of appropriated funds from the judiciary's budget to the Marshals Service for security services and equipment, by expressing the security concerns and needs of the judiciary, and by facilitating communication on security matters.

16. Office of Court Reporting and Interpreting Services: Implements court-reporting policies developed by the Judicial Conference, prepares reports for the relevant committees of the Conference, and authorizes contractual reporting services and funding for staff court reporter travel. The office also prepares and administers court interpreter certification tests, and works with court personnel on the provision of adequate interpreting services.

17. Office of Equal Employment Opportunity and Special Projects: Oversees implementation of the Judicial Conference's equal employment opportunity directives and provides advice to the courts on related matters.

7.700 Federal Judicial Center

The Federal Judicial Center is the research, development, and training arm of the federal judicial system. It was established by Congress in 1967 (28 U.S.C. § 620 et seq.), on the recommendation of the Judicial Conference of the United States.

By statute, the Chief Justice of the United States chairs the Center's Board. This Board also includes the director of the Administrative Office of the United States Courts and two circuit judges, three district judges, and one bankruptcy judge elected by the Judicial Conference for four-year terms.

The Center's Continuing Education and Training Division conducts seminars, workshops, and short courses for third branch personnel. These programs range from orientation seminars for newly appointed judges to on-site management training for support personnel.

The Research Division undertakes empirical and exploratory research on federal judicial processes, court management, and sentencing and its consequences, usually at the request of the Judicial Conference and its committees, the courts, or other groups in the federal court system.

The Innovations and Systems Development Division designs and helps the courts implement new technology. The division's work began under the mantle of Courtran, a multipurpose computerized court and case management system developed by the division, parts of which have been transferred for operation to the Administrative Office. The Center and the Administrative Office are cur-

rently undertaking a major effort to provide computers and automated support to circuit, district, and bankruptcy courts on a decentralized basis. This effort extends well beyond the initial Courtran program.

The Inter-Judicial Affairs and Information Services Division maintains liaison with state and foreign judges and judicial organizations. The Center's library, which specializes in judicial administration, is located within this division. The division also publishes The Third Branch, a monthly bulletin of developments in federal judicial administration.

Copies of the Center's Catalog of Publications and its Media Catalog can be obtained by writing to the Center's Information Services, 1520 H Street, N.W., Washington, D.C. 20005. Publications are provided free of charge; a self-addressed, gummed mailing label, preferably franked, should be enclosed. (The volume of requests for publications is typically so great that it is very difficult to process telephone orders.) Media programs are available only on loan and only to federal judicial personnel.

8.000 THE LANGUAGE AND PROCESS OF LITIGATION

This section introduces some of the terms most commonly used in the United States courts. It does not attempt to cover all or even most legal terminology. Rather, it provides a general explanation of some of the more fundamental concepts and terms of the law. Its sole purpose is to offer the new secretary a relatively brief introduction to the unique language of the courts. The experienced legal secretary will already be familiar with much of the material in this section.

8.100 Jurisdiction

In order for a judgment of a court to have any force, that court must have the authority, or jurisdiction, to decide the case. There are several categories of jurisdiction. One of these is jurisdiction over the person. For example, the United States District Court for the Eastern District of Louisiana has jurisdiction, for most purposes, to settle disputes only between persons who are residents of Louisiana or who have some connection or relationship to that state. In general, if a Louisiana resident wanted to sue a resident of California, he or she would have to do so in a court that had jurisdiction over residents of California. The court in Louisiana, with limited exceptions, has

no authority to decide or determine a California resident's rights or obligations.

A court must also have jurisdiction over the subject matter. When an individual has a dispute with a neighbor because the neighbor burns trash in his or her yard in violation of a city ordinance, if they disagree about the exact boundary line between their properties, or even if the neighbor crashes into the person with an automobile, the suit probably belongs in a state or city court. Federal courts do not usually have jurisdiction over the subject matter of these types of disputes. In general, only when there is a federal question or diversity of citizenship is a dispute between private parties a case for the federal courts. A federal question is a question arising under the Constitution of the United States, acts of Congress, or treaties that requires the interpretation and application of these authorities. Diversity of citizenship means that all the opposing parties are citizens of different states. In the automobile accident case considered in the next section, the dispute could be heard in federal court rather than in state court only if the driver and the person injured were residents of different states.

In suits between citizens of different states (diversity of citizenship cases), a dispute must involve more than $10,000 to come within the jurisdiction of a federal court. The amount of money required to establish jurisdiction is sometimes referred to as the jurisdictional amount. The requirement of a general

jurisdictional amount for federal question cases was abolished some years ago.

8.200 Complaint Through the Civil Trial

Consider, as an example, a man who has been injured by another man in an auto accident. He feels that the person at fault ought to pay the expenses involved. The law requires that any person who, by his or her own fault, causes damage to another should pay for the damage he or she has caused. Of course, the other driver may have a different view of the matter. He is likely to think that the accident was not his fault in the first place and that there is no reason why he should pay for the damage.

Here lies an important difference of opinion, or a dispute. The law provides certain machinery and procedures for settling such matters. The machinery is the judicial system. The rules that govern its operation are the rules of procedure, in this case, the Federal Rules of Civil Procedure. The Federal Rules of Criminal Procedure, the Federal Rules of Appellate Procedure, and the Federal Rules of Bankruptcy Procedure govern the other types of federal court actions. These rules are supplemented by the local rules of an individual court. The dispute brought before the court is called the case, suit, action, cause, or controversy.

The man who has been injured in the auto accident, the one who complains or sues, is the plaintiff or complainant. The

plaintiff begins by filing the complaint, the formal written statement in which he presents the facts as he believes them to be and demands the relief to which he believes he is entitled. This begins the suit. (Actually, the plaintiff probably first goes to his lawyer, who draws up the complaint and files it in the clerk's office of the proper court.)

To file a paper or other document is to place it in the official custody of the clerk of the court. The clerk is then required to record upon it the date of its receipt and to retain it in the office, subject to inspection by whomever it may concern. It becomes a part of the record of that case.

The driver who ran into the plaintiff, the one the plaintiff claims should pay the expenses of the accident, is the defendant. He is required to file an answer to the complaint, which is his version of what happened. He will probably deny at least part of what the plaintiff has claimed.

The plaintiff and defendant are the parties to the suit; they are called opposing parties or adversaries because they are, in this matter at least, making claims against each other. They are also called litigants, and the proceedings in court are called litigation.

At this point, it is necessary to backtrack just a bit. The law requires the defendant to answer the complaint. How does he know he has been sued? There is a special procedure for notifying a person that he or she has been sued and that he or she must file an answer within a given time. This is accomplished by the

clerk's issuing the summons, which is a type of writ (a formal command from the court), to the plaintiff or the plaintiff's attorney, who is to deliver it to the defendant(s) by mail or by procedures permitted under state law. The summons notifies each defendant named that an action has been brought against that defendant in the court and that he or she is required to appear and answer the complaint. If the defendant fails to do so, a default judgment may be entered.

To say that the defendant has been served with the summons or that there has been service of process means that the necessary papers (including the complaint) have been mailed or delivered to the defendant, officially notifying him or her of the action. When the papers have been served, the person serving the process makes a return to the court by reporting back to the court an account of the time and manner of service (or the reason why the summons was not served) or, if the papers have been served by mail, by filing with the court the required acknowledgment.

Together, the complaint and the answer make up the pleadings: the opposing parties' formal allegations of their respective claims and defenses submitted for the judgment of the court. From the pleadings, it is possible to determine the gist of the dispute. Generally, there will be one or more points of disagreement; these are called the issue, the heart of the dispute.

Once the answer has been filed, issue has been joined; that is, the parties have agreed on what the issue actually is, and

the case is ready to be set for trial. A case does not go to trial immediately after issue has been joined, however. Many steps may have to be taken to prepare the case. Hundreds of years of court proceedings have led to the conclusion that a dispute is resolved more efficiently and more fairly if both sides have as much information as possible. If, in the hypothetical case, the driver is employed by another person or a company, if his brakes were defective, or if his driver's license has been suspended, the plaintiff should know. The defendant, in turn, is entitled to know, for example, that the plaintiff was injured in a different accident the day before or that the plaintiff has trouble seeing well in bright sunlight. The defendant is also entitled to know the plaintiff's income if it is part of the expense the defendant will be expected to pay. The procedures for obtaining from the opposing party information necessary to conduct the case are called discovery.

In routine cases, discovery proceedings are carried out by the lawyers, or counsel; the court is not directly involved. However, in some types of complex cases, and in cases in which a court is attempting to reduce the time spent in discovery, the court may become directly involved by establishing times and places for discovery and by supervising the proceedings.

In many courts, the responsibility for supervising discovery procedures and ruling on discovery motions is delegated to magistrates. A procedure exists for appealing the magistrate's rulings to the district judge.

The three most common ways of obtaining discovery are by interrogatory, deposition, or motion for production of documents.

Interrogatories are written questions served on an adversary, who is required to serve written answers under oath.

A deposition is usually an oral statement by a person made under oath and before an officer of the court or an attorney. It is not made in open court, and it is taken down in writing, usually by a court reporter. The attorney for the opposing party is notified to attend and may cross-examine the deposed person. Anyone with relevant information may be deposed: the parties to the suit, witnesses, and so on. The deposition is used most often to obtain discovery, but under certain conditions, when alternate sources of the evidence are not readily available, it may be introduced as evidence at the trial. If, for example, one party believes that the opposing party has in its possession some document, such as an insurance policy or a statement made by a witness at the time of the accident, that is necessary to his or her case, he or she may ask to see the document. If the request is denied, he or she may then ask the court to compel the adversary to show him or her the document. This is done by bringing a motion to compel the production of documents. If the court decides that the requesting party is entitled to see the document, the judge will order it produced.

A motion is a request that the court order some particular thing or response. Some motions are granted as a matter of course; others are granted only after the opposing party has been

given notice and an opportunity to argue against the motion.

Typically, one party files a motion asking the court to order some action, at the same time scheduling it for hearing on the next day the judge will be hearing motions. Notice is the information or warning given to a person by the party about something he or she is entitled to know. In the example of the automobile accident, the opposing party is entitled to know that his adversary is asking the court to compel him to produce an insurance policy. He may think that the moving party, the party that brought the motion, has no right to see the requested papers and that he, the opposing party, has a right to ask the court not to compel the production of the document. A hearing, a relatively formal proceeding in which both sides have an opportunity to be heard, is therefore scheduled before the judge. After the arguments of both sides are heard and their briefs or supporting memorandums considered, the judge will either grant the motion, that is, order what was asked, or deny it, that is, refuse to order it. The judge may choose to take the matter under advisement, that is, set it aside for the time being and grant or deny the motion at a later date.

There is no limit to the number or kinds of motions that may be filed. Before the day of trial the parties may have made any or all of the following motions:

Motion to amend the complaint: A request to the court for permission to correct an error in the complaint.

Motion to dismiss: A request to the court to dismiss a case

because the plaintiff has not alleged any legal basis for relief. For example, the mover might allege that the court does not have jurisdiction over the person of the defendant or that the amount of money in dispute is not sufficient to come within the court's jurisdiction.

Motion for judgment on the pleadings: A request for judgment by the court without trial, if the pleadings alone show that one party is entitled to judgment.

Motion to produce: A request for anything the mover needs or thinks he or she has a right to have, such as an insurance policy, statements taken from witnesses at the time of an accident, and so forth.

Motion for change of venue: If the defendant has been sued at a place distant from his or her residence, he or she may ask the court to transfer the case to a more convenient location. One of the most frequent reasons for change of venue is prejudicial pretrial publicity.

Motion to extend time: A request that the court extend the time allowed for a certain procedure. For example, although the defendant must answer the complaint within twenty days, he or she may ask the court to grant an extension for good cause. These motions are frequently referred to informally as requests for "continuances."

Motion for summary judgment: Should all the facts of a case be established and uncontested, as the result of discovery or otherwise, a party may move for judgment on some or all of the

issues raised in the case as a matter of law. Motions to amend pleadings or to add or remove parties from the suit may also be filed.

In the example of the automobile accident, the defendant may decide that he has also been injured and that the plaintiff caused the accident and should therefore pay both his own and the defendant's expenses. The defendant then files a counterclaim. He sues the plaintiff just as the plaintiff sued him, but both actions are kept within the same suit.

On the other hand, the defendant may admit that the plaintiff was not at fault, that the accident was a result of the bad brakes on his own car, a condition about which he knew nothing and that he feels was the fault of the mechanic who recently checked and guaranteed the brakes. So the defendant files a cross-claim against a third-party defendant.

A third party can also be brought into the suit by way of intervention. For example, suppose the plaintiff's employer was required to give him sick pay while he was unable to work as a result of the accident. The employer may intervene in the suit or make itself a party to the suit. In this case the employer would be seeking to have the defendant pay its expenses as well as those of the plaintiff. By an intervention, a third party joins with the plaintiff to seek what is claimed in the complaint, or joins with the defendant to resist the claims of the plaintiff. In some cases, intervention is brought against both the defendant and the plaintiff.

At this time a pretrial conference may be scheduled before a judge or magistrate. The function of this meeting of the judge with the attorneys for both sides is to lay bare the heart of the dispute and to narrow the issue as much as possible, thus simplifying the subsequent trial. In some courts a pretrial conference is routinely held in each case; in others a conference is held only when requested by counsel or ordered by the court. In many courts, a magistrate conducts the pretrial conference.

Typically, the conference is held after discovery has been completed or is nearly completed, when counsel are fully aware of the evidence in the case. In complex cases a pretrial conference may be held early in the proceedings to establish discovery schedules and other preliminary matters. (There are also various other kinds of conferences, such as status conferences. The nature of these various meetings will vary in part according to the judge's case management approach.)

In advance of a pretrial conference conducted by a judge, the courtroom deputy reviews the case file and places the documents in sequence. The secretary should then put the file and record in the place designated by the judge. This should be done sufficiently in advance of the conference to allow the judge time to look through the file. If a proposed pretrial order (see below) has been submitted, the secretary should place it at the top of the file.

At the conference, the attorneys first stipulate their points of agreement. This avoids unnecessary proof of uncon-

tested facts at the trial. In the example, counsel will probably agree on the location of the accident, who was driving which auto, the direction in which each car was traveling, and possibly even the extent of injury. The main issue will probably be whether the plaintiff or the defendant had the obligation to allow the other to pass. The attorneys for both sides will indicate the witnesses they will call and the exhibits they will present at the trial.

Some judges ask that the courtroom deputy, the law clerk, or both attend pretrial conferences. Frequently, the judge's secretary is present for note-taking if the presence of a court reporter is not required and if the conference is held in chambers.

The agreements made at the conference are set out in the pretrial order, a draft of which is prepared by counsel in advance of the conference. This order is then amended and signed by the attorneys and the judge at the conference.

We come now to the day set for trial of the case. In general, the parties are entitled to trial by jury in both civil and criminal cases. If a jury has been waived in a criminal case or has not been demanded in a civil case--or if the case is one not triable by jury, as in admiralty or equity cases--then the case is tried by the court, that is, by the judge alone.

The jury trial is an evidentiary proceeding in which each side presents its case to a group of disinterested, impartial, and qualified citizens. It takes place in the presence and under the supervision of the judge, who rules upon all questions of

procedure and admission of evidence and instructs the jury in the law.

Jurors are selected from the jury venire, which is a panel made up of about thirty persons whose names have been selected at random from voter lists or other sources and who have been summoned to serve as jurors on the day of trial. From this jury venire, a jury of twelve persons in criminal cases or of six persons (usually) in civil cases is selected to hear the evidence presented by both sides and determine which version of the facts is accurate (for example, to determine which party was at fault in the accident). This trial jury is called a petit jury, and the decision it reaches is called a verdict. The judge first asks certain questions of the venire to determine whether the prospective jurors are qualified by law and whether any are likely to be prejudiced in favor of or against either party. This questioning process is called the voir dire. If, for example, one of the prospective jurors is a relative or close friend of one of the parties, he or she cannot be considered disinterested and impartial, and should not serve on the jury that will decide the case. The opposing party is entitled to challenge any prospective juror who may be other than disinterested and impartial. This is challenge for cause, and the judge rules on whether there is sufficient reason to exclude that person from the jury. Each side is also allowed a limited number of peremptory challenges, which allow exclusion of a person from the jury without any showing of cause.

(The petit jury, which is used in both criminal and civil trials, must be distinguished from the grand jury, which is used only at a preliminary stage of criminal cases to determine whether the government's evidence is sufficient to offer probable cause for bringing a defendant to trial; see section 8.610.)

In the case of the automobile accident, the plaintiff must prove that the defendant should pay for the damage; the plaintiff thus has the burden of proof. He must, therefore, present evidence by calling on witnesses who may have seen the accident to describe what they saw, by calling on doctors to establish the extent of the injury, by showing pictures of the scene of the accident, and by presenting medical bills, auto repair bills, and city ordinances regarding traffic regulations. He also provides any other evidence that will tend to prove to the jury that the defendant was at fault and that the plaintiff is entitled to recover for damages.

Testimony is the direct oral evidence, as distinguished from written and documentary evidence, given by a witness. The defendant usually tries to rebut the proof offered by the plaintiff. He may attempt to impeach, or discredit, one or more of the plaintiff's witnesses or to present other witnesses whose testimony contradicts theirs. The defendant in the example might impeach the plaintiff's witness by showing that he is prejudiced or not truthful, that he does not see well, that his view was obscured, that he had been drinking, and so on.

The attorney presents testimony of a witness by means of ex-

amination. The witness is asked questions, the answers to which are likely to bring out the facts the attorney wants to establish. After the examination, the opposing attorney cross-examines the witness. The questions the opposing attorney asks the witness are designed to test the truth of his or her testimony or to bring to light other facts in the case.

Attendance of witnesses at trial is secured by means of a subpoena, which is a command that a person appear in court to testify. The subpoena is issued by the clerk under the seal of the court; it may be served by the marshal or by any adult not a party to the suit. When the subpoena is served on behalf of a private party, it must be accompanied by the tender of witness fee and reimbursement for mileage.

A subpoena duces tecum commands a person to appear in court to testify and to bring with him or her certain books or records that are in his or her possession or control. In the example, a subpoena duces tecum might be issued to command the plaintiff's employer to bring to court the payroll ledger of the company, to prove that the plaintiff was earning as much as he claims.

The jury hears all the evidence offered by both sides and then retires to deliberate. In most instances, it agrees upon a verdict. It may be a general verdict indicating whether the decision is for the plaintiff or the defendant or a special verdict answering certain specific interrogatories propounded by the judge to the jury.

If the case has been tried by the court, that is, by the

judge without a jury, then the judge makes findings of fact and conclusions of law. In either case, the next step is the entry of judgment.

The judgment is a separate document from the verdict of the jury or the written opinion of the judge upon which it is based. It is the final decree or order of the court in the case. The judgment is effective when it is entered on the docket sheet by the clerk.

A few other terms related to this stage of the case might be discussed here.

When the plaintiff has presented all his or her evidence to the jury, the defendant may feel that the plaintiff has not proved enough to be entitled to recovery. For example, although the plaintiff in the automobile accident may have proved that he was badly injured, the defendant might say that he failed to present evidence sufficient to prove that his injury was the defendant's fault. In this case, the defendant would make a motion for a directed verdict, asking the court to direct the jury that only one verdict is possible--a verdict for the defendant.

Or, after the jury has returned its verdict, either party may feel that the verdict is obviously wrong and make a motion for judgment nov (notwithstanding the verdict). Such a motion, which must be filed ten days from the date the judgment on the verdict is entered, asks the court to render judgment different from the jury's verdict. This motion may be granted only if the judge thinks no evidence was presented that would support the

verdict of the jury and if the requesting party had previously requested a directed verdict at the close of the opponent's case.

One party may feel that the trial was unfair. For example, he or she may claim unfairness because one of the jurors slept during the trial or because the judge or one of the lawyers inadvertently said something prejudicial to the jury during an important part of the trial. As a result he or she may make a motion for a new trial. If this motion is granted, the entire trial process is repeated.

Of course, if either party believes some wrong has been committed during the trial, he or she may call it to the attention of the court at that time and a mistrial may be declared. The trial is then stopped, the jurors are excused, and a new trial is scheduled for a later date.

More often, at the end of the trial, judgment is entered, the motion for a new trial is denied, and parties go on to the next step. In the case of the automobile accident, if the plaintiff prevails, he will obtain a judgment entitling him to recover a certain amount of money from the defendant. This represents the value in dollars of the damage he suffered from the accident; in general, he will also be awarded interest and costs. The costs awarded include certain expenses of the trial, such as fees and mileage paid to witnesses at the time they are subpoenaed, certain of the expenses involved in taking depositions, and so on. Attorneys' fees, usually the largest expense in a trial, are

occasionally but not ordinarily included in the costs that the losing party must pay to the winner.

After a certain number of days, if the losing party does not appeal to a higher court, the plaintiff is entitled to collect his or her judgment. If the defendant does not voluntarily pay that amount, the plaintiff may apply to the court for a writ of execution, which orders that the judgment be paid and may serve as the basis to attach the defendant's property in satisfaction of the judgment.

8.300 Record Keeping

The major steps that occur in a court case are written down in one form or another. When the complaint is first filed, it is put into a folder and assigned a number to distinguish it from other cases in the district. This number is usually referred to as the docket number and generally contains two parts: first, the last two digits of the year in which the case was filed and, second, a number reflecting the order of filing.

Every document subsequently filed in the case--that is, the answer, motions, orders, subpoenas, and so on--is marked with the docket number and put into a folder that is informally called the case file. Any subsequent proceeding in open court is noted in writing by the clerk of court. Such a written notation is called a minute entry or minute order and is also put into the record folder.

The clerk's office maintains the complete record of each

case. In most cases, there is little for the judge's staff to do upon initial filing of the case except to make such record entries as may be needed by the judge to monitor and control the progress of each case.

The Federal Judicial Center and the Administrative Office have developed computer-based management systems for the federal courts. The secretary will find it helpful to be familiar with the status of these various applications in the individual court.

8.400 Special Terminology

Up to this point the steps in one kind of case, an ordinary tort case, have been traced. Other types of civil actions entail further special terminology.

8.410 Injunction

An injunction is an order of the court that requires a person to do something or refrain from doing something. For example, if a person is about to be evicted from his or her home in what he or she believes to be a violation of the federal law, that person may apply to the court for an injunction against the eviction by the landlord. The judge will probably set the case for a hearing, on the issuance of a preliminary injunction, within a few days. Consideration of the permanency of the injunction will await the trial on the merits. However, if even a short delay in obtaining the injunction would result in irreparable harm to the person and his or her family, he or she can apply to the court for a temporary restraining order. By this

action the court orders the party against whom the order is obtained to wait to act until a hearing can be held. If necessary, the court may issue this order ex parte, that is, solely on the application of the tenant, with an opportunity for the landlord to be heard later.

If the judge is not in chambers when the temporary restraining order is requested, the secretary or law clerk may be urged to bring the order to the judge's immediate attention in open court or otherwise. The secretary should be prepared to handle such emergency inquiries and be familiar with the judge's policy about them.

Most district judges will not sign requests for ex parte restraining orders except in rare instances of dire emergency. The judges in some courts ask the secretary to advise a lawyer who comes to the chambers seeking such an order that the judge does not ordinarily sign temporary restraining orders without hearing from opposing counsel. The lawyer may then arrange for the judge to see both counsel in person or for a telephone conference, depending on the judge's policy. The secretary or law clerk should arrange for the courtroom deputy and the court reporter to be present at the conference, unless the judge does not require them. Policies in this area vary from court to court, and secretaries should discuss them with the judges.

8.420 Habeas Corpus

A writ of habeas corpus is an order of the court commanding someone with custody of a person to bring that person before the court. The most common types of habeas corpus petitions are those from prisoners under sentences of state courts. The person who brings this action is called the petitioner rather than the plaintiff, as in most other civil actions. The petitioner alleges that he or she is being held in custody in violation of the Constitution and wants the federal court to examine the grounds of his or her complaint and, upon finding that the custody is illegal, order his or her immediate release.

If a petitioner alleges, for example, that he or she was convicted without a fair trial, that he or she pleaded guilty as a result of being misinformed or coerced to do so, or that he or she was not represented by a lawyer and did not understand the implications of the confession, the court will order the warden or other person holding the petitioner in custody to show cause why the writ should not be granted. The warden will then make a return showing the authority for the detention. Note that there are other types of petitions by state prisoners, the most common being civil rights actions complaining of prison conditions.

8.430 Section 2255 Actions

A prisoner convicted in a federal court who feels that he or she was sentenced in violation of the Constitution has similar recourse. The prisoner may make a motion, in the same court that

handed down the sentence, to vacate, set aside, or correct the sentence. This is informally known as a 2255 motion because it is provided by section 2255 of title 28 of the U.S. Code.

8.440 In Forma Pauperis

Prisoner petitions, as well as other kinds of civil cases, are often brought in forma pauperis, which means that the petitioner declares under oath that he or she is unable to pay the costs of the suit. With the court's permission, the suit is filed as a pauper suit and the petitioner is then excused from paying a filing fee. He or she can also obtain service of process without payment of the marshal's fee and necessary transcripts for appeal of the proceedings at the expense of the government. In criminal cases only, under the Criminal Justice Act, a lawyer may be appointed to represent the petitioner at government expense. A case may also be presented pro se, which means that the person has neither court-appointed nor privately appointed counsel and represents himself or herself directly.

8.500 Special Types of Civil Cases

8.510 Bankruptcy

Bankruptcy serves a twofold function. It grants persons (or corporations) without sufficient assets to meet their obligations the chance to make a fresh start and remain useful members of society by relieving them of the oppressive burden of their debts. It also provides for an orderly liquidation of nonexempt assets of the debtor for the benefit of creditors.

The bankruptcy judge is the judicial officer who presides over the administration of bankruptcy matters in the district court and conducts most adversary proceedings in bankruptcy cases by delegation of authority from the district judges.

The trustee in bankruptcy is a private individual who is appointed as an officer of the court. The trustee may be selected by the debtor's creditors, but is normally appointed by the bankruptcy judge. The trustee takes title to that property of the debtor which is not exempt under state law. Under the supervision of the bankruptcy judge, the trustee liquidates all nonexempt assets of the debtor for the benefit of the creditors. Under a pilot program in place in eighteen districts, this function is performed by private trustees appointed and supervised by one of ten U.S. trustees, officials of the Department of Justice. In nonpilot districts, trustees report to the court's estate administrator.

8.520 Admiralty and Maritime

Admiralty cases are those which pertain to seamen and vessels that ply the navigable waters of the United States. Admiralty cases are civil actions and, in general, follow the rules of civil procedure. There are a few specialized terms in these cases, however.

Action in rem: Rem is a Latin word that means "thing." An action in rem is an action against a thing rather than against the person who owns it. If a vessel causes damage--for example,

if it rams another vessel or owes a debt for provisions for a voyage--the party who has suffered the loss or to whom the debt is owed may sue the owner of the ship. In certain circumstances, that party may also proceed against the ship itself. A warrant for the impounding of the ship is issued, and the ship is detained. It may be released by the posting of a bond. The owner, or whoever has an ownership interest in the vessel, is summoned or given notice to file an answer; if the owner fails to answer, the vessel may be sold for payment of the debt. Actions in rem may also apply to other types of civil litigation, particularly actions involving real property.

Limitations of liability: In certain cases a shipowner is liable for damages only to the extent of the value of the ship. That is, he or she is not personally liable for the amount still owed after sale of the vessel if proceeds from the sale are insufficient to pay for the damages the vessel has caused. In such instances, the shipowner petitions the court to declare the limit of his or her liability. If the court decides that the owner is entitled to such a limit, the ship is appraised, the owner's interest is weighed against the claims, and the claims are paid off pro rata; that is, the money from the sale is divided among claimants in proportion to the size of their various claims.

8.600 Criminal Actions

A criminal case differs from a civil case in many respects. For a criminal case to be decided in federal court, it must in-

volve an alleged violation of federal law. The violation is considered to be an offense against the United States and is prosecuted by the United States attorney. The title of such a case will be "United States v. (name of the defendant)."

8.610 Preliminary Proceedings

Preliminary proceedings are those that begin the criminal prosecution. The complaint, a sworn statement of the essential facts constituting the offense, is usually made before a magistrate. The complaint is usually made by the U.S. attorney or by a federal law enforcement officer.

Upon a showing of probable cause, a warrant for arrest is issued by the magistrate. The warrant names the defendant, describes the crime, and orders the marshal to arrest the defendant. At the request of the U.S. attorney, the magistrate may instead issue a summons ordering the defendant to appear at a stated time and place. In the case of a warrant for arrest, the person making the arrest must bring the defendant before the magistrate without unnecessary delay for an initial appearance. The defendant is informed of his or her rights, but is not called upon to plead innocent or guilty at this time. (This occurs at the arraignment.) The defendant may retain counsel or, if he or she cannot afford to pay an attorney, may have counsel appointed at the expense of the government under the Criminal Justice Act.

Bail may be set or other conditions of release established by the magistrate at the initial appearance or at a later court

appearance. Bail is an amount of money, in cash or a bond, that must be guaranteed to ensure the defendant's presence at trial or at subsequent proceedings. If the judge or magistrate requires bail, and the defendant cannot meet the bail, the defendant is held in custody until the case is disposed of or until bail is met. A bond is a promise to pay a certain amount of money if the condition of the bond--in this case the defendant's appearance at trial--is not met.

A preliminary examination, at which evidence is presented, is held to determine if there is probable cause for belief that a crime has been committed and that the defendant committed the crime. It is usually held within ten to twenty days after the initial appearance. If the evidence is insufficient, the defendant is discharged and the papers in the proceeding are forwarded to the clerk. If probable cause is found, the defendant is detained to answer in the district court. No preliminary examination is held, however, if an indictment is returned or an information filed.

Under the Fifth Amendment, a person charged with a felony is entitled to have the charge presented to a grand jury. A grand jury, although selected in much the same manner as a petit jury, is asked to decide only whether probable cause exists to bring a person to trial for a crime. The grand jury hears only one side of the case, the government's, and does not render a verdict. The grand jury's decision that the evidence is sufficient to constitute probable cause is called an indictment, that is, a charge

that the person named should stand trial to determine his or her guilt. The indictment states the essential facts surrounding the commission of the crime and cites the statute, rule, or regulation the defendant is alleged to have violated.

Criminal accusations may also be brought by the United States attorney through an information in misdemeanor cases, which do not require action by a grand jury, or where indictment is waived by the defendant.

The next step in the process is the arraignment. The defendant appears in open court, the indictment or information is read, and he or she enters a plea. He or she may plead guilty, not guilty, or nolo contendere. Nolo contendere, or "no contest," means that the defendant does not actually plead guilty but that he or she does not contest the charge and is subject to sentence by the court as though guilty. The judge has the right to accept or refuse a plea of guilty or nolo contendere.

If the defendant pleads not guilty, he or she is returned to custody or allowed to go free on bail while awaiting the day set for trial.

8.620 Pretrial Motions

During the time prior to the trial, various motions may be brought.

Motion to dismiss: As in a civil proceeding, the defendant may ask the court to dismiss the charges. He or she may claim that there was a defect in the grand jury proceedings, claim that

the court does not have jurisdiction over the offense with which he or she is charged, or claim any other fact that might cause the court to dismiss the indictment or information brought.

Motion to suppress evidence: The defendant may ask the court not to allow certain evidence to be admitted against him or her at the trial, contending it was obtained illegally. For example, police may have searched the defendant's home without a search warrant and, as a result of the search, found narcotics, burglary tools, or checks stolen from the U.S. mail. According to the Constitution, a person has a right to enjoy the privacy of his or her home without fear of unreasonable searches.

Motion to sever: In a case in which two defendants are tried together, one of them may feel that the jury will be prejudiced against him or her because of the bad reputation of or the strength of the evidence against the other defendant. He or she may ask the court to separate the two cases and try them separately.

Motion for a bill of particulars: The defendant may ask the court to order the United States attorney to state the details of the alleged crime, for example, the time and place at which it was supposedly committed, the manner in which it was allegedly committed, and so forth.

Motion for discovery and inspection: The defendant may ask the court to order the United States attorney to permit the defendant to inspect and copy certain documents or information about which he or she has a right to be informed, for example,

any statements or confessions by the defendant or reports of physical and mental examinations.

Motion for change of venue: Generally, a defendant is tried in the district in which the crime was allegedly committed. The defendant may move for a transfer to another geographical district, or venue, if there appears to be such prejudice that he or she could not obtain a fair trial in the original district.

Omnibus hearing: During the time before trial, depositions may be taken, witnesses may be subpoenaed, and so on. Traditionally, discovery in criminal cases has been extremely limited. In recent years some courts have adopted the practice of conducting a pretrial hearing to determine what motions will be filed, to simplify the issues, and to expedite the full disclosure of evidence. Such a hearing is called an omnibus hearing because it combines all discovery procedures and all motions into a single hearing.

8.630 The Trial

At the trial, evidence is presented through examination and cross-examination of witnesses. The burden of proof (beyond a reasonable doubt) is higher than that in civil proceedings, and protection is afforded to the right of the defendant against self-incrimination. The attorneys make closing arguments, and the judge charges the jury on the law involved in the case.

After all the evidence of one or both sides has been presented, the defendant may bring a motion for judgment of acquit-

tal. The granting of this motion removes the case from the jury and amounts to a court decree that the defendant is not guilty.

If the jury returns a verdict of guilty, the court may still, on motion of the defendant, set aside the verdict and enter a judgment of acquittal. The verdict of the jury must be unanimous and, upon return of the verdict, the jury may be polled to verify its unanimity.

A judgment of conviction sets forth the plea, the verdict of the jury (or the findings of the court if the case was tried without a jury), the pronouncement of the judgment, and the sentence.

8.640 Presentence Investigation Report

Prior to sentencing, the probation office of the court makes a presentence investigation and submits a report to aid the court in imposing sentence. Sentencing options of imprisonment or fine are spelled out in the statute defining the criminal offense. The judge has the additional alternative of sentencing the defendant to supervised or unsupervised probation under such conditions as the court defines. The probation office attaches a "Report on Sentenced Offender by United States District Judge" to the presentence report. When the judge has commented on and signed that form, the secretary should return it to the probation office.

The reports made by probation officers for district judges' use in sentencing are confidential documents, subject to disclo-

sure, with exceptions, only to the defendant and his or her attorney under the Federal Rules of Criminal Procedure. Any further disclosure is subject to the discretion of the district judge. The general practice is to retain the reports in the judge's chambers at least for the period of time within which a motion for reduction of sentence can be acted upon. From the secretary's standpoint, a four-month retention period is the general rule. If the conviction is appealed, the report should be retained for four months after the appeal has been terminated. When the four months have elapsed, the secretary should consult the judge as to further retention of the report in chambers and, when the judge has no further use for it, return the report to the chief probation officer.

The secretary and other persons on a judge's staff must never divulge the contents of a presentence investigation report without explicit instruction from the judge.

8.650 Sentencing

Some judges ask their staffs to keep a sentencing file on defendants. This may include the presentence report, sentencing council recommendation chart, and guideline evaluation worksheet on which the defendant's salient factor score is computed. (The Parole Commission calculates a salient factor score to determine when and whether a sentenced defendant should be released on parole. The probation officer also calculates this score, for the judge's information, at the time of sentencing.) Prior to a sen-

tencing date, the secretary or law clerk should assemble the court files needed for the sentencings set on that day. They should be placed in such a location that the judge can reexamine the files before the sentencing. In some instances, the judge will want to confer with the probation officer who prepared the presentence report before imposition of sentence. Additionally, the secretary or clerk should be certain that the following parties are present in the courtroom for every sentencing: the court reporter, courtroom deputy, marshal, United States attorney, probation officer, defense counsel, and defendant.

Some district judges maintain a sentence record book that contains information about the sentence of every person sentenced by the judge. This information enables the judge to review past sentences imposed for offenses similar to those in pending cases.

After sentencing, the court informs the defendant of his or her right to appeal. In limited circumstances, the sentence may be stayed or temporarily suspended and the defendant admitted to bail when an appeal is taken. A sentence of death is always stayed pending appeal.

8.700 Appeal

Despite all the safeguards to fairness that the rules of procedure provide, one party may have reason to think that he or she did not receive a fair trial or that there was otherwise a defect in the district court proceedings such as to support a reversal of its judgment. A party may think that the judge's

charge to the jury gave an incorrect interpretation of the law to be applied, that some evidence was presented in violation of the rules, or that the evidence did not justify the verdict. Thus the law provides for review, by the court of appeals for the circuit in which the district court is located, of any final judgment or order of the court. In general, the dissatisfied party must have made known his or her objection to the supposed error at the time it was committed in order to be allowed to appeal the error after the trial.

The party who wants to appeal, the appellant, files a notice of appeal in the district court, informing everyone concerned that the case is not yet over. If the defendant is appealing a judgment ordering him or her to pay the plaintiff (the appellee), he or she may obtain a stay of execution by giving a supersedeas bond. This stay prevents the plaintiff from collecting the judgment until the case has been reviewed on appeal. A supersedeas bond must be of sufficient amount to ensure that the judgment can and will be paid at the proper time if required. If the appellant does not ask for a stay of execution, he or she need only give a bond for costs, a much smaller amount, to ensure that the costs of the appeal will be paid.

The court of appeals does not try the case again or redetermine the facts; rather, it reviews the case on the record to decide the legal issues presented. The original papers and exhibits filed in the district court, the transcripts of all proceedings, and a certified copy of the docket sheet entries constitute

the record on appeal. The parties designate which parts of the record they want the appeals court to review, and the appellant has those portions reproduced as an appendix to the parties' written arguments. Since the appellant and appellee rely on only one appendix, it is referred to as a joint appendix. The clerk of the district court prepares the record, a docket fee is paid, and the record is transmitted to the clerk of the court of appeals. The court of appeals studies the record and considers the objections or alleged errors.

Each party is given an opportunity to present its legal arguments to the court in writing. The document through which arguments are presented is called a brief. Because the appellant has the burden of convincing the court of appeals that the trial court erred, he or she files the opening brief. The appellee then files a brief in response; if the appellant wishes, he or she may then file a reply brief addressing any additional matters raised in the appellee's brief.

The attorneys are allowed to present oral arguments in open court if the court considers it necessary. Most cases are heard by a panel of three judges, but in cases of exceptional importance or where the court finds it necessary to secure or maintain uniformity of decisions, a case may be heard en banc, that is, by all of the active judges on the court of appeals. En banc hearings are held only when ordered by a majority of the active judges on the court.

The court of appeals renders a judgment either affirming the

judgment of the district court or reversing it. If the judgment is reversed, it may also be remanded, that is, sent back to the district court for the taking of further evidence. In most cases, the court of appeals also produces a written opinion setting forth the legal reasoning in support of its decision. Several kinds of opinions may be filed by the court.

A per curiam opinion is usually a short opinion dealing with a simple case involving issues that have been decided frequently. The opinion is not identified with the name of the judge who wrote it, but with the names of all the judges sitting on the panel.

An authored opinion identifies the name of the judge who wrote the opinion in addition to the names of the other judges on the panel and whether they support it or dissent from it. This conventional kind of opinion discusses the issues and the authorities and reasons for the court's decision.

A dissenting opinion is the opinion of one or more members of a panel who disagree with the result reached by the majority.

A concurring opinion is the opinion of one or more members of a panel, constituting less than a majority, who agree with the result of the majority opinion, but states separately the concurring judges' views of the case or reasoning.

The party that loses an appeal may file a petition for rehearing that attempts to convince the sitting panel that their decision was erroneous and should be withdrawn or revised. The prevailing party may not file a response to the petition unless

one is requested by the court. The great majority of petitions for rehearing are denied.

The losing party may also move for a rehearing en banc. Such a motion, if filed, is circulated to all active judges of the appellate court and to all the members of the original panel.

The mandate is the document through which the court of appeals formally notifies the district court of its decision and through which jurisdiction for any necessary additional proceedings is conferred upon the district court. The losing party may request by motion that the issuance of the mandate be stayed while it applies for review of the case by the Supreme Court.

Parties may seek review of their case in the Supreme Court of the United States. In some situations, such as when a federal court has held an act of Congress to be unconstitutional, the losing party enjoys an absolute right to appeal to the Supreme Court, which upon finding that jurisdiction exists then has no choice but to review the case. (The Court dismisses many such cases for "want of a substantial federal question.") In the great majority of circumstances, however, the parties may only ask the Supreme Court to review the case by petitioning the Court to issue a writ of certiorari. It is then in the Court's discretion to issue the writ and thus review the case.

SUBJECT INDEX

D

G

H

I

J

L

M

R

S