

## THE LAWYER REPRESENTATIVE'S ROLE THROUGHOUT THE YEAR

One of the changes brought about by the 1976 reform of the judicial conference was to make it a year-long process, a continuing entity, rather than a one-time event.

This is consistent with the overall purpose of the conference to provide a means of improving the administration of justice in the Ninth Circuit. Thus the role of the lawyer representative does not end with the conclusion of the conference, but rather continues on the local level throughout the year, culminating in the succeeding conference.

**Number and Selection Process:** Before the conference was reorganized, “lawyer delegates” as they were then called, were hand picked by individual circuit and district judges. Prior to 1976, the number of lawyers was far higher than today, with a ratio of lawyer delegates to judicial officers close to 3:1, and the role of the lawyers was predominantly as social guests. After 1976, the reforms sought to emphasize the “lawyer representative” concept and established a mechanism requiring input from lawyers and judges with specific criteria for the selection of lawyers who would be invited to attend the conference. From a ratio of one per active district judgeship (in 1998=99), plus the U.S. attorney and federal public defender from each district, the number of lawyer representatives invited to attend has been increased to 1.28 lawyer representatives per district. The Ninth Circuit has 112 authorized district judgeships which includes 3 temporary judgeships in 2012, and 175 lawyers were either elected or appointed to serve as lawyer representatives in one of the 15 judicial districts that comprise the circuit.



*Lawyer representatives attended an orientation meeting at the 2016 Ninth Circuit Judicial Conference held in Big Sky, Montana.*



The Order of the Judicial Council spells out five criteria necessary for a lawyer to qualify for selection as a lawyer representative:

1. Admitted to practice in the district court and actively involved in federal practice.
2. Interested in the purposes and work of the conference.
3. Willing and able to contribute actively to the purposes and work of the conference.
4. Willing to assist in implementing conference programs with the local bar.
5. Together with others selected, will constitute a fair cross-section of practitioners before the federal courts of the district. The selection committee should consider the gender, ethnic, racial, and religious diversity and the diverse geographic and practice backgrounds of those who practice before the federal courts.  
(Order, 2.c(1)-(5))

The 1976 *Wallace Report* that recommended conference reform also insisted that “Representatives attending the circuit conference should reflect as much as possible a spectrum of the Ninth Circuit....An effort should be made to secure an appropriate race, sex, and age representation within the lawyer representative contingent...” (75 F.R.D. 553, 560).

Each district must complete the selection of new lawyer representatives to fill vacancies within 90 days after the beginning of the conference year (the last day of each conference marks the beginning of the following conference year), pursuant to one of two possible procedures:

1. The bar in the district shall nominate to a committee of judges within the district a number of proposed lawyer representatives, approximately three times larger than the number to be selected, and the committee of judges shall select the lawyer representatives for that district from the names so submitted.
2. A committee of judges within the district shall nominate to the bar within the district a number of lawyer representatives approximately three times larger than the number to be selected, and the bar shall select the lawyer representatives for that district from among the names so submitted. (Order, 2.b(1))

Any alternative procedure may also be used with the prior approval of the executive committee. Whatever the procedure, some districts rely heavily on federal court committees or a chapter of the Federal Bar Association for assistance in the nomination process; others place an advertisement in the local legal paper and solicit resumes of interested candidates. A concerted effort at education and outreach is essential to attract a wide array of qualified individuals who are truly representative of the federal bar in each district.



After the selection process is completed, the new lawyer representatives serve a three-year term. At the conclusion of their first year, lawyer representatives are eligible for election as chair of their delegation. Under policies adopted in 1995, districts are asked to elect a chair who will serve for a two-year term to assure continuity on the Lawyer Representatives Coordinating Committee. Any lawyer representative is eligible for election to a three-year term on the executive committee of the conference. Lawyer representatives who have completed their terms continue as ex-officio members of the district's delegation for two additional years (or longer if they are elected to the conference executive committee) to provide continuity and a broader base for the district delegation's work. Ex-officio members have a duty to continue to participate in all home district meetings and activities, but may only attend the annual judicial conference as an alternate for a lawyer representative who is unable to attend.

**Representation & Responsibilities:** In addition to their responsibilities at the annual judicial conference, lawyer representatives have a continuing role the rest of the year, particularly the responsibility to carry the work of the conference back to the bar. Lawyer representatives do not attend the conference in their individual capacities—they attend with the duty to teach, discuss, and implement those positions of the conference that are appropriate to the improvement of justice in their district. Similarly, an intended statutory role for the lawyer participants in the conference is to offer constructive criticism of the way courts are functioning, and to inform the judges of any deficiencies in the operation of the courts in the circuit.

See the table on the following page for a list of the responsibilities of a lawyer representative.

**Chair of the Delegation:** Each district delegation of lawyer representatives is headed by a chair. Under recent changes approved by the Judicial Council, each district will elect a chair for its delegation from the group of lawyer representatives who are completing their first year of service. The chair will serve for two years. The lawyers in a delegation elect the new chair usually just prior to or, at the judicial conference each year. Some districts have elected co-chairs to reduce the demands on each individual. See table on the following page for a list of the duties and responsibilities of the chair of a district delegation.

**Lawyer Representatives Coordinating Committee:** The Lawyer Representatives Coordinating Committee (LRCC) is composed of those who chair and co-chair the 15 lawyer representative delegations from each district in the circuit. A 1991 amendment to the Order of the Judicial Council created a rotating three-member leadership structure for the LRCC. The LRCC is headed by a chair, a chair-elect, and a vice-chair — the latter two positions rotate into the chair position with each successive conference.

At each annual circuit judicial conference, the lawyer representatives elect a new vice-chair. To be eligible for election as the vice-chair, a lawyer representative must be the chair of a district delegation at the time of the election. The vice-chair serves for a year until the next



<b>Duties of a Lawyer Representative</b>
Attend and participate in lawyer representative meetings in the district (the Judicial Council order requires two or more such meetings each year).
Attend and participate in all joint meetings of lawyers and judges in the district (two or more required each year), including any district conferences.
Attend and participate in the annual judicial conference.
Vote in lawyer representative elections and in balloting for judicial conference resolutions.
Participate actively in the conference resolution process—proposing, drafting, and debating resolutions.
Educate members of the bar generally about the conference and solicit their reviews.
Speak up at district meetings and at the judicial conference to assure that the views of lawyers are heard.
Continue to attend and participate in all district meeting for two years after the expiration of their term as a lawyer representative.

conference and then becomes chair-elect. After another year of service, the chair-elect becomes the chair of the LRCC. All three members of the LRCC leadership structure serve on the conference executive committee and attend all of its meetings. In 1996, the three members of the LRCC leadership structure were also constituted as a liaison committee to the Judicial Council of the Ninth Circuit.

The LRCC coordinates the activities of the lawyer representatives, acts as a liaison between the executive committee and the lawyer representatives, and acts as a liaison between the court of appeals and the lawyer representatives. The LRCC elects individuals to fill vacancies

*contd. p. 12*



<b>Duties of the District Delegation Chairperson</b>
Attend the annual circuit conference and participate actively.
Plan and chair local lawyer representatives meetings and district conferences (the Judicial Council order requires two or more such meetings each year).
Work with the chief judge to plan joint meetings of the lawyers and judges of the local delegation (two or more required each year).
Nominate to the local bar new lawyer representatives to be selected by the judges; or assist the local bar as requested.
Inform the circuit executive when new lawyer representatives are chosen and when local delegation meeting dates and district conference dates are set.
Find ways to improve the dialogue between lawyers and judges locally and to make substantive improvements in the judicial system.
Educate members of the bar generally about the activities of the conference and solicit their opinions.
Respond on request to the chair of Lawyer Representatives Coordinating Committee as issues arise: suggest ideas for the LRCC chair or chair-elect to take to the executive committee.
Participate in all LRCC telephone conference calls and all LRCC in-person meetings (with the judges of the court of appeals, chief district judges, chief bankruptcy judges and other meetings as required) or arrange for a substitute if unable to attend.
Develop resolutions for the conference.
Prepare the annual district report on bench/bar activities, with the chief judge, for submission to the Circuit Executive's Office at least 30 days before the beginning of the conference.
Organize the district delegation dinner for the conference with the chief judge.
Ensure the attendance of a full complement of lawyer representatives at the next conference.
Recommend, propose nominations, and advise as requested on appointment to circuit committees.
Coordinate the election of the next chair in the district.



in the position of LRCC chair-elect, and vacancies in the lawyer members of the executive committee. Over the past several years, the LRCC has met separately at the conference, with the chief district judges during their late winter semi-annual meeting, and with the judges of the court of appeals. These meetings, and regular mail correspondence and telephone conference calls, give the chairs an opportunity to share ideas for projects and comment on emerging issues with other delegations.

**Examples of Accomplishments:** In the past, lawyer representatives have made a significant impact on the improvement of the administration of justice in their district and in the circuit in a variety of ways. Lawyer-sponsored initiatives resulted in the development of the Public Information and Community Outreach (PICO) Committee, now the Courts and Community Committee, to bring greater public awareness on the role of the courts. There are few limits to the means by which this may be done—creative approaches and imaginative ideas are encouraged.

**District Conferences:** Taking the improvement of communications between the bench and the bar as the key to the role of the lawyer representative, all districts have organized and conducted district conferences, modeled loosely after the annual circuit conference. These conferences—often held over a weekend in a retreat setting—include all of the judicial officers in a district and a broad cross-section of practitioners invited through a variety of means. District conferences are able to reach a far broader group of lawyers, educate them about the conference and its purposes, and obtain the benefit of their experience and ideas. These conferences also allow more time to focus on specific district concerns, and to air district grievances so remedial action can occur.

**Resolutions:** The judicial conference considers, debates, and votes on written resolutions submitted in advance by conference members. The resolutions process is one of the most tangible and lasting ways the conference makes a contribution to the improvement of the administration of justice within the circuit. The judicial council order provides that any conference member, or group of members, or district delegation, may submit a resolution to the circuit executive no less than 45 days prior to the opening session of the conference. Resolutions must relate to the business of the courts and the improvement of the administration of justice. (Order 4d.3.)

Resolutions have been submitted on a wide range of topics, from voir dire in criminal cases to depository status for the Pasadena library, from guidelines for payment in CJA cases to opposing the passage of mandatory minimum sentencing laws. At the conference, judges and lawyers vote separately on each resolution. A resolution passes if both a majority of judges and lawyers voting approve it. Successful resolutions are then referred to the Ninth Circuit Judicial Council for appropriate implementation.



The conference chair, that is, the chair of the conference executive committee, reports each year at the conference on the status of the prior year's resolutions. This policy—part of an overall effort to maintain continuity between conferences, and to assure follow up on conference resolutions—was itself instituted as a result of a resolution passed at the 1986 conference. Another 1986 resolution called for each district to consider implementing an early settlement technique for expediting civil litigation, and to report on the results at the succeeding year's conference. For the 1987 conference, most districts reported on their experiences and several had begun to implement new dispute resolution programs with the cooperation of their bars. In 1988, the conference passed a resolution recommending an in-depth study of how to use United States magistrate judges most effectively. The lawyers put forth a resolution at the 1990 circuit conference that resulted in the establishment of the first federal task force to study gender bias in the courts of the Ninth Circuit. Similarly, a 1993 conference resolution resulted in the creation of a task force to study race, religious, and ethnic bias in the courts.

Lawyer representatives are encouraged to become actively involved in the resolutions process and to begin planning and drafting resolutions early in the conference year. Often delegations or groups of conference members can solicit cross-support for resolutions during the year so that a broad coalition of individuals actually sponsors and introduces the resolution at the conference.

**Interview Projects:** A number of district delegations, including the Eastern District and the Northern District of California, have interviewed their district judges and magistrate judges concerning their preferred pretrial and in-court procedures and practices. The lawyer representatives from the district organized the interview effort, compiled the results, published them, and made them available for purchase by members of the bar. Succeeding delegations have undertaken to update these manuals and add bankruptcy judges to their scope. Practitioners have expressed many positive reactions to the manuals and find them useful practice aids.

### **Other Projects:**

The range of projects that a district delegation, or the Lawyer Representatives Coordinating Committee, can become involved in is as broad as the creativity and imaginations of the members of those bodies. One delegation worked to fund and establish a lawyers' lounge in its courthouse. Another has become active in setting up a confidential judicial evaluation process so the district judges obtain valuable feedback and suggestions for how to run their courts more efficiently. Quite a few lawyer delegations have worked with their district courts to develop and institute some form of alternative dispute resolution program, such as easily neutral evaluation, to expedite the handling of particular kinds of cases. At various times, lawyer representatives have spoken to the press or clarified legal questions involving the circuit



when it was inappropriate for judges to speak on their own behalf. The possibilities and opportunities are endless and active participation is encouraged.

The role of the lawyer representative is an important one, both at the district and the circuit levels, and the judges of the court value and appreciate their many contributions. This handbook has been developed with the hope that it will enable new lawyer representatives to “get up to speed” as quickly as possible to assure full involvement in the process.

If you have suggestions for additions or changes for future printings of this book, please contact Renée S. Lorda, Assistant Circuit Executive for Conference and Education, at (415) 355-8920.

