NINTH CIRCUIT JUDICIAL CONFERENCE RESOLUTIONS

1990-2008

Resolution Index 1980-1999

ALPHABETICAL INDEX

1980 - 1989 RESOLUTIONS

NINTH CIRCUIT JUDICIAL CONFERENCE

TITLE	STATUS	YEAR
A Resolution Concerning Rule 35, Federal Rules Of Criminal Procedure	Approved	1986
Adopting Procedures For Reducing Delay In Disposition Of Matters Under Submission In The Circuit	Approved as Amended	1988
Adoption And Implementing A Mechanism For Follow-Up From Conference To Conference	Approved	1987
Adoption, Implementation, And Reporting Of Settlement Procedures And Civil Litigation	Approved	1986
Advisory Committee To Study Temporary Detention Facilities Problems	Approved	1982
Appointed Counsel	Approved	1980
Appointment Of A Committee To Study Current Motion Practice Before The Ninth Circuit	Approved	1984
Apprehension Of Fugitives	Tabled	1981
Attorney Compensation Under Federal Torts Torts Claim Act	Approved	1983
CJA Fees	Approved	1983
Composition Of Appellate Division Of The District Of Guam	Withdrawn	1980
Continuing Legal Education Requirement To Be Established In Each District Which Applies To All Lawyers Admitted To Practice In Federal Court	Disapproved	1983
Creation Of Additional Judgeships	Approved	1981
Criminal Discovery	Approved	1984
Criminal Justice Act Fees	Approved	1982
Criminal Justice Act Payments	Approved	1989
Dated Opinion	Withdrawn	1980

Decentralizing Payment Of CJA Vouchers	Approved	1982
Discovery In Criminal Cases	Approved	1982
Division Of The Circuit	Approved	1982
Division Of The Circuit	Approved	1984
Division Of The Circuit (Opposition to)	Approved	1989
Establish Open Book Examination Requirement For New Admittees To The Federal Bar Covering Local Rules Of Court And As Many Additional Aspects Of The Federal Rules As The Courts Believe Important	Disapproved	1983
Establishment Of Peer Consultation Point For Lawyers	Disapproved	1983
Evaluation Of Judges	Approved	1981
Evaluation Of Lawyers	Approved	1981
Expedited Handling Of Interlocutory Appeals	Withdrawn	1980
Formation Of A Committee To Study The Use Of Telephone Conferences For Conducting Hearings In The District Court	Approved	1982
Furnishing A Copy Of Instructions To Jury	Approved	1981
Geographical Distribution Of Lawyer Representatives On Executive Committee	Disapproved	1981
Grand Jury Reform	Approved	1980
Grand Jury Reform	Disapproved	1981
Hearing Oral Argument On Appeal By Videoconference	Disapproved	1984
Helms Bill S. 1847	Approved	1982
Housing Of PreTrial Detainees	Approved	1981
Interest On Judgments	Approved	1981
Judiciary Exemption From The Balanced Budget And Emergency Deficit Control Act Of 1985	Approved	1986
Juror Questionnaires	Approved	1989
Law Clerk Selection Process	Approved	1983
Law Office Searches	Approved	1983
Law Student Rules	Approved	1980

Lawyer Reimbursement for Conference Attendance	Disapproved	1989
Legal Services Corporation	Approved	1981
Mandating 30 Minutes Per Side of Attorney Voir Dire in Jury Cases	Disapproved as Amended	1989
Mandatory Criminal Sentences	Approved	1989
Metropolitan Correction Center	Approved	1983
Notice And Comment On Proposed Revision To Federal Rule 83	Approved	1984
Numerical Allocation Of Lawyer Invitees	Tabled	1981
Opposing A Court's Reduction Of A CJA Voucher Without Stating Its Reasons And Offering The Attorney An Opportunity To Respond	Approved	1988
Preemptory Challenge (Opposition To)	Approved	1980
Proposal to Pay Judicial Officers Bi-weekly	Approved	1989
Proposed Amendment of 28 U.S.C. §333 to Provide for Biennial Circuit Judicial Conferences	Tabled	1989
Proposed Amendment To Rule 16 Fed. R. Civ. P	Approved	1982
Publication Of All Guam Opinions And Decisions	Approved	1980
Quadrennial Report Of The Commission On Executive, Legislative, And Judicial Salaries	Approved	1984
Reassignment Of Remanded Cases	Disapproved	1980
Recognition Of Pro Bono Publico Service	Approved	1984
Recognize Exceptional Attorney Pro Bono Publico Service	Approved	1983
Recommending Amendment To The Jencks Act Regarding Witness Statements	Approved as Amended	1988
Recommending Study By The Circuit Of Methods To Maintain Consistency Of The Law Of The Circuit	Approved	1988
Recommending Study By The Judicial Conference Of The United States To Support Repeal Of 28 U.S.C. Sec. 1447(d)	Approved	1988
Recommending Study Of Procedures To Increase Communication Between Federal Judges And Federal Court Practitioners	Approved	1988

Reduction Of Compensation For Panel Attorneys	Approved	1986
Regarding Appointment Of A Committee On Attorney Discipline Procedures	Approved	1988
Regarding Attorney/Juror Contact	Approved	1989
Release And Inspection Of Copies Of Presentence Investigation Reports By Defense Counsel	Approved	1982
Repeal Section 706, Title VII Of Civil Rights Act Of 1964 42 USC 2000e-5(f)(1)(b)	Disapproved	1983
Retirement Benefits For Bankruptcy Judges	Approved	1982
Service Of Process	Approved	1981
Social Security Amendment	Approved	1983
Supplemental Voir Dire	Approved	1980
Supplemental Voir Dire	Disapproved	1981
Supporting And Recommending Depository Status For The Pasadena Branch Library Of The Ninth Circuit	Approved	1988
Terms Of Delegates And Continuity In Chairman Positions	Approved	1982
Time Of Selection Of Alternative Jurors	Disapproved	1981
Timeliness Of Filing	Approved	1980
To Request Present Implementation Of Law Clerk Salaries To $33,000 Annually	Approved	1987
To Have The Ninth Circuit Rules Committee Consider Modifying Or Eliminating The "Fifteen Minute" Argument	Disapproved	1987
Urging The Congress Of The United States To Appropriate Funds For Adequate Computer Support For The Federal Courts	Approved	1988
Voir Dire Of Prospective Jurors	Disapproved	1980

ALPHABETICAL INDEX

1990 - 1999 RESOLUTIONS

NINTH CIRCUIT JUDICIAL CONFERENCE

TITLE	STATUS	YEAR
Adopt A Mechanism To Advise Court Of Preference For Summary Decision	Approved	1990
Create An Advisory Committee On Gender Bias In The Courts	Approved	1990
Establish A Standing Committee On Sentencing Guidelines	Approved as Amended	1990
Improve Security For The Court Of Appeals	Approved	1990
Repeal Mandatory Criminal Sentences And Modify Federal Sentencing Guidelines	Approved	1990
Make Discretionary The Application Of Sentencing Guidelines	Approved	1990
Modify S.2648 To Be Consistent With The U.S. Judicial Conference Statement On Case Management And 14-Point Delay Program	Approved as Substituted	1990
Strengthen Security For All Judicial Officers	Approved	1990
Study The Advisability Of Legalizing Controlled Substances	Tabled as Amended	1990

1990 RESOLUTIONS

TITLE	STATUS
Strengthen Security for All Judicial Officers	Approved
Improve Security for the Court of Appeals	Approved
Repeal Mandatory Criminal Sentences and Modify Federal Sentencing Guidelines	Approved
Make Discretionary the Application of Sentencing Guidelines	Approved
Establish a Standing Committee on Sentencing Guidelines	Approved as Amended
Study the Advisability of Legalizing Controlled Substances	Tabled
Adopt a Mechanism to Advise Court of Preference for Summary Decision	Approved
Modify S.2648 to be Consistent with the U.S. Judicial Conference Statement on Case Management and 14-Point Delay Program	Approved as Substituted
Create an Advisory Committee on Gender Bias in the Courts	Approved as Amended

1990 RESOLUTIONS

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1990 RESOLUTIONS

Ninth Circuit Judicial Conference

DATE: May 1990

TO: All Members of the Ninth Circuit Judicial Conference

FROM: 1990 Resolutions Subcommittee:
District Judge John C. Coughenour, Chair, Daniel Bent, Esquire,
and Terry Bird, Esquire

RE: Conference Resolutions Procedure

Nine resolutions have been submitted for consideration by the 1990 Ninth Circuit Judicial Conference. The resolutions have been placed on the conference agenda for debate and vote on **Friday, June 15, 1990, from 9:45 a.m. until 11:15 a.m.**

Proponents and opponents will be given a brief opportunity to speak to each resolution. Comments and debate from the floor are encouraged. Additional time has been allotted this year.

Voting will be by written ballot. Judges and lawyer representatives will vote separately. A resolution may be adopted by the conference only if a majority of both groups concur.

Ballots may be found on the back of this booklet.

STATEMENT OF PURPOSE
POLICY AND GUIDELINES
FOR THE CONDUCT OF THE BUSINESS OF THE
NINTH CIRCUIT JUDICIAL CONFERENCE

Resolutions Subcommittee
Ninth Circuit Judicial Conference
June 1990

I. It is the statutory function and purpose of the Ninth Circuit Judicial Conference (28 U.S.C. Section 333), as confirmed by Order of December 12, 1978, to consider the business of the courts of the Ninth Circuit, to advise means of improving the administration of justice, and to assist in implementing decisions made by the judicial council as to the administration of the business of the courts of the Ninth Circuit. All representatives to the conference are expected to participate actively in the business of the conference.

II. It is the policy of the judicial council of the circuit and of the judicial conference of the circuit to encourage free, open, and frank discussion and debate among all representatives to the judicial conference concerning the proper business of the conference. It is expected that all representatives will conduct themselves with the mutual respect and courtesy that is so essential to the proper and orderly functioning of a deliberative body.

III. The chair of the conference, with the advice and consent of its Executive Committee, in advance of the annual meeting, will announce to the representatives the rules that will govern the conduct of the general business sessions of the conference, including the following:

(a) A resolutions subcommittee will be created composed of at least three members of the Executive Committee of the conference, including the chief judge of the circuit or his designee, a district court judge and a lawyer representative.

(b) The resolutions subcommittee may establish a timetable for the submission of resolutions, and procedures for their distribution to conference representatives.

(c) Resolutions may be submitted by any judge or lawyer representative, as well as by a delegation.

(d) The resolutions subcommittee may eliminate resolutions not germane to the statutory purpose of the conference, see 28 U.S.C. Section 333; restate germane resolutions in a form suitable for consideration by the conference; fix the order in which resolutions shall be considered; and determine the time to be allotted for consideration of each resolution.

1990 Resolution No. 1

Strengthen Security for All Judicial Officers

Submitted by

Judge William D. Browning
District of Arizona

WHEREAS, the recent murder of Circuit Judge Robert Vance, as well as the murder of a civil rights attorney, attempted bombing of the 11th Circuit Courthouse in Atlanta, Georgia, and the numerous reports of attempts upon other judges have disclosed the inadequacies in security afforded judicial officers at their work stations, while traveling, and at home; and

WHEREAS, the integrity of the judicial branch is dependent upon judges making decisions unaffected by fear for the safety of themselves and their families; and

WHEREAS, there is an increasing number of actual threats against judicial officers,

NOW, THEREFORE, BE IT RESOLVED that the 9th Circuit Judicial Conference urges that on-site and off-site security for judicial officers be given an emergency and urgent status so as to prevent and discourage future attempts against judges or their families and that the Congress appropriate such sums as the judicial branch needs for its security.

1990 Resolution No. 2

Improve Security for the Court of Appeals

Submitted by

Judicial Council Subcommittee on Security

WHEREAS, we lament the passing of Judge Robert S. Vance, judge of the United States Court of Appeals for the Eleventh Circuit, who was brutally murdered in his home on December 16, 1989; and

WHEREAS, we can no longer consider judges of the court of appeals immune from threats and physical harm, nor their families and staff; and

WHEREAS, that in addition to the necessary protection for district judges, adequate protection should be provided to the judges of the court of appeals;

NOW, THEREFORE, BE IT RESOLVED by the Judicial Conference of the Ninth Circuit that the Marshals Service and General Services Administration should be provided with sufficient resources to protect adequately the courthouses of the United States Court of Appeals and judges and staff.

1990 Resolution No. 3

Repeal Mandatory Criminal Sentences and Modify Federal Sentencing Guidelines

Submitted by

Judge Robert J. McNichols
Eastern District of Washington

WHEREAS, at the Ninth Circuit Judicial Conference in 1989 a resolution was adopted by a heavy majority vote urging the Judicial Conference of the United States to submit a resolution to the Congress urging that Congress reconsider all mandatory minimum sentencing statutes. Similar resolutions were adopted by several other circuits; and

WHEREAS, the resolution was referred to the Criminal Law and Probation Committee of the United States Judicial Conference for study. At the March 1990 meeting the Judicial Conference acted favorably and is in the process of submitting a resolution to the Congress; and

WHEREAS, the Federal Courts Study Committee over the past eighteen months conducted surveys and heard extensive testimony on the subject, and has recently lodged its report with the Congress in which it recommends outright repeal of mandatory criminal sentencing statutes;

NOW, THEREFORE, BE IT RESOLVED that the Ninth Circuit Judicial Conference reaffirm its strong opposition to mandatory criminal sentences and urge all senators and members of Congress within the Ninth Circuit and elsewhere to promote efforts to repeal criminal mandatory sentencing statutes and to establish alternative congressional policy, restoring some reasonable flexibility to the criminal sentencing process.

BE IT FURTHER RESOLVED that a copy of this resolution be forwarded to all senators and members of Congress from the states within the Ninth Circuit and to the Judicial Conference of the United States.

1990 Resolution No. 4

Make Discretionary the Application of Sentencing Guidelines

Submitted by

Judge William D. Browning,
District of Arizona

WHEREAS, the U.S. Sentencing Commission guidelines are too inflexible to permit district courts to fashion an appropriate sentence in a given case; and

WHEREAS, the effect of rigid application of the guidelines is to transfer, in large part, the discretionary sentencing function from the courts to the prosecutorial agency; and

WHEREAS, the guidelines (and minimum mandatory sentences) lead to artificial and strained legal applications to facilitate plea bargains,

NOW, THEREFORE, BE IT RESOLVED that Congress should amend the Sentencing Reform Act to state clearly that the guidelines promulgated by the Sentencing Commission are general standards regarding the appropriate sentences in the typical case, not compulsory rules. Although the guidelines should identify the presumptive sentence, the trial judge should have general authority to select a sentence outside the range prescribed by the guidelines, subject to appellate review for abuse of discretion. The exercise of this discretion may be based upon factors such as an appropriate plea bargain or the defendant's personal characteristics and history.

Statement of Reasons

The Sentencing Reform Act Guidelines have significantly changed how criminal cases are now handled and have markedly increased an already burgeoning criminal workload in U.S. district courts.

Prosecutorial discretion is no longer subject to judicial supervision and review and the plea bargaining process is perverted by artificial and often untrue stipulations so as to reach a given result. This both decreases the number of legitimate plea bargains and disadvantages defendants who plead solely because of the rigidity and severity of sentence if found guilty.

The discussion on pp. 60-64 of the Federal Courts Study Committee Tentative Recommendations, filed December 22, 1989, more fully illuminates the problem.

1990 Resolution No. 5

Establish a Standing Committee on Sentencing Guidelines

Submitted by

Federal Public and Community Defenders of the Ninth Circuit:

Judy Clarke
Southern District of California

Franny A. Forsman
District of Nevada

Thomas W. Hillier, II
Western District of California

Peter M. Horstman
Central District of California

Fredric F. Kay
District of Arizona

Michael R. Levine
District of Hawaii

Barry Portman
Northern District of California

Arthur Ruthenbeck
Eastern District of California

Steven Wax
District of Oregon

WHEREAS, the recently published *Report of the Federal Courts Study Committee* identified overwhelming concern with the workability and fairness of the Sentencing Guidelines; and

WHEREAS, the Federal Courts Study Committee recommends that the Judicial Conference "create a standing committee to study proposed and actual guidelines and to provide advice on them to the Sentencing Commission, the federal judiciary, and the Congress"; and

WHEREAS, the Federal Courts Study Committee further recommends that Congress should reevaluate the process by which Commission-promulgated guidelines become law;

NOW, THEREFORE, BE IT RESOLVED that the Chief Judge of the Ninth Circuit shall move, at the next meeting of the United States Judicial Conference, for the establishment of a standing committee on the Sentencing Guidelines whose purpose will be to study and comment on the problems presently plaguing the federal sentencing system and to recommend such changes, including the possibility of repealing the Sentencing Reform Act, as are necessary to assure that federal sentences are imposed in a fair and efficient manner.

1990 Resolution No. 6

Study the Advisability of Legalizing Controlled Substances

Submitted by

Thomas W. Hillier, II, Esquire
Federal Public Defender
Western District of Washington

David M. Stern, Esquire
Lawyer Representative
Central District of California

WHEREAS, the Ninth Circuit Judicial Conference has been directed by 28 U.S.C. §333 to meet annually "for the purpose of considering the business of the courts and advising means of improving the administration of justice";

WHEREAS, a significant part of the "business of the courts" presently consists of the enforcement of federal laws regulating the use, possession and distribution of controlled substances (as defined by 21 U.S.C. §802(6));

WHEREAS, the Ninth Circuit Judicial Conference is concerned that federal laws regulating the use, possession and distribution of controlled substances may be exacerbating the ills they are meant to control and reduce;

WHEREAS, the appropriate method for expressing such concerns of the Ninth Circuit Judicial Conference is through the United States Judicial Conference;

NOW, THEREFORE, BE IT RESOLVED that the Chief Judge shall move, at the next meeting of the United States Judicial Conference and in accordance with 28 U.S.C. §331, for the establishment of a standing committee to study the advisability of legalizing and regulating, other than through application of criminal law, the use, possession and distribution of controlled substances.

we believe this is an appropriate subject for resolution. Rather than having the Ninth Circuit act alone, we believe our delegate to the U.S. Judicial Conference (Chief Judge Goodwin) ought to transmit the Ninth Circuit's concerns to the entire judiciary and move for the creation either of a standing committee, as contemplated by 28 U.S.C. §331, or of a special Powell-type commission to consider the drug problem and specifically the advisability of legalization.

1990 Resolution No. 7

Permit Summary Decisions in Appellate Cases

Submitted by

Albert T. Harutunian, III, Esquire
Southern District of California

WHEREAS, it is in the interest of justice to avoid undue delay in the rendering of appellate decisions; and

WHEREAS, the preparation of a detailed appellate opinion may cause substantial delay in the rendering of an appellate decision, as compared with the preparation of a summary decision; and

WHEREAS, there are circumstances where all parties would prefer a quicker summary decision, rather than waiting for a highly detailed opinion; and

WHEREAS, there may be circumstances where the court puts extra time and effort into preparing a detailed opinion, which it would not have done if it had known the parties would be satisfied with a summary decision; and

WHEREAS, the Ninth Circuit's ability to effectively manage its docket would be enhanced by a procedure for informing the court of cases where all parties would be satisfied receiving a summary decision;

NOW, THEREFORE, BE IT RESOLVED that the Ninth Circuit adopt a mechanism for the parties in a case to advise the clerk of the court at an appropriate stage whether the parties would be satisfied receiving a summary decision. To avoid prejudicing the court, the identity of any party or parties objecting to a summary decision would not be disclosed to the panel of judges or their staffs.

BE IT FURTHER RESOLVED that regardless of the desires of the parties, the court would remain free to render decisions of any length or format it deemed appropriate.

1990 Resolution No. 8

Declaration of Opposition to S.2707 as Introduced

Submitted by

Senior Judge Peckham, Northern District of California
Chair, U.S. Judicial Conference Subcommittee on S.2707

WHEREAS, S.2707, "The Civil Justice Reform Act of 1990," has recently been introduced in the United States Senate; and

WHEREAS, S.2707, though containing commendable provisions for increased training of judicial personnel and for utilizing advisory committees to assist courts in analyzing problems of cost and delay in civil litigation, also contains provisions requiring all district courts to adopt highly detailed, bureaucratized approaches to case management; and

WHEREAS, the proposed plans, while motivated by laudable goals of expediting judicial resolution of civil cases, derogate from judicial authority to determine appropriate pretrial procedures, and include many features whose effects would be counterproductive to the goal of increasing the courts' abilities to efficiently manage their cases; and

WHEREAS, objectionable features of the mandatory plans include, but are not limited to, requiring all district courts to adhere to rigid tracks for managing all cases, giving clerical staff the authority, at the time of filing, to determine the track to which cases are assigned, limiting the use of magistrates, and failing to take into account the pressures of district courts' increased criminal case loads; and

WHEREAS, S.2707, as written, would require burdensome, untested procedural rules that duplicate or are inconsistent with current Federal Rules of Civil Procedure which already allow and, to some extent, mandate procedures for effective judicial case management; and

WHEREAS, the proper method of reforming court procedures is through the means previously established for that purpose, the Rules Enabling Act,

NOW, THEREFORE, BE IT RESOLVED that the Ninth Circuit Judicial Conference opposes passage of S.2707 in its present form and endorses the principles expressed in the U.S. Judicial Conference Statement on Case Management, adopted March 13, 1990.

1990 Resolution No. 9

Create An Advisory Committee on Gender Bias in the Courts

Submitted by

The Lawyer Representatives Coordinating Committee

WHEREAS, gender bias in the courts includes behavior or decision making of participants in the justice system which is based upon or reveals stereotypical attitudes regarding the roles of women and men, cultural perceptions about the relative worth of the sexes, and misconceptions about the social and economic realities encountered by women and men;

WHEREAS, the problem of gender bias may continue to exist in the federal courts within the circuit despite efforts by the bench and bar to eradicate it;

WHEREAS, gender bias in the courts is an impediment to the fair administration of justice;

WHEREAS, a large number of state judicial councils have established gender bias committees; and

WHEREAS, the California Judicial Council has recently issued its report finding that gender bias in the California courts is pervasive and widespread and recommended dozens of reforms;

NOW, THEREFORE, BE IT RESOLVED that:

1) The Executive Committee of the Ninth Circuit Conference establish an Advisory Committee on Gender Bias in the Courts composed of judges, lawyers, and other experts to conduct a comprehensive review of gender bias issues including, but not limited to, courtroom interaction, judicial branch employment practices and other issues of court administration, gender bias within the judiciary, selection of court-appointed counsel, and jury instructions.

2) The Executive Committee be authorized to conduct public hearings, regional meetings, and surveys; consult with other professionals in the justice system; collect statistical information and perform any other tasks consistent with its charge.

3) The Executive Committee prepare a written report which will set forth its findings and make recommendations for the elimination of gender bias in the courts.

1991 Conference Resolutions Tally

Drafting, debating, and voting on resolutions prepared by judicial conference members is the most concrete and lasting way in which the conference can influence and improve the administration of justice. During this year's conference, resolutions debates were sprinkled across the three days and were tied into some of the conference themes. Of the seven resolutions submitted, two were defeated, one was tabled, and four passed. To pass, a resolution must receive a majority vote from both the judges and the lawyers, voting separately.

Resolutions Process

Successful resolutions are reviewed by the Ninth Circuit Judicial Conference Executive Committee and forwarded to the Ninth Circuit Judicial Council. The council brings them to the attention of the appropriate bodies for action. In the next issue, the status of the eight resolutions passed at the 1990 judicial conference will be reported. The following is a summary of the voting on the seven resolutions considered by the 1991 Ninth Circuit Judicial Conference in Maui, Hawaii.

esolution No. 1: Allow Videocamera Access to Federal Court Proceedings. Asks Ninth Circuit to affirm videocamera access to civil proceedings.

DEFEATED	YES	NO	ABSTAIN
Judges	52	107	3
Lawyers	64	53	0

Resolution No. 2: Convene the Ninth Circuit Judicial Conference Biennially. Recommends that the chief judge convene the circuit conference every other year.

DEFEATED	YES	NO	ABSTAIN
Judges	35	127	0
Lawyers	16	101	0

Resolution No. 3: Ethical Standards Should Apply to All Federal Practitioners. Urges the Judicial Conference of the United States to issue a policy that all districts adopt a local rule incorporating that state's standards of professional conduct.

TABLED

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1991 RESOLUTIONS

Ninth Circuit Judicial Conference

DATE: August 1991

TO: All Members of the Ninth Circuit Judicial Conference

FROM: 1991 Resolutions Subcommittee:
Susan Y. Illston, Esquire, Chair; Circuit Judge Melvin Brunetti,
District Judge Alicemarie H. Stotler, Michael E. McNichols, Esquire
Henry Shields, Jr., Esquire

RE: Conference Resolutions Procedure

Six resolutions have been submitted for consideration by the 1991 Ninth Circuit Judicial Conference. The format for debate and voting on conference resolutions has been changed this year. DEBATE has been divided into three separate sessions:

- Tuesday, August 6, from 12:00 - 1:00 p.m., part of small group discussions (Resolution 1)
- Wednesday, August 7, from 4:30 p.m. - 5:15 p.m. (Resolutions 1 and 2, and others, time permitting)
- Thursday, August 8, from 10:45 a.m. - 11:30 a.m. (Resolutions 3 - 6)

VOTING on the resolutions will take place by two ballots:

- Wednesday, August 7, 5:30 p.m. is the deadline for Ballot One (containing the votes on Resolutions 1 and 2)
- Thursday, August 8, 12:00 noon is the deadline for Ballot Two (containing the votes on Resolutions 3 - 6)

The results of Ballot One will be reported at the closing session on Thursday, August 8.

As in previous years, in the two general sessions, proponents and opponents will be given a brief opportunity to speak to each resolution. Comments and debate from the floor are encouraged. Circuit Judge Jerome Farris, our parliamentarian, will decide any questions concerning proper procedure according to Robert's Rules of Order.

Voting will be by written ballot (official ballots can be found on the back cover of the resolutions booklet). Judges and lawyer representatives will vote separately. A resolution may be adopted by the conference only if a majority of both groups concur.

1991 Resolution No. 1

Allow Videocamera Access to Federal Civil Proceedings

Submitted by

Lawyer Representatives of the Eastern District of California

WHEREAS, the public is increasingly relying on television reports about the administration of courts and the government, and it is in the public interest for citizens to see and hear our system of justice as it deals with disputes;

WHEREAS, because of significant technological improvements, video cameras can now cover courtroom proceedings with a minimum of disruption to courtroom proceedings;

WHEREAS, other jurisdictions have developed rules which give courts the flexibility to limit videocamera access to courtroom proceedings where the interests of justice require it;

NOW, THEREFORE, BE IT RESOLVED that the Ninth Circuit Judicial Conference affirm that videocamera access to civil courtroom proceedings, when consistent with litigants' rights to a fair trail, will foster the public's knowledge of and confidence in our judicial system.

1991 Resolution No. 3

Ethical Standards Should Apply to All Federal Practitioners

Submitted by

The Ninth Circuit Federal Public and Community Defenders

WHEREAS, with the increasing public concern about the professional conduct of lawyers and the ethical standards under which lawyers engage in the practice of law, the federal courts must actively encourage lawyers, including all lawyers employed by the United States of America, to comply with the highest standards of the legal profession. No segment of the legal profession, including lawyers employed by the federal government, should be exempt from compliance with recognized ethical standards governing the practice of law.

NOW, THEREFORE, BE IT RESOLVED that the United States Judicial Conference should issue a policy recommending:

1) that each district court approve a local rule which incorporates and adopts the standards of professional conduct which govern the practice of law in the state in which the district court is located, and

2) that each district court include in this local rule a provision which requires all lawyers employed by the federal government who appear before the district court to comply with this local rule.

1991 Resolution No. 5

Repeal Mandatory Minimum Sentencing Statutes

Submitted by

Raymond C. Fisher, Esquire and Terry W. Bird, Esquire
of the Lawyer Representatives Coordinating Committee

WHEREAS, based on a sincerely held belief that the mandatory minimum sentences, however framed, do not result in advancing the cause of justice and fairness; and

WHEREAS, based on a belief that even a sincere desire to eliminate disparity is not a sufficient reason to hamper the judiciary in its obligation to ensure that justice is being served in the courtrooms of our nation;

NOW, THEREFORE, BE IT RESOLVED that the Judicial Conference of the Ninth Circuit urges the Congress of the United States of America to consider the repeal of all statutes that require the trial judge to impose a mandatory minimum sentence.

1991 Resolution No. 7

Opposition to Dividing the Ninth Circuit

Submitted by

Resolutions Subcommittee

WHEREAS, on August 2, 1991, a bill, S. 1686, was introduced in the United States Congress to divide the Ninth Circuit, placing Alaska, Idaho, Montana, Oregon, and Washington in a new circuit, and;

WHEREAS, members of this conference in 1982, 1984, and 1989, overwhelmingly recommended rejection of any proposal to divide the Ninth Circuit on the ground that the Ninth Circuit was functioning effectively and division would not alleviate the problems caused by burgeoning caseloads which confronted the entire federal judicial system, and;

WHEREAS, the considerations which counseled opposition to division of the Ninth Circuit in 1982, 1984, and 1989, remain true today;

NOW, THEREFORE, BE IT RESOLVED that the Ninth Circuit Judicial Conference again recommends to the United States Congress that it reject any proposal to divide the Ninth Circuit at this time.

Statement of Reasons

The Ninth Circuit faces substantially the same circumstances today as those prevailing in 1989 when similar legislation was introduced in the Congress to divide the Ninth Circuit, with one exception. The Federal Courts Study Committee's Final Report, published in April 1990, recommended that no further efforts be made to divide circuits for five years. During this time, the committee suggested studies of various alternate appellate structures and close observation of the experience of the Ninth Circuit.

The principal objections to dividing the Ninth Circuit are those outlined in the circuit executive's memorandum, S.948, Ninth Circuit Court of Appeals Reorganization Act (1989):

1. There is no administrative need to divide the circuit.
2. Splitting the circuit would not address the real problem which is workload, not structure.
3. Creating more circuits would increase the workload of the Supreme Court.
4. The size of the Ninth Circuit is an asset strengthened by the variety and diversity of the backgrounds of its members; its large pool of district judges permits flexible assignments of judges to districts experiencing temporary but acute need for additional judicial resources.
5. A single court of appeals has preserved a consistent and predictable body of law throughout the western states and the Pacific maritime area.
6. The Ninth Circuit has been a leader in experimental and innovative procedures to foster effective administration and a consistent body of law.
7. The costs of establishing a new circuit, and duplicating administrative support structures already in place, will exceed $5 million initially, and over $2.5 million annually.

1992 RESOLUTIONS

TITLE	STATUS
Establish Long-Range Plans For The Courts And Create A Standing Committee	Approved
Eliminating Gender Bias In The Ninth Circuit	Approved
Encourage Civility Through District Action	Approved
Study Incivility, Propose Guidelines, And Educate The Bench And Bar	Approved
Opposing The Merger Of The District Courts Of The Northern Mariana Islands And Guam	Approved
Endorsing The Re-establishment Of Article III Courts In The Northern Mariana Islands And Guam	Approved
Encouraging Attorney Voir Dire	Disapproved
Recommendation To Amend 28 U.S.C. §1447(d) To Allow Review Of Remand Orders	Disapproved
Restriction On Subjects Of Conference Resolutions	Disapproved
Recommending Full Support Of Efforts To Assure Full Funding Of Defense Function Under The Criminal Justice Act	Approved

1992 RESOLUTIONS

Ninth Circuit Judicial Conference

DATE: August 1992

TO: All Members of the Ninth Circuit Judicial Conference

FROM: 1992 Resolutions Subcommittee:
Chief Judge Robert E. Coyle, Chair; Lourdes G. Baird, Terry W. Bird

RE: Conference Resolutions Procedure

Nine resolutions have been submitted for consideration by the 1992 Ninth Circuit Judicial Conference. The resolutions have been placed on the conference agenda for debate and vote on

- Thursday, August 6, from 10:30 a.m. until 11:30 a.m.

Proponents and opponents will be given a brief opportunity to speak to each resolution. Comments and debate from the floor are encouraged. Circuit Judge Stephen Reinhardt, our parliamentarian, will decide any questions concerning proper procedure according to Robert's Rules of Order.

Voting will be by written ballot. Judges and lawyer representatives will vote separately. A resolution may be adopted by the conference only if a majority of both groups concur.

Official ballots may be found on the back cover of this booklet. Please deposit ballots in the boxes provided or turn them in to the conference registration desk.

1992 Resolution No. 1

Establish Long-Range Plans for the Courts and Create a Standing Committee

Sponsored by

District Judge Alicemarie H. Stotler (C.D. Cal.)
Circuit Judge Melvin Brunetti
Nicole A. Dillingham, Vice chair, LRCC
District and Bankruptcy Clerks Liaison Committee

WHEREAS, the Judicial Conference of the United States has created the Committee on Long-Range Planning to promote, encourage, and coordinate planning activities within the Judicial Branch of the United States, and, after consultation with other Conference committees, judges and interested parties, prepare and submit for Judicial Conference approval a long-range plan for the Judiciary; and

WHEREAS, the United States Court of Appeals for the Ninth Circuit is the first federal court in the country to adopt a long-range plan;

WHEREAS, the diversity, resources, nature and volume of litigation of the Ninth Judicial Circuit deserve and require evaluation, management, and planning for the future of the justice system;

BE IT THEREFORE RESOLVED that each court in each district within the Ninth Circuit formulate a long range plan. Each court's plan should include a mission statement and multiyear goals and objectives sought by its judicial officers, lawyer representatives, court staff and supporting agencies.

BE IT FURTHER RESOLVED that the Judicial Council of the Ninth Circuit consider establishing a Standing Committee to study the long-range planning process in the Ninth Circuit, to coordinate the goals and objectives identified in long-range plans, and to recommend improvements to the plans adopted within the circuit.

1992 Resolution No. 3

Encourage Civility Through District Action

Submitted by

Susan Y. Illston, Member, Program Subcommittee
The Honorable Peter W. Bowie, U.S. Bankruptcy Court, S.D. Cal.

WHEREAS, the administration of justice is a truth-seeking process designed to resolve human and societal problems in a rational, peaceful and efficient manner; and

WHEREAS, conduct that properly may be characterized as uncivil, abrasive, abusive, hostile or obstructive impedes the fundamental goal of resolving disputes rationally, peacefully and efficiently

THEREFORE, BE IT RESOLVED that the conduct of lawyers in the Ninth Circuit should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms; and

BE IT FURTHER RESOLVED that the conduct of judges in the Ninth Circuit toward all participants should be characterized at all times by courtesy, patience, punctuality and protection against unjust and improper criticism or attack; and

BE IT FURTHER RESOLVED that each judicial district within the Ninth Circuit should consider what steps it should take to promote the spirit of this resolution.

1992 Resolution No. 5

Opposing the Merger of the District Courts of the Northern Mariana Islands and Guam

Submitted by

The Pacific Islands Committee
Chair, Circuit Judge Alfred T. Goodwin
and
Michael A. White, Lawyer Representative (N.M.I.)

WHEREAS, the Commonwealth of the Northern Mariana Islands was established pursuant to the provisions of an agreement between the people of the Northern Mariana Islands and the United States Government entitled "Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America" ("the Covenant"), reprinted at 48 U.S.C. §1681 note; and

WHEREAS, Section 401 of the Covenant provides that "the United States will establish for and within the Northern Mariana Islands a court of record to be known as the 'District Court for the Northern Mariana Islands'"; and

WHEREAS, in accord with Section 401 of the Covenant, the District Court for the Northern Mariana Islands was established pursuant to the provisions of 48 U.S.C. §1694(a); and

WHEREAS, the Government of the Territory of Guam was established unilaterally by the United States Government, and exists pursuant to the provisions of the Organic Act of Guam, 48 U.S.C. §1421 et seq.; and

WHEREAS, the District Court of Guam was established pursuant to the provisions of 48 U.S.C. §1424(a); and

WHEREAS, the Commonwealth of the Northern Mariana Islands and the Territory of Guam are legally separate and distinct, with fundamentally different bases of self-government, and completely separate legal systems and political institutions; and

WHEREAS, at its meeting of October 18, 1991, the Ninth Circuit Judicial Council, by a divided vote, and without the recommendation of its Pacific Islands Committee, adopted a proposal that the Districts of the Northern Mariana Islands and Guam be merged into a single judicial district; and

WHEREAS, in connection with its consideration of the Covenant, the United States Congress considered and expressly rejected the concept of a single district court for the Northern

1992 Resolution No. 7

Encouraging Attorney Voir Dire

Submitted by

The Ninth Circuit Lawyer Representatives Coordinating Committee

WHEREAS, Article III and the Sixth and Seventh Amendments to the Constitution of the United States recognize the fundamental importance of the jury in criminal and civil trials in United States courts; and

WHEREAS, appropriate voir dire, conducted by both the court and counsel, is essential to effective challenges for cause to ensure an impartial jury; and

WHEREAS, recent developments in the law governing the use of peremptory challenges have accentuated counsel's need to conduct voir dire to ensure proper exercise of peremptory challenges;

NOW, THEREFORE, BE IT RESOLVED that the Ninth Circuit Judicial Conference encourages trial judges to grant counsel leave to conduct voir dire of a reasonable scope for a reasonable time as a matter of course.

1992 Resolution No. 9

Restriction on Subjects of Conference Resolutions

Submitted by

Judges and Lawyer Representatives
of the Southern District of California

No resolution shall be presented to the Ninth Circuit Judicial Conference that calls upon the conference to take a position on any issue that has been presented for decision in any federal court within the Ninth Circuit.

Statement of Reasons

This resolution is being proposed to avoid a replay of the events of last year, when a resolution was proposed concerning an issue of legal interpretation then pending before a court within the circuit. The resolution was tabled by a vote of the conference when a judge pointed out that adopting the resolution could disqualify every judge in the circuit from ruling on a case that was then pending.

Resolutions involving issues pending within the Ninth Circuit should not even be presented to the conference for a vote. The Resolutions Subcommittee should identify resolutions that include issues of legal interpretation known to be pending, and rule them inappropriate for presentation to the conference. The publication of, and voting on, resolutions should not give the appearance that pending issues have been prejudged, nor that the United States Court of Appeals for the Ninth Circuit takes opinion polls on how it should rule on legal issues.

1993 Conference Resolutions Tally

Drafting, debating, and voting on resolutions prepared by judicial conference members is the most concrete and lasting way in which the conference can influence and improve the administration of justice. Of the ten resolutions submitted to the 1993 Ninth Circuit Judicial Conference in Santa Barbara, California, nine passed and one was defeated. To pass, a resolution must receive a majority vote from both the judges and the lawyers, voting separately.

Successful resolutions are reviewed by the Ninth Circuit Judicial Conference Executive Committee and forwarded to the Judicial Council of the Ninth Circuit. The council brings them to the attention of the appropriate bodies for action. The following is a summary of the voting on the ten resolutions considered by the conference in 1993. See page 4 for an update on the seven resolutions passed at the 1992 conference.

Resolution No. 1: Establish a Task Force on the Effects of Ethnicity, Race, and Religion on the Administration of Justice in the Ninth Circuit

PASSED	YES	NO	ABSTAIN
Judges	113	18	4
Lawyers	84	5	2

Resolution No. 2: Assure Gender Fairness: Full Implementation of the Ninth Circuit Gender Bias Task Force's Recommendations

PASSED	YES	NO	ABSTAIN
Judges	112	19	4
Lawyers	88	3	----

Resolution No. 3: Encourage Ninth Circuit Attorneys to Participate in the Pro Se Representation Project

PASSED	YES	NO	ABSTAIN
Judges	123	9	2
Lawyers	75	14	2

Resolution No. 4: Preserve the Historically Limited Role of the Federal Courts

PASSED	YES	NO	ABSTAIN
Judges	128	4	3
Lawyers	88	3	----

Resolution No. 5: Encourage Increased Communication, Cooperation, and Coordination Between the State and Federal Judiciaries in the Ninth Circuit

PASSED	YES	NO	ABSTAIN
Judges	129	2	4
Lawyers	90	----	1

Resolution No. 6: Support Adequate Funding for the United States Courts

PASSED	YES	NO	ABSTAIN
Judges	129	1	----
Lawyers	90	1	----

Resolution No. 7: Support Full Funding for Drug Aftercare Treatment Budgets

PASSED	YES	NO	ABSTAIN
Judges	121	6	7
Lawyers	87	4	----

Resolution No. 8: Promote a Study of the Effect of Mandatory Minimum Sentencing Provisions

PASSED	YES	NO	ABSTAIN
Judges	128	4	3
Lawyers	88	2	1

Resolution No. 9: Oppose Proposed Changes in the Federal Rules of Civil Procedure

DEFEATED	YES	NO	ABSTAIN
Judges	65	65	5
Lawyers	73	16	2

Resolution No. 10: Approve Ninth Circuit Requests for Additional Judgeships

PASSED	YES	NO	ABSTAIN
Judges	101	19	----
Lawyers	78	7	----

1993 NEW Resolution No. 10
(As Amended at the Conference)

Approve Ninth Circuit Requests For Additional Judgeships

Sponsored by

The Ninth Circuit Lawyer Representatives Coordinating Committee

WHEREAS, it is imperative to the administration of justice that Congress provide an adequate number of judges to process the federal courts' caseloads; and

WHEREAS, the caseloads of individual judges in the Ninth Circuit have dramatically increased over the years and continue to increase; and

WHEREAS, without an adequate number of federal judges, the quality of justice will be adversely affected; and

WHEREAS, increased staff and technological assistance help federal judges process cases, but only individual judge time allocated to each case insures just and quality decision making; and

WHEREAS, it is essential, in order to preserve the quality of the federal court system in the Ninth Circuit, to provide additional district and circuit judgeships; and

WHEREAS, the district courts of the Ninth Circuit have requested additional judgeships purusant to the existing weighted case load formula that is applicable nationwide; and

WHEREAS, after careful deliberation and study, the Ninth Circuit Court of Appeals has concluded that it requires 10 additional judgeships; and

WHEREAS, the Ninth Circuit Court of Appeals has made a request for the 10 additional judgeships, which is well within the nationwide formula applicable to all circuits; and

WHEREAS, the judgeship request of the Ninth Circuit Court of Appeals was approved by the Ninth Circuit Judicial Council, the Administrative Office, the Statistics Subcommittee, the Judicial Resources Committee of the United States Judicial Conference, but has been deferred and is now under study by the United States Judicial Conference;

1993 Resolution No. 9
(As Amended at the Conference)

Oppose Proposed Changes in Federal Rule of Civil Procedure Rule 26 (a)(1)(b)

Sponsored by

The Ninth Circuit Lawyer Representatives Coordinating Committee

WHEREAS, the Advisory Committee on Civil Rules of the Judicial Conference of the United States proposed certain changes to the discovery provisions of the Federal Rules of Civil Procedure; and

WHEREAS, the proposed rules were roundly criticized from all sides of the practicing bar; and

WHEREAS, the Advisory Committee originally withdrew the rules, then reproposed them to the Judicial Conference of the United States; and

WHEREAS, the Judicial Conference of the United States forwarded the proposed rule changes to the United States Supreme Court; and

WHEREAS, the United States Supreme Court has forwarded the proposed rule changes to the United States Congress; and

WHEREAS, the rule changes create expensive new burdens and ethical dilemmas for litigants and their counsel which should not be created without extensive study and local experimentation;

NOW, THEREFORE, BE IT RESOLVED THAT the Congress affirmatively reject the proposed revisions to Federal Rules of Civil Procedure Rule 26 (a)(1)(b) and send them back to the Advisory Committee for further study and review.

1993 Resolution No. 9
(As Amended at the Conference)

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WHEREAS, the rule changes create expensive new burdens and ethical dilemmas for litigants and their counsel which should not be created without extensive study and local experimentation;

NOW, THEREFORE, BE IT RESOLVED THAT the Congress affirmatively reject the proposed revisions to the Federal Rules of Civil Procedure and send them back to the Advisory Committee for further study and review.

1993 Resolution No. 8

Promote a Study of the Effect of Mandatory Minimum Sentencing Provisions

Submitted by

The Ninth Circuit Lawyer Representatives Coordinating Committee

WHEREAS, this conference, by resolutions passed in 1989, 1990, and 1991, has in the interest of justice urged the repeal or substantial reform of mandatory sentencing provisions and restoration of judicial sentencing discretion; and

WHEREAS, there is uncertainty as to whether mandatory minimum sentence provisions substantially further the policy goals which prompted their enactment, and as to whether they otherwise have an adverse affect upon the overall administration of civil and criminal justice in the federal courts; and

WHEREAS, the lawyer representatives of the Central District of California have formed a task force to gather information, conduct studies, and perform analysis necessary to evaluate the impact on the administration of justice of the mandatory minimum sentence provisions and sentencing guidelines and to inform future decisions;

NOW, THEREFORE, BE IT RESOLVED THAT the Ninth Circuit Judicial Conference supports the work of the Central District of California Lawyer Representative Task Force in its review and analysis of the mandatory minimum sentencing and guideline sentencing provisions, and urges the members of this conference to cooperate and assist in the task force's efforts to compile data, conduct studies, and perform analysis necessary to inform future decisions relating to mandatory minimum sentencing and guideline sentencing legislation.

1993 Resolution No. 7

Support Full Funding for Drug Aftercare Treatment Budgets

Submitted by

The Active and Senior Judges*, the Federal Public Defender, and the United States Attorney of the Northern District of California and The Ninth Circuit Lawyer Representatives Coordinating Committee

WHEREAS, United States Probation and Pretrial Services Offices throughout the country suffered a 20% reduction in their respective drug aftercare treatment budgets in fiscal year 1993; and

WHEREAS, there is a recognized link between drug use and new criminal activity, in addition to the concomitant relationships between drug use and violent crime; and

WHEREAS, almost half of all federal offenders sentenced to prison in 1990 were convicted of drug offenses; and

WHEREAS, a reduction in drug treatment services will undoubtedly increase the court time necessary to adjudicate a number of new violations of probation and supervised release; and

WHEREAS, the average national cost for probation/pretrial supervision and state-of-the-art drug aftercare treatment on an annual basis is approximately $3,500 per year, compared to the minimal cost of $20,072 per year to house an inmate in the Bureau of Prisons;

NOW, THEREFORE, BE IT RESOLVED THAT the Judicial Conference of the United States should promote the need and urgency for full funding for the probation and pretrial drug aftercare treatment budgets of the Probation and Pretrial Services Division of the Administrative Office of the United States Courts in fiscal year 1994 and beyond.

* One judge dissenting.

1993 SUBSTITUTED Resolution No. 4

Preserve the Historically Limited Role of the Federal Courts in the Area of Criminal Law

Sponsored by

The Resolutions Subcommittee

WHEREAS, the Founders established two separate and independent judicial systems in this country, operating side-by-side; and

WHEREAS, until recently, the frequency and volume of conflicts arising from the joint and concurrent jurisdiction across the two systems has not had a disparate effect on either system; and

WHEREAS, recent actions by the Congress have significantly expanded federal jurisdiction into what had formerly been traditionally and exclusively state criminal law areas; and

WHEREAS, the increasing federalization of state law crimes poses a serious threat to the proper jurisdictional balance between the two court systems; and

WHEREAS, one serious side effect of this trend has been to dramatically increase the criminal dockets in the federal courts, reducing the ability to timely exercise their other important federal law functions in civil and noncriminal areas;

NOW, THEREFORE, BE IT RESOLVED THAT:

The Legislative and Executive Branches of the federal government should convene a national commission on the role of the federal judiciary, composed of members of each branch of government along with highly respected state representatives, to:

1) Consider the appropriate role and function of the federal courts in the criminal law area; and

2) Develop guidelines for the establishment of new federal crimes based upon the enduring principles of a healthy federalism; and

3) Recommend such other measures to ensure the preservation of a proper balance between the state and federal court systems in the area of criminal law.

1993 Resolution No. 3

Encourage Ninth Circuit Attorneys to Participate in the Pro Se Representation Project

Submitted by

The Ninth Circuit Lawyer Representatives Coordinating Committee
and
The Ninth Circuit Senior Advisory Board

WHEREAS, the number of appeals filed in the United States Court of Appeals for the Ninth Circuit which involve pro se litigants has reached unprecedented levels; and

WHEREAS, the court of appeals' consideration of complex nonfrivolous pro se appeals would be greatly assisted in many cases by the appointment of pro bono counsel for the litigant;

WHEREAS, the court of appeals is in the process of establishing a comprehensive Pro Se Project to provide for the appointment of pro bono counsel in complex civil appeals where a party is proceeding pro se; and

WHEREAS, the Pro Se Project will depend upon the participation, active involvement, and contribution of the private bar in order to succeed; and

WHEREAS, the Senior Advisory Board has endorsed the project and offered its support for the project's successful implementation; and

WHEREAS, members of the Lawyer Representatives Coordinating Committee have committed themselves to support the proposed Pro Se Project and to assist in coordinating the project in their districts;

NOW, THEREFORE, BE IT RESOLVED THAT:

All lawyer representatives and all other members of the Ninth Circuit bar:

1) Assist the United States Court of Appeals to develop, carry out, and coordinate an effective Pro Se Project to provide counsel in complex, nonfrivolous civil appeals where a party is proceeding pro se; and

1993 Resolution No. 2

Assure Gender Fairness: Full Implementation of the Ninth Circuit Gender Bias Task Force's Recommendations

Submitted by

The Ninth Circuit Lawyer Representatives Coordinating Committee

WHEREAS, the federal courts in the Ninth Circuit have a paramount interest in and commitment to the fair and unbiased administration of justice in the circuit, including specifically the eradication of gender bias from our court system; and

WHEREAS, the study conducted by the Ninth Circuit Gender Bias Task Force has shown that some forms of gender bias continue to exist in the courts of the Ninth Circuit; and

WHEREAS, the Ninth Circuit Gender Bias Task Force has developed a series of recommendations to assist the bench and bar in eliminating all forms of gender bias;

NOW, THEREFORE, BE IT RESOLVED THAT:

The Ninth Circuit Judicial Conference hereby:

1) Endorses the findings of the Ninth Circuit Gender Bias Task Force; and

2) Urges the bench and bar of the Ninth Circuit to assist in implementing the recommendations of the Ninth Circuit Gender Bias Task Force; and

3) Urges the bench and bar of the Ninth Circuit to continue to lead in eradicating bias and in reaffirming the commitment to equal justice.

Statement of Reasons

The Ninth Circuit has been a leader among the federal courts in undertaking a careful study of the issue of gender as it affects the business of the courts. The administration of justice in Ninth Circuit courts has already benefitted immeasurably from the serious consideration of this report and will benefit further from the implementation of the recommendations to assure gender equity and fairness.

Looking to the future, the Ninth Circuit is in a unique position to draw upon its experience and background from the gender bias study to explore interrelated issues of ethnicity, race, and religion as they affect the business of Ninth Circuit courts. Further, the Ninth Circuit has an obligation, pursuant to a September 1992 resolution of the Judicial Conference of the United States, "to sponsor educational programs for judges, supporting personnel and attorneys to sensitize them to concerns of bias based on race, ethnicity, gender, age and disability...."

At a day-long conference convened in Pasadena in January 1993, over 50 individuals representing the courts, bar associations, civil justice organizations, law schools, U.S. Attorney's offices, legal defenders, and social scientists met to discuss the appropriate role for the Ninth Circuit in this area. A consensus emerged that these issues warrant careful consideration by the court and that a special task force should be established. Four areas of particular concern emerged: the criminal justice system, the specific experiences of women of minority ethnicities, races, or religions, the effects of language barriers on court processes, and the importance of outreach to the community. See *Report of the Conference on Ethnicity, Race, and Religion and the Ninth Circuit*, January 27, 1993. Copies are available from the Office of the Circuit Executive, P.O. Box 193846, San Francisco, CA 94119-3846.

The conference urged a wide-ranging research agenda, including statistical reporting, the effects of language and the use of interpreters, prosecutorial and sentencing disparities, and interactions with the public and with tribal courts, among others. The conference further recommended that the circuit should begin immediately to implement policies to further fairness, including assuring diversity in court appointments of bankruptcy and magistrate judges, prohibiting memberships in clubs that invidiously discriminate, requiring appropriate accommodations when calendaring matters at times of religious holidays, and sponsoring and encouraging educational programs with components on ethnicity, race, and religious fairness and cultural awareness.

Passage of this resolution will begin the process of formally addressing a spectrum of important issues that have a daily impact on the effective administration of justice in the Ninth Circuit, and will demonstrate once again the Ninth Circuit's leadership in improvements to the operations of the courts.

1993 Resolution No. 1

Establish a Task Force on the Effects of Ethnicity, Race, and Religion on the Administration of Justice in the Ninth Circuit

Submitted by

The Honorable Arthur L. Alarcon, Circuit Judge
The Honorable Robert Boochever, Circuit Judge
The Honorable Dorothy W. Nelson, Circuit Judge
The Honorable John C. Coughenour, W.D. Wash.
The Honorable Irma E. Gonzalez, S.D. Cal.
The Honorable Terry J. Hatter, Jr., C.D. Cal.
The Honorable Marilyn L. Huff, S.D. Cal.
The Honorable Consuelo B. Marshall, C.D. Cal.
The Honorable A. Wallace Tashima, C.D. Cal.
The Honorable Lynne Riddle, Bankruptcy Judge, C.D. Cal.
Bill Lann Lee, Esquire, Lawyer Representative
The Ninth Circuit Lawyer Representatives Coordinating Committee

WHEREAS, the federal courts in the Ninth Circuit have a paramount commitment to assuring fairness and equity in the administration of justice; and

WHEREAS, the population in the Ninth Circuit is the most ethnically and racially diverse of all the circuits in the nation; and

WHEREAS, manifestations of ethnic, racial, and religious bias may exist in the federal court system despite efforts by the bench and bar to eradicate them; and

WHEREAS, at least 15 state court systems and one federal circuit have established commissions or task forces to examine the effects of racial and ethnic bias in the courts; and

WHEREAS, the Judicial Conference of the United States has encouraged the federal courts to sponsor educational programs for judges, supporting personnel, and attorneys to sensitize them to concerns of bias based upon race and ethnicity; and

WHEREAS, the Ninth Circuit has learned much about how to approach successfully fairness and equity issues through its Gender Bias Task Force and the work of the state court bias commissions;

STATEMENT OF PURPOSE
POLICY AND GUIDELINES
FOR THE CONDUCT OF THE BUSINESS OF THE
NINTH CIRCUIT JUDICIAL CONFERENCE

Resolutions Subcommittee
Ninth Circuit Judicial Conference
August 1993

I. It is the statutory function and purpose of the Ninth Circuit Judicial Conference (28 U.S.C. Section 333), as confirmed by Order of December 12, 1978, to consider the business of the courts of the Ninth Circuit, to advise means of improving the administration of justice, and to assist in implementing decisions made by the judicial council as to the administration of the business of the courts of the Ninth Circuit. All representatives to the conference are expected to participate actively in the business of the conference.

II. It is the policy of the judicial council of the circuit and of the judicial conference of the circuit to encourage free, open, and frank discussion and debate among all representatives to the judicial conference concerning the proper business of the conference. It is expected that all representatives will conduct themselves with the mutual respect and courtesy that is so essential to the proper and orderly functioning of a deliberative body.

III. The chair of the conference, with the advice and consent of its Executive Committee, in advance of the annual meeting, will announce to the representatives the rules that will govern the conduct of the general business sessions of the conference, including the following:

(a) A resolutions subcommittee will be created composed of at least three members of the Executive Committee of the conference, including the chief judge of the circuit or his designee, a district court judge and a lawyer representative.

(b) The resolutions subcommittee may establish a timetable for the submission of resolutions, and procedures for their distribution to conference representatives.

(c) Resolutions may be submitted by any judge or lawyer representative, as well as by a delegation.

(d) The resolutions subcommittee may eliminate resolutions not germane to the statutory purpose of the conference, see 28 U.S.C. Section 333; restate germane

1993 RESOLUTIONS

Ninth Circuit Judicial Conference

DATE: August 1993

TO: All Members of the Ninth Circuit Judicial Conference

FROM: 1993 Resolutions Subcommittee:
Chief Judge Malcolm Marsh, Chair; Judge Mary Schroeder,
Richard Wallis, Esq.

RE: Conference Resolutions Procedure

Nine resolutions have been submitted for consideration by the 1993 Ninth Circuit Judicial Conference. The resolutions have been placed on the conference agenda for debate and vote on

- Thursday, August 19, from 10:15 a.m. until 11:30 a.m.

Proponents and opponents will be given a brief opportunity to speak to each resolution. Comments and debate from the floor are encouraged. Chief District Judge Barbara J. Rothstein, our parliamentarian, will decide any questions concerning proper procedure according to Robert's Rules of Order.

Voting will be by written ballot. Judges and lawyer representatives will vote separately. A resolution may be adopted by the conference only if a majority of both groups concur.

Official ballots may be found on the back cover of this booklet. Please deposit ballots in the boxes provided or turn them in to the conference registration desk.

1993 RESOLUTIONS

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1993 Conference Resolutions Tally

Drafting, debating, and voting on resolutions prepared by judicial conference members is the most concrete and lasting way in which the conference can influence and improve the administration of justice. Of the ten resolutions submitted to the 1993 Ninth Circuit Judicial Conference in Santa Barbara, California, nine passed and one was defeated. To pass, a resolution must receive a majority vote from both the judges and the lawyers, voting separately.

Successful resolutions are reviewed by the Ninth Circuit Judicial Conference Executive Committee and forwarded to the Judicial Council of the Ninth Circuit. The council brings them to the attention of the appropriate bodies for action. The following is a summary of the voting on the ten resolutions considered by the conference in 1993. See page 4 for an update on the seven resolutions passed at the 1992 conference.

Resolution No. 1: Establish a Task Force on the Effects of Ethnicity, Race, and Religion on the Administration of Justice in the Ninth Circuit

PASSED	YES	NO	ABSTAIN
Judges	113	18	4
Lawyers	84	5	2

Resolution No. 2: Assure Gender Fairness: Full Implementation of the Ninth Circuit Gender Bias Task Force's Recommendations

PASSED	YES	NO	ABSTAIN
Judges	112	19	4
Lawyers	88	3	----

Resolution No. 3: Encourage Ninth Circuit Attorneys to Participate in the Pro Se Representation Project

PASSED	YES	NO	ABSTAIN
Judges	123	9	2
Lawyers	75	14	2

Resolution No. 4: Preserve the Historically Limited Role of the Federal Courts

PASSED	YES	NO	ABSTAIN
Judges	128	4	3
Lawyers	88	3	----

Resolution No. 5: Encourage Increased Communication, Cooperation, and Coordination Between the State and Federal Judiciaries in the Ninth Circuit

PASSED	YES	NO	ABSTAIN
Judges	129	2	4
Lawyers	90	----	1

Resolution No. 6: Support Adequate Funding for the United States Courts

PASSED	YES	NO	ABSTAIN
Judges	129	1	----
Lawyers	90	1	----

Resolution No. 7: Support Full Funding for Drug Aftercare Treatment Budgets

PASSED	YES	NO	ABSTAIN
Judges	121	6	7
Lawyers	87	4	----

Resolution No. 8: Promote a Study of the Effect of Mandatory Minimum Sentencing Provisions

PASSED	YES	NO	ABSTAIN
Judges	128	4	3
Lawyers	88	2	1

Resolution No. 9: Oppose Proposed Changes in the Federal Rules of Civil Procedure

DEFEATED	YES	NO	ABSTAIN
Judges	65	65	5
Lawyers	73	16	2

Resolution No. 10: Approve Ninth Circuit Requests for Additional Judgeships

PASSED	YES	NO	ABSTAIN
Judges	101	19	----
Lawyers	78	7	----

1994 Conference Resolutions Tally

Passage of conference resolutions is the most tangible way that the members of the Ninth Circuit Judicial Conference can have a profound and lasting impact on the administration of justice in the circuit. Eight resolutions were submitted to the 1994 conference in Coronado, California. All eight passed. To succeed, a resolution must receive a majority vote from both the judges and the lawyers, voting separately.

Successful resolutions are reviewed by the Ninth Circuit Judicial Conference Executive Committee which develops an implementation plan that is forwarded to the Ninth Circuit Judicial Council. The council brings them to the attention of the appropriate bodies for action.

Positive Impact on Court Operations

Recent examples of resolutions that have had a positive impact on the Judiciary have included a 1990 resolution to study the effects of gender bias in the courts, a 1993 resolution to study the effects of ethnicity, race and religious bias in the courts, and multiple resolutions to modify the sentencing guidelines and to reduce the number of mandatory minimum sentences.

Resolution No. 1: Designate Attorney Advisory Budget Committee

PASSED	YES	NO	ABSTAIN
Judges	96	67	6
Lawyers	85	7	----

Resolution No. 2: Assess Budget's Impact on the Quality of Justice

PASSED	YES	NO	ABSTAIN
Judges	109	54	6
Lawyers	80	12	----

Resolution No. 3: Remove *Pro Se* Law Clerk Positions from District Court Clerks' Staffing

PASSED	YES	NO	ABSTAIN
Judges	155	10	4
Lawyers	90	2	----

Resolution No. 4 (as amended on the floor): Assure Fairness: Adopt General Orders Prohibiting Bias in All Forms

PASSED	YES	NO	ABSTAIN
Judges	113	50	6
Lawyers	81	10	1

Resolution No. 5: Repeal Mandatory Minimum Sentence Laws

PASSED	YES	NO	ABSTAIN	
Judges		151	17	1
Lawyers	85	7	----	

Resolution No. 6: Revise Sentencing Guidelines for First-Time, Non-Violent Offenders

PASSED	YES	NO	ABSTAIN	
Judges		157	9	3
Lawyers	90	2	----	

Resolution No. 7: Authorize Federal Magistrate Judges to Try Felony Cases by Consent

PASSED	YES	NO	ABSTAIN	
Judges		108	60	1
Lawyers	51	41	----	

Resolution No. 8: Enhance Bar Involvement in the Judicial Council of the Ninth Circuit

PASSED	YES	NO	ABSTAIN	
Judges		115	50	4
Lawyers	87	5	----	

1994 RESOLUTIONS

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1994 RESOLUTIONS

Ninth Circuit Judicial Conference

DATE: August 1994

TO: All Members of the Ninth Circuit Judicial Conference

FROM: 1994 Resolutions Subcommittee:
Robert A. Goodin, Esquire, chair
Circuit Judge Edward Leavy
District Judge Howard D. McKibben

RE: Conference Resolutions Procedure

Eight resolutions have been submitted for consideration by the 1994 Ninth Circuit Judicial Conference. The resolutions have been placed on the conference agenda for debate and vote on

- Thursday, August 18, from 10:45 a.m. until 11:45 a.m.

Proponents and opponents will be given a brief opportunity to speak to each resolution. Comments and debate from the floor are encouraged. Our parliamentarian will decide any questions concerning proper procedure according to Robert's Rules of Order.

Voting will be by written ballot. Judges and lawyer representatives will vote separately. A resolution may be adopted by the conference only if a majority of both groups concur.

Official ballots may be found on the back cover of this booklet. Please deposit ballots in the boxes provided or turn them in to the conference registration desk.

STATEMENT OF PURPOSE
POLICY AND GUIDELINES
FOR THE CONDUCT OF THE BUSINESS OF THE
NINTH CIRCUIT JUDICIAL CONFERENCE

Resolutions Subcommittee
Ninth Circuit Judicial Conference
August 1994

I. It is the statutory function and purpose of the Ninth Circuit Judicial Conference (28 U.S.C. Section 333), as confirmed by Order of December 12, 1978, to consider the business of the courts of the Ninth Circuit, to advise means of improving the administration of justice, and to assist in implementing decisions made by the judicial council as to the administration of the business of the courts of the Ninth Circuit. All representatives to the conference are expected to participate actively in the business of the conference.

II. It is the policy of the judicial council of the circuit and of the judicial conference of the circuit to encourage free, open, and frank discussion and debate among all representatives to the judicial conference concerning the proper business of the conference. It is expected that all representatives will conduct themselves with the mutual respect and courtesy that is so essential to the proper and orderly functioning of a deliberative body.

III. The chair of the conference, with the advice and consent of its Executive Committee, in advance of the annual meeting, will announce to the representatives the rules that will govern the conduct of the general business sessions of the conference, including the following:

(a) A resolutions subcommittee will be created composed of at least three members of the Executive Committee of the conference, including the chief judge of the circuit or his designee, a district court judge and a lawyer representative.

(b) The resolutions subcommittee may establish a timetable for the submission of resolutions, and procedures for their distribution to conference representatives.

(c) Resolutions may be submitted by any judge or lawyer representative, as well as by a delegation.

(d) The resolutions subcommittee may eliminate resolutions not germane to the statutory purpose of the conference, see 28 U.S.C. Section 333; restate germane

1994 Resolution No. 1

Designate Attorney Advisory Committees

Submitted by

The Lawyer Representatives Coordinating Committee

WHEREAS, the Judiciary has faced increasingly difficult budget shortages over the last few years; and

WHEREAS, these shortages have required cutbacks and staffing reductions in many district and bankruptcy court clerks offices; and

WHEREAS some clerks offices have had to significantly curtail services formerly provided to the bar and litigants, resulting in increases in copying costs, elimination of FAX filing, restrictions on office hours, reductions in service counter staff, and the like; and

WHEREAS many of the proposed staffing and service reductions have had an unfavorable impact on the practice of law and have been undertaken without the benefit of the views of the bar; and

WHEREAS the lawyers who practice before the federal courts wish to offer their advice, suggestions, and possibly less disruptive alternatives to help the court and clerks' office operate satisfactorily under the current budget restrictions;

NOW, THEREFORE, BE IT RESOLVED THAT the court of appeals and each district and bankruptcy court within the Ninth Circuit designate an attorney budget advisory committee for the chief judge or clerk to consult with before instituting orders or procedures which have an impact on the bar.

1994 Resolution No. 2

Assess Budget's Impact on the Quality of Justice

Submitted by

Robert A. Goodin, Esquire
Member, Conference Executive Committee

WHEREAS, the federal Judiciary has in the recent past experienced, and can for the foreseeable future expect to continue to experience, a severe challenge posed by the twin conditions of an increasing work load and a decreasing amount of resources allocated to it with which to address that workload; and

WHEREAS, concerns have been raised in various quarters that the federal Judiciary's response to the challenge outlined above has unduly emphasized issues of efficiency and productivity without giving equal weight to issues of the quality of justice and the effectiveness of delivery of justice; and

WHEREAS, given the importance of the role of the federal courts in insuring the preservation of due process and the protection of the rights of individuals, it is imperative that appropriate weight be given to insuring that pursuit of efficiency does not jeopardize the quality of justice; and

WHEREAS, one of the reasons that the considerations of efficiency may have predominated over considerations of the quality of justice in response to the challenge outlined above is that efficiency measures are more readily subject to quantifiable measurement than issues of quality;

NOW, THEREFORE, BE IT RESOLVED THAT

(1) the circuit undertake a study to ascertain litigant perceptions of the quality of justice meted out by Ninth Circuit courts; and

(2) judicial impact statements prepared by the courts to demonstrate the quantitative impact of proposed legislation *also* include an assessment of the impact on the quality of justice of services to be provided by the courts; and

(3) the Judicial Conference of the United States and the Administrative Office of the United States Courts be required, *before* reducing the budget in a particular category, to assess and state the impact of the proposed reduction on the quality of those particular services provided by the Judiciary, and be required, in implementing any budget reductions, to give considerations of the quality of justice equal weight to those of efficiency.

1994 Resolution No. 3

Remove *Pro Se* Law Clerk Positions from District Court Clerks' Staffing

Submitted by

Conference of Chief District Judges
Chief District Judge Lloyd George (Nev.)
District Judge Howard McKibben (Nev.)
District Judge Phillip M. Pro (Nev.)
District Judge David W. Hagen (Nev.)
Magistrate Judge Robert Johnston (Nev.)

WHEREAS, the *pro se* law clerk program was created to meet the overwhelming demands of prisoner and *pro se* litigation in the district courts and has been shown to be a cost-effective means of expediting the handling of prisoner and *pro se* cases while conserving judicial time and increasing consistency in decisions; and

WHEREAS, the approved staffing allocation for district court clerks' offices is limited due to current budget constraints imposed on the Judiciary; and

WHEREAS, all district court clerks' offices have been and continue to be staffed at less than one hundred per cent (100%) of the work measurement formula; and

WHEREAS, positions for *pro se* law clerks are part of the district court clerks' office staffing; and

WHEREAS, *pro se* law clerks are attorneys who provide critical services to the district courts in direct relationship with the judges and magistrate judges relating to the processing and disposition of prisoner and *pro se* litigation;

NOW, THEREFORE, BE IT RESOLVED THAT the Judicial Conference of the United States:

(1) remove all *pro se* law clerk positions from the offices of the district court clerks and place them under the supervision of the chief judge of the district or another judge or magistrate judge as designated by the chief judge;

(2) allow the clerical (deputy clerk) staffing credit for prisoner and *pro se* litigation to remain with the offices of the district court clerks;

(3) fully fund each court's authorized allocation of *pro se* law clerk positions.

1994 Resolution No. 4

Assure Fairness: Adopt General Orders Prohibiting Bias in All Forms

Submitted by

The Lawyer Delegation for the Northern District of California

WHEREAS, the Ninth Circuit Judicial Conference has previously resolved to take steps to assure the fair and unbiased administration of justice in the circuit; and

WHEREAS, the Ninth Circuit continues to develop approaches to court administration to assure that litigation in the circuit is free from bias or prejudice;

NOW, THEREFORE, BE IT RESOLVED THAT

(1) The bench and bar of the district courts in the Ninth Circuit are urged to adopt General Orders stating the following:

The practice of law before the district court must be free from prejudice and bias in any form. Treatment free of bias must be accorded all courtroom jurors and support personnel. The duty to exercise non-biased behavior includes the responsibility to avoid comment or behavior that can reasonably be interpreted as manifesting prejudice or bias toward another on the basis of gender, race, ethnicity or national origin, citizenship, pregnancy, religion, disability, age, or sexual orientation, unless relevant to an issue in the case. This duty is owed by all attorneys, judges, judicial officers and court personnel in connection with matters pending before the district court. Reference to this rule shall be made in materials provided to all litigants upon the filing of a matter with the clerk of the court, and copies of the rule shall be made available in the clerk's office.

(2) The bench and bar of the district courts in the Ninth Circuit are urged to adopt General Orders implementing rules such as the above prohibiting conduct manifesting bias or prejudice through the court's traditional inherent powers to administer fair and equal justice and through voluntary peer review and education.

1994 Resolution No. 5

Repeal Mandatory Minimum Sentence Laws

Submitted by

The Judges and Lawyer Delegation for the Central District of California

WHEREAS, mandatory minimum sentencing statues too often result in a miscarriage of justice (many of which are the subject of published opinions) because courts are precluded from considering unique, mitigating factors; and

WHEREAS, the United States Bureau of Prisons has reported a dramatic increase in the federal prison population, causing correctional facilities to operate at 144% capacity (cost: nearly $21,000 a year per inmate); and

WHEREAS, the United States Sentencing Commission has indicated that the system of mandatory minimum sentences is seriously flawed; and

WHEREAS, two independent surveys of federal district/circuit judges nationwide and in the Ninth Circuit reveal overwhelming opposition to statutes requiring mandatory minimum sentences; and

WHEREAS, suitable enhanced punishment for repeat and/or violent offenders is authorized by laws other than those requiring a mandatory minimum sentence;

NOW, THEREFORE, BE IT RESOLVED THAT Congress enact legislation to repeal statutes that require a mandatory minimum sentence so that all offenders are sentenced in accordance with applicable sentencing guidelines.

1994 Resolution No. 6

Revise Sentencing Guidelines for First-Time, Non-Violent Offenders

Submitted by

The Judges and Lawyer Delegation for the Central District of California

WHEREAS, the United States Bureau of Prisons has reported that, since the Sentencing Guidelines became effective, there has been a dramatic increase in the federal prison population, causing correctional facilities to operate at 144% capacity (cost: nearly $21,000 a year per inmate); and

WHEREAS, the right to appeal sentences under the Sentencing Guidelines has generated an even greater burden on the appellate process (128 sentence appeals per circuit judge between 1988 and 1992) which prolongs the period of submission for all other cases on appeal; and

WHEREAS, a survey of active district and appellate judges in this circuit reveals widespread support to reform the Sentencing Guidelines so that the courts can exercise greater discretion; and

WHEREAS, there are currently ample statutes requiring enhanced prison terms for repeat and/or violent offenders;

NOW, THEREFORE, BE IT RESOLVED THAT Congress and the United States Sentencing Commission revise the Sentencing Guidelines so that judges can exercise greater discretion to impose less time or alternatives to imprisonment upon first-time, non-violent offenders.

Statement of Reasons

The Federal Sentencing Guidelines have been in effect long enough to evaluate their impact. Unfortunately, their application, as magnified by the mandatory minimum laws, have harmed our systems by, for instance, delaying civil cases, increasing appeals, and overloading our prisons. Significantly, the guidelines took away too much discretion from the federal Judiciary. Some balance can be restored by removing their force as to first-time non-violent offenders. Existing laws can adequately handle those cases.

1994 Resolution No. 7

Authorize Federal Magistrate Judges To Try Felony Cases By Consent

Submitted by

Max Gillam, Esquire, Senior Advisory Board

WHEREAS, the federal courts are suffering a caseload crisis due in part to the increasing number of felony criminal filings; and

WHEREAS, criminal cases are increasing in complexity and are taking longer for district judges to dispose of under the Sentencing Guidelines; and

WHEREAS, the Speedy Trial Act requirement that criminal cases take precedence has resulted in significant backlogs in the handling of civil matters in many districts; and

WHEREAS, United States magistrate judges, if appropriately empowered to do so, could assist Article III judges in handling felony trials, thus freeing up time for the consideration of the civil docket; and

WHEREAS, research supports the concept that a statutory, not a constitutional, change may be all that is required to enable magistrate judges to try felony cases upon referral from an Article III judge with the consent of the accused; and

WHEREAS, such an augmentation to the duties of magistrate judges would substantially enhance the ability of the district court to manage its caseload and would improve the administration of criminal and civil justice;

NOW, THEREFORE, BE IT RESOLVED THAT the Judicial Conference of the United States petition the United States Congress to amend the "additional duties" clause of the Federal Magistrate Act, 28 U.S.C. § 636 (b)(3), to permit United States magistrate judges to preside over felony trials upon referral from an Article III judge when counsel for the accused and the accused have consented.

holdings of these cases, it appears that the Court has adopted the view that the "additional duties" clause is to be given a restricted interpretation in the absence of consent by the parties, and a much broader interpretation where consent has been given.

Statutory authorization could, however, be easily extended by adding a provision to the Federal Magistrate Act specifically granting magistrate judges the power to conduct such trials. Such a provision could read: "When specifically designated to exercise such jurisdiction by the district court, any United States magistrate judge shall with the informed consent of the accused have the jurisdiction and power to try persons accused of, and sentence persons convicted of, misdemeanors and felonies committed within that judicial district." The grant of magistrate criminal jurisdiction in U.S. Code, Title 18, Section 3401 could be amended simply by adding the word "felony" or "felonies" after every use of the words "misdemeanor" or "misdemeanors." If these or similar changes are made, a magistrate should have clear constitutional and statutory power to conduct a felony trial, when reference of the matter by the district court is accompanied by the consent of the accused based on the advice of competent counsel. Consideration could also be given in drafting the legislation so as to also require the consent of the government.

1994 Resolution No. 8

Enhance Bar Involvement in the Judicial Council of the Ninth Circuit

Submitted by

The Lawyer Representatives Coordinating Committee

WHEREAS, the members of the bar play a critical role in the administration of justice; and

WHEREAS, proposals for improvements in the administration of justice affect the membership of the bar and are more easily effected with the support of the bar; and

WHEREAS, the Judicial Council of the Ninth Circuit exercises a key role in the administration of justice and the governance of the courts in this circuit; and

WHEREAS, no regular means of communication exists between the judicial council and the bar;

NOW, THEREFORE, BE IT RESOLVED THAT a lawyers' advisory committee to the Judicial Council of the Ninth Circuit be formed, consisting of one lawyer representative from each judicial district (one of whom shall be designated chair) who shall serve for staggered terms to ensure continuity. Initially the Lawyer Representatives Coordinating Committee will serve as the advisory committee and propose to the judicial council the structure and membership of the advisory committee. The advisory committee shall furnish the views of the bar upon matters before the judicial council and may participate in the proceedings of the council upon its request, and shall serve as a means of communication between members of the bar and judicial officers for the resolution of such other issues as may from time to time arise.

1995 Conference Resolutions Tally

Passage of conference resolutions is the most tangible way that the members of the Ninth Circuit Judicial Conference can have a profound and lasting impact on the administration of justice in the circuit. Twelve resolutions were submitted to the 1995 conference in Maui, Hawaii. Eight of the twelve passed. To succeed, a resolution must receive a majority vote from both the judges and the lawyers, voting separately.

Successful resolutions are reviewed by the Ninth Circuit Judicial Conference Executive Committee which develops an implementation plan that is forwarded to the Ninth Circuit Judicial Council. The council brings them to the attention of the appropriate bodies for action.

Resolutions Do Have An Impact

Recent examples of resolutions that have had a positive impact on the Judiciary have included a 1990 resolution to study the effects of gender bias in the courts, a 1993 resolution to study the effects of ethnicity, race and religious bias in the courts, and multiple resolutions to modify the sentencing guidelines and to reduce the number of mandatory minimum sentences.

Resolution No. 1: Adopt Effective Prisoner Grievance and Case Management Procedures

PASSED	YES	NO	ABSTAIN
Judges	140	22	10
Lawyers	94	13	2

Resolution No. 2: For the Uniform Application of Rule 26

FAILED	YES	NO	ABSTAIN
Judges	57	124	3
Lawyers	34	74	1

Resolution No. 3: Solicitation of Bar's Input on Decisions Affecting Court Procedures

PASSED	YES	NO	ABSTAIN
Judges	151	33	1
Lawyers	107	2	0

Resolution No. 4: Establishing Goals for Performance of *Pro Bono Publico* Service by Lawyer Representatives

FAILED	YES	NO	ABSTAIN
Judges	67	114	4
Lawyers	44	64	1

Resolution No. 5: To Encourage Publication of Opinions Reversing Civil Jury Verdicts

PASSED	YES	NO	ABSTAIN
Judges	116	66	3
Lawyers	90	17	2

Resolution No. 6: To Encourage Publication of *En Banc* Vote Tally

PASSED	YES	NO	ABSTAIN
Judges	114	67	4
Lawyers	96	17	0

Resolution No. 7: Encouraging Attorney *Voir Dire*

FAILED	YES	NO	ABSTAIN
Judges	48	143	4
Lawyers	91	18	0

Resolution No. 8: Do Not Exclude Lesbians and Gay Men from the Model EEO Plan of the Ninth Circuit

PASSED	YES	NO	ABSTAIN
Judges	101	79	5
Lawyers	84	23	2

See RESOLUTIONS, page 4

RESOLUTIONS DEBATE on the floor of the conference, led here by Booker Evans, Esquire, of Las Vegas, who argued in support of uniform application of Rule 26.

RESOLUTIONS, from page 3

Resolution No. 9: Encouraging Reform of Sentencing Guideline § 5K1.1

PASSED	YES	NO	ABSTAIN
Judges	98	72	13
Lawyers	69	31	9

Resolution No. 10: End Separate Voting on Conference Resolutions

FAILED	YES	NO	ABSTAIN
Judges	39	141	5
Lawyers	78	30	1

Resolution No. 11: Fill Judicial Vacancies Irrespective of Legislation to Divide the Circuit

PASSED	YES	NO	ABSTAIN
Judges	127	16	1
Lawyers	93	6	0

Resolution No. 12: Continued Funding for Post-Conviction Defender Organizations

PASSED	YES	NO	ABSTAIN
Judges	104	32	8
Lawyers	85	13	0

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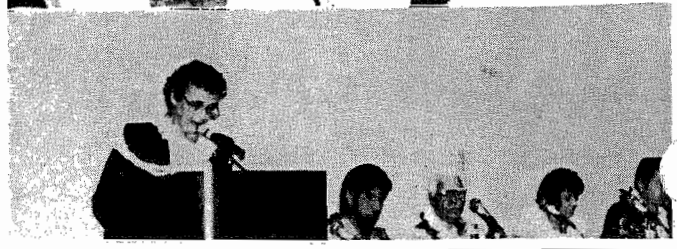
Other Meetings at the Time of the Conference

The annual circuit conference, because it is the *only* time during the year when *all* of the circuit's judicial officers are in one place together, is used as a convenient and economical time for holding a variety of other business and committee meetings in addition to the conference itself. For instance, the Education Committee met with the new director of the Federal Judicial Center, Judge Rya W. Zobel (below:*top*). The Bankruptcy Judges Education Committee held a business meeting and conducted four bankruptcy "mini-programs," including a panel on "Appellate Judges' Views on Bankruptcy Appeals," with Circuit Judge Kozinski (below: *middle*). And, at every conference, there is a parallel program for conference spouses and guests (below: *bottom*). These are just a few of the supplemental meetings that occur during the conference to save the judges and lawyers the extra cost, time, and inconvenience of holding separate meetings at other locations.



1995 Resolution No. 1

Adopt Effective Prisoner Grievance and Case Management Procedures

Submitted by

Honorable Cynthia Imbrogno, Chair
The Task Force on Prisoner Remedy Procedures

WHEREAS, the resolution of prisoner grievances is a responsibility shared by state correctional facilities and federal courts; and

WHEREAS, the increase in state prisoner litigation in the federal courts over the past ten years is substantial; and

WHEREAS, the Task Force on Prisoner Remedy Procedures conducted a study of prisoner *pro se* lawsuits in the Ninth Circuit and concluded that some of the existing state prison grievance procedures and federal court case management procedures could be improved in the manner in which prisoner grievances are resolved, especially because the vast majority are filed *pro se*; and

WHEREAS, the task force found that the development of effective prison grievance procedures and court case management procedures requires the cooperative efforts of state correctional administrators, state attorney generals, and federal judges;

NOW, THEREFORE, BE IT RESOLVED THAT the task force recommends:

(1) That the district courts work with prisoner legal service providers, state and federal prison administrators and attorney generals' offices within their districts to effect ongoing communication and cooperation in implementing procedures for the efficient and effective processing of *pro se* prisoner cases; and

(2) That the district courts give consideration to the recommendations contained in the report of the Task Force on Prisoner Remedy Procedures, such as pursuing the certification of state grievance procedures under 42 U.S.C.§ 1997e, and the implementation of case management methods, in light of the identified hallmarks of effective procedures; and

(3) That most districts receive funding for at least one *pro se* law clerk. That the Federal Judicial Center, the Ninth Circuit Education Council and the individual district courts should develop training programs and manuals for *pro se* law clerks, who should communicate with each other and the Ninth Circuit *Pro Se* Unit on a regular basis, through computer bulletin boards, conferences and publications, to ensure consistency and efficiency in the processing of these cases; and

(4) That the Administrative Office of the United States Courts should review and revise the types of standardized data it currently requires the district courts to maintain to accumulate consistent, valuable and accurate data from all district courts permitting future studies to determine the true nature and scope of the federal *pro se* prisoner caseload and the effectiveness of procedures implemented to address it; and

(5) That the Judicial Council of the Ninth Circuit develop a plan to facilitate the implementation of the task force report and recommendations, and to assist in this process by serving as a clearinghouse of state prison procedures and court case management practices and by calling upon the resources of the Federal Judicial Center where appropriate.

Statement of Reasons

The Judicial Council of the Ninth Circuit, through Chief Judge Wallace, appointed a Task Force on Prisoner Remedy Procedures to study prisoner *pro se* litigation in the Ninth Circuit. The task force's mission was to inventory prison grievance procedures and court case management practices, to identify prison procedures and court practices that seemed effective, and to make recommendations to promote the adoption of effective prison grievance procedures and court case management practices.

Due to differences among state prison conditions and among district courts, procedures and practices that are workable for one location may be less workable for others. The task force concluded, however, that the courts and state attorneys general and correctional administrators have not exerted sufficient effort to develop or even discuss possible improvements. The task force also concluded that the resolution of the problems in processing state prisoner grievances starts with the failure of the state prisons to adopt effective prison grievance procedures consistent with CRIPA standards or with standards deemed "otherwise fair and effective." The ineffectiveness of state prison grievance procedures results in the filings of an inordinate number of federal lawsuits, which lawsuits for the most part are dismissed within six months of filing because of filing defects or lack of a federal legal question. The high number of these prisoner lawsuits calls for more effective screening by the nonjudicial staff in the district courts, for the use of early neutral evaluation strategies, and for other experimental case processing approaches.

The task force believes that a shared, concerted effort by state officials and federal judges can result in a great reduction in the number of lawsuits filed inappropriately in federal court.

1995 Resolution No. 2

For the Uniform Application of Rule 26

Submitted by

The Resolutions Subcommittee

WHEREAS Rules 26(a) through (f) were amended by Congress effective December 1, 1993, and;

WHEREAS attorneys and their clients conduct business in the several districts within the Ninth Circuit, and;

WHEREAS the several districts of the Ninth Circuit have "opted in" or "opted out" of selective portions of Rule 26's requirements, and;

WHEREAS districts "opting in" or "opting out" of selective provisions of Rule 26 have created numerous inconsistencies for the practitioners and their clients who conduct business in multiple districts throughout the Ninth Circuit;

NOW, THEREFORE, BE IT RESOLVED THAT Rules 26(a) through 26(f) of the Federal Rules of Civil Procedure, the so-called mandatory disclosure rules, shall be implemented and applied uniformly in every district and division of the Ninth Circuit beginning on January 1, 1996.

Statement of Reasons

Business and commerce in the districts, territories and states which constitute the Ninth Circuit generates significant activity within the courts. Many businesses operate from several locations within the circuit and often find themselves in multi-district litigation. Because of the application of Rule 26 varies significantly from district to district, the clients and their attorneys are not only required to interpret the application of Rule 26 in each district but often times find that they are required to make disclosures in one district that they are not required to make in another, all within the same case. Further, a major purpose of the amendments to Rule 26 was to speed up the exchange of what was deemed to be basic information about the case and to eliminate the time and paperwork involved in requesting that information. The rule is designed to save time and expense and to get the litigants to meet early in the case to discuss issues with the focus toward early and inexpensive resolution of some of these cases. If the ultimate goal is to allow the parties to engage in discussions which will hopefully lead to settlement early in the case, that should be a circuit-wide goal. Therefore, for uniformity, consistency and in an effort to achieve the goals and purpose of the Rule 26 amendment, the rule should be uniformly applied.

AMENDED
1995 Resolution No. 3

Solicitation of Bar's Input on Decisions Affecting Court Procedures

Submitted by

Lawyer Representatives Coordinating Committee

WHEREAS, in an effort to improve services and meet budgetary constraints, the federal courts are called upon from time to time to modify existing rules of practice and internal operating procedures; and

WHEREAS, to varying degrees, changes to rules of practice and internal operating procedures have an impact on the practice of law before the federal courts; and

WHEREAS, federal court practitioners have valuable insights into the practice of law before the federal courts and wish to assist the courts in their effort to improve court services;

NOW, THEREFORE, BE IT RESOLVED THAT

(1) the courts within this circuit should solicit input from the bar whenever possible pertaining to any proposed changes in the rules of practice and internal operating procedures of such court which may have a substantial impact on the delivery of service to the bar and counsel prior to making any such changes to such rules and procedures; and

(2) the courts should establish procedures for eliciting input from members of the federal bar, including, without limitation, the lawyer representatives from the applicable court(s) and the leadership of the applicable federal bar associations.

Statement of Reasons

The Judiciary has faced, and will continue to face for the foreseeable future, the problem of a continuing increase of workload and no reasonable expectation of a commensurate increase in resources and, in fact, the prospect of a diminution in those resources.

There is a concern that the focus on issues of efficiency and productivity may come a the expense of the quality of justice and the effectiveness of the delivery of justice. Further, such changes have the potential of adversely impacting the quality of services delivered to the parties and the bar without first soliciting the input of the bar.

The proponents of this resolution respectfully submit that an efficient balance of services in the administration of justice can best be promoted by soliciting input from those immediately effected thereby. Consistent with the mandate of 2 U.S.C. §2077, solicitation of input as to such budgetary issues that impact the delivery of services to the parties and the bar will promote a healthy dialogue, potentially affording the court a broader perspective of solutions to pressing budgetary issues.

1995 Resolution No. 4

Establishing Goals for Performance of *Pro Bono Publico* Service by Lawyer Representatives

Submitted by

The Resolutions Committee

WHEREAS, the Code of Professional Responsibility has long urged attorneys to support and participate in ethical activities designed to assure that persons unable to pay all or a portion of a reasonable fee should be able to obtain legal services, and;

WHEREAS, it has become apparent that citizens with legitimate claims are unable to afford the services of an attorney, severely impacting and impairing their ability to litigate disputes in the courts of the United States, and;

WHEREAS, lawyer representatives from the various districts within the Ninth Circuit assume the responsibility of assisting the courts with the overall improvement of the court through their participation, and;

WHEREAS, the responsibilities of a lawyer representative include active participation with the Judiciary in seeking more efficient and effective means for operating the courts; and

WHEREAS, lawyer representatives are leaders selected from the ranks of their state and local bar associations, and;

WHEREAS, the American Bar Association has promulgated model Rule 4.1 encouraging its members to adopt a goal of fifty (50) hours of *pro bono publico* service annually;

NOW, THEREFORE, BE IT RESOLVED THAT the Ninth Circuit Judicial Conference shall adopt a goal that all lawyer representatives to the Ninth Circuit will commit fifty hours annually to *pro bono publico* service.

Statement of Reasons

The public perception of attorneys is one of greed and absence of public concern. The perceptions are inaccurate and belie the commitment that the vast majority of lawyers have to justice and fairness and the commitment of the various bar associations that every individual be entitled to have his or her matter heard and supported in every phase by competent counsel.

If there is any fundamental proposition of government on which all would agree, it is that one of the highest goals of society must be to achieve and maintain equality before the law. This ideal remains an empty form of words unless the legal profession is ready to provide adequate representation for those unable to pay the usual fees. *Professional Representation: Report of The Joint Conference*, 44 A.B.A.J. 1159, 1216 (1958). The American Bar Association and numerous local bar associations across the country have long been advocates of our fundamental duty as attorneys to see to it that all persons requiring legal service be able to obtain it, regardless of their economic status.

As "bar leaders," lawyer representatives should be the forerunners and provide an example to other attorneys in the area of *pro bono* representation. A fifty (50) hour annual commitment by each lawyer representative will be a giant step toward a goal of having every member of the bar involved in this effort.

1995 Resolution No. 5

To Encourage Publication of Opinions Reversing Civil Jury Verdicts

Sponsored by

Tom Boland, Lawyer Representative, District of Montana

WHEREAS, the Ninth Circuit Court of Appeals has, with increasing frequency, reversed jury verdicts and has done so with opinions that are stamped: "NOT FOR PUBLICATION."

WHEREAS, for example, the Ninth Circuit Court of Appeals, in an unpublished opinion filed on January 26, 1994, reversed a plaintiff's verdict in the amount of $1.6 million on the basis of "insufficiency of evidence."

WHEREAS, for example, the Ninth Circuit Court of Appeals, in an unpublished opinion filed on April 19, 1994 in another case, again reversed a plaintiff's jury verdict on the basis of "insufficiency of evidence" where nearly $4 million was awarded.

WHEREAS, for example, the Ninth Circuit Court of Appeals, in an unpublished opinion filed on August 15, 1994 in yet another case, reversed a plaintiff's jury verdict, again, on the basis of "insufficiency of evidence" in the amount of $3 million.

WHEREAS, the district courts of this circuit and trial bar of this circuit would be better served if circuit court opinions, reversing jury verdicts on grounds of insufficiency of evidence, were published, together with the reasons therefore.

NOW, THEREFORE, BE IT RESOLVED THAT the Judicial Council of the Ninth Circuit urge the Ninth Circuit Court of Appeals to publish all opinions wherein civil jury verdicts are reversed on the grounds of insufficiency of evidence.

Statement of Reasons

The trial bar, the litigants involved, and the public at large, is entitled to know when and why the Ninth Circuit Court of Appeals reverses a jury verdict on the grounds of "insufficiency of evidence." Very often there are cases pending in the district courts of this circuit which have issues similar to, if not identical to, issues in cases pending before the court of appeals. Often it is only by accident or coincidence that a trial counsel in a district court case learns about an appellate court decision that reversed a jury verdict on grounds of insufficiency of evidence, because many of those decisions are ordered to be "Not for Publication."

When a civil jury verdict is reversed on grounds of "insufficiency of evidence," the appellate court is making a determination about the kind and character of evidence necessary to sustain a verdict on appeal. More cases might be resolved at the district court level, if the trial bar and the district courts hade a better understanding (from reading published opinions on the issue) of what it is the circuit court determines sufficient evidence to be.

Further, the Civil Justice Reform Act was a response to the escalating costs of litigation, particularly costs experienced by the litigants at the district court level. The goal of reducing litigation costs will be further fostered by the publication of circuit court opinions reversing jury verdicts for "insufficiency of evidence." A well-developed body of case law on this issue would undoubtedly assist litigants and their trial counsel in assessing their case, thereby, leading to the possibility of an earlier resolution of the case through the pursuit of alternative dispute resolution.

Further, whatever administrative reasons might exist to justify the frequent use of unpublished opinions seem greatly outweighed by the trial bar and the public's right to know about decisions of this circuit.

1995 Resolution No. 6

To Encourage Publication of *En Banc* Vote Tally

Sponsored by

The Lawyer Representatives Coordinating Committee

WHEREAS, pursuant to the Circuit Advisory Committee notes promulgated under Circuit Rule 35-1 through 35-3, when the Ninth Circuit Court of Appeals votes on a request for *en banc* consideration, the vote tally is not published.

WHEREAS, although the vote tally is not published when *en banc* consideration is voted upon, any dissenting judge may direct his or her dissent be incorporated in the Order denying *en banc* consideration.

WHEREAS, the vote tally of the Ninth Circuit, when considering *en banc* review, may and frequently would provide the affected litigants and the trial bar in general with valuable and useful information respecting the inclinations of the voting judges.

WHEREAS, the Justices of the United States Supreme Court are free to record their votes when they vote to grant *certiorari.*

WHEREAS, when balancing the public's right to know about the inner workings of the court with whatever administrative reasons the court might have for not publishing vote tallies, the publication of *en banc* vote tallies predominates.

NOW, THEREFORE, BE IT RESOLVED THAT the Judicial Council of the Ninth Circuit urge the Ninth Circuit Court of Appeals to publish its vote tallies when voting on a request for *en banc* consideration.

Statement of Reasons

Even though there are many reasons why a circuit court judge may vote against hearing a case en banc, the trial bar, not to mention the public at large, should be allowed to know how may circuit judges voted to have a case heard en banc. The vote tally signals a strong sense of the circuit regarding the issue at the bar. Litigants and their counsel, in other cases, would benefit from knowing the tally on a particular issue in order that an informed decision can be made whether to incur additional costs in the pursuit of an en banc review, not to mention a petition for certiorari. Arguably, the open disclosure of the en banc vote tally would lead to the reduction of appellate court workload by minimizing the filing of requests for en banc consideration that are, for all intents and purposes, dead on arrival.

Whatever administrative reasons might exist for not publishing the vote tally seem greatly outweighed by the public's right to know how many judges voted for or against a request for en banc consideration.

Circuit judges are allowed to publish their dissent when they vote in favor of en banc consideration, and the fact of their vote against such consideration should also be allowed publication. Is there any sound reason for not revealing the vote tallies?

1995 Resolution No. 7

Encouraging Attorney *Voir Dire*

Submitted by

Lawyer Representatives Coordinating Committee

WHEREAS, Article III and the Sixth and Seventh Amendments to the Constitution of the United States recognize the fundamental importance of the jury in criminal and civil trials in United States courts; and

WHEREAS, appropriate *voir dire*, conducted by both the court and counsel, is essential to effective challenges for cause to ensure an impartial jury; and

WHEREAS, recent developments in the law governing the use of peremptory challenges have accentuated counsel's need to conduct *voir dire* to ensure proper exercise of peremptory challenges; and

WHEREAS, the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States is considering a change to F.R.C.P. 47(a) to provide for active participation by counsel in *voir dire*;

NOW, THEREFORE, BE IT RESOLVED THAT the Ninth Circuit Judicial Conference support a change to F.R.C.P. 47(a) to provide for active participation by counsel in *voir dire.*

Statement of Reasons

This resolution is nearly identical to Resolution No. 7 which was passed by the lawyers but was defeated by the judges in 1992. It is being reintroduced now in conjunction with renewed activity by the Committee on Rules of Practice and Procedure to amend F.R.C.P. 47(a) to mandate at least some attorney *voir dire* in federal courtrooms.

Rule 47(a) of the Federal Rules of Civil Procedure grants district judges discretion to conduct *voir dire* themselves or to permit counsel to do so. Many district judges have experimented with attorney *voir dire* over the past few years and have been happy with the results. This experience may in part be providing the impetus for the rule change.

There are both new and long-standing reasons to support attorney involvement in *voir dire.* It has always been true that *voir dire* by counsel will help ensure the elimination of bias by permitting counsel to engage in somewhat more searching inquiry of jurors as to whom a possible basis for challenge for cause is thought to exist.

More recently, a more critical reason for *voir dire* by counsel arose in the wake of *Batson v. Kentucky* and its progeny. In the past, peremptory challenges could lawfully be exercised on the basis of mere assumptions about the demographic characteristics of given jurors (and often, in typical cases of limited *voir dire*, counsel had little more to go on). Since these assumptions may be based in whole or in part upon race, religion, or gender, however, they can no longer lawfully be a basis for the exercise of peremptory challenges. If peremptory challenges are to remain a vital part of the process of jury selection, trial counsel must be given sufficient opportunity to conduct *voir dire* in order to be able to make judgments based upon answers given to questions crafted to reveal mindsets which, though they might not reach the level of bias, may suggest grounds for exercise of a peremptory challenge.

1995 Resolution No. 8

Do Not Exclude Lesbians and Gay Men from the Model EEO Plan of the Ninth Circuit

Submitted by

The lawyer delegations from N.D. California, S.D. California, and the Federal Defenders of the Ninth Circuit

WHEREAS, it is widely recognized that gay men and lesbians "have historically been the object of pernicious and sustained hostility" and that discrimination based on sexual orientation is "likely to reflect deep-seated prejudice"; *Rowland v. Mad River Local School District*, 470 U.S. 1009, 1014, 105 S. Ct. 1373, 1377 (J. Brendan dissenting); *Watkins v. U.S. Army*, 837 F.2d 1428 (9th Cir. 1988), aff'd on other grounds, 875 F.2d 699 (9th Cir. 1989); *Pruitt v. Cheney*, 963 F.2 1160 (9th Cir. 1990); *High Tech Gays v. Defense Industry Security Clearance Office*, 895 F.2d 563 (9th Cir. 1990); and

WHEREAS, this hostility and prejudice has caused many gay men and lesbians to be closeted at work; and

WHEREAS, it is therefore difficult to ascertain the full scope and breadth of discrimination in employment on account of sexual orientation through statistical analysis; and

WHEREAS, there is ample evidence drawn from local agencies, community groups and national surveys that discrimination on account of sexual orientation in employment is a real and significant problem; and

WHEREAS, many localities and states, including the states of California, Hawaii, and Washington, as well as the United States Department of Justice have declared it unlawful to discriminate against gay men and lesbians on account of their sexual orientation; and;

WHEREAS, the Ninth Circuit had included sexual orientation as one of the protected categories in its original Model Equal Employment Opportunity Plan but removed it in its second version of the Plan; and

WHEREAS, in keeping with its leadership in equal employment matters the Ninth Circuit Judicial Conference in 1994 passed a resolution encouraging the district courts to adopt Local Rules protecting gay men and lesbians in the courtroom;

NOW, THEREFORE, BE IT RESOLVED THAT the Model Equal Employment Opportunity Plan and Discrimination Complaint Procedures of the Ninth Circuit be amended to include sexual orientation as a protected category along with race, color, national origin, gender, religion, age and/or disability.

Statement of Reasons

Because of the closeted nature of sexual orientation caused by societal, group, and individual acts of discrimination, it is difficult to document statistically the full scope and breadth of bias in employment against gay men and lesbians. However, volumes of anecdotal testimony drawn from personal stories, records from local agencies, community groups and national surveys reveal a deep well of exclusion and harassment for those who self-identify or who are perceived by employers and co-workers to be gay.

Justice Brendan in his dissent in *Rowland v. Mad River Local School District,* 470 U.S. 1009, 1014, 105 S. Ct. 1373, 1377 (1985) recognized the persistence of discrimination against gay men and lesbians, observing that they "have historically been the object of pernicious and sustained hostility" which is "likely to reflect deep-seated prejudice" rather than rationality. *Plyler v. Doe,* 457 U.S. 202, 216 n.14, 102 S. Ct. 2382, 2394 n. 14 (1982).

In response to the compelling need for the protection of gays and lesbians in the workplace, akin to those afforded to members of other communities whose civil rights have been violated, an increasing number of localities and states, including the states of California, Hawaii, and Washington, have adopted laws prohibiting employment discrimination on account of sexual orientation; sadly, the United States Congress has consistently rejected efforts to enact comparable legislation although the United States Department of Justice has adopted a policy prohibiting discrimination based upon sexual orientation applicable throughout the Department.

The original draft of the Ninth Circuit's Model Equal Employment Opportunity Plan, following the growing practice of extending workplace rights to cover gay men and lesbians, included sexual orientation as a protected category along with race, color, national origin, gender, religion, age and/or disability. In so doing, the Ninth Circuit went beyond the scope of the Judicial Conference's draft, maintaining its position as a leader with respect to equal employment policies, as it had been before with its proposed gender bias rules. However, the most recent version of the Plan has all references to sexual orientation deleted.

It is imperative that the Ninth Circuit's Plan return to its original intent of providing gay men and lesbians with a discrimination-free workplace. To do otherwise would be to relegate gay men and lesbian employees of the Circuit to continued invisibility and vulnerability, suffering in silence from wrongful acts without a course of redress which their faithful service and dignity deserve.

1995 Resolution No. 9

Encouraging Reform of Sentencing Guideline 5K1.1

Submitted by

Leslie R. Weatherhead, Esq., Spokane, Washington

WHEREAS, Sentencing Guideline 5K1.1 is the only means by which sentences may be imposed by a court below certain mandatory minimum terms set by statute in certain cases; and

WHEREAS, Guideline 5K1.1 by its terms applies only where a criminal defendant can furnish "useful" information inculpatory of another; and

WHEREAS, there exists no moral principle which justifies different treatment of the simply contrite from those in possession of knowledge which inculpates others; and

WHEREAS, the United States courts have traditionally recognized that promises of consideration- for testimony (even truthful testimony) threaten the integrity of the courts; and

WHEREAS, Guideline 5K1.1's emphasis on ability to inculpate others results in disparate treatment of offenders and threatens the integrity of the courts by creating powerful temptation for perjury; and

WHEREAS, truthfulness and real contrition should be the sole criteria for leniency at sentencing;

NOW, THEREFORE BE IT RESOLVED THAT the Ninth Circuit Judicial Conference respectfully urges the United States Sentencing Commission and the United States Congress to modify Sentencing Guideline 5K1.1 and its authorizing statute to make truthfulness and real contrition the sole criteria for relief from mandatory minimum sentences in certain cases.

AMENDED
1995 Resolution No. 10

End Separate Voting on Conference Resolutions

Sponsored by

Lawyer Representatives Coordinating Committee

WHEREAS, an important function of the Ninth Circuit Judicial Conference is to provide for the sharing of views among bench and bar on issues affecting the administration of justice; and

WHEREAS, the only method prescribed by the Council Order for obtaining the expression of the sense of the conference is by means of formal resolutions presented and debated at each conference; and

WHEREAS, over time a practice has developed in connection with conference resolutions to record the votes of the members from the bench and bar in separate tallies, and to require a majority from both tallies for a resolution to carry, which practice was formally adopted by the Judicial Council in 1995; and

WHEREAS, the method of employing separate tallies of lawyer and judicial members tends to distort the outcome of votes, causing the failure of resolutions which enjoy the support of a majority of the members of the conference; and

WHEREAS, the method of employing separate tallies of lawyer and judicial members may inhibit full discussion of important issues regarding the administration of justice;

NOW, THEREFORE, BE IT RESOLVED THAT the Judicial Council should amend the Council Order to provide that the vote of a simple majority of the members of the conference as a whole shall suffice to carry or defeat a resolution.

Statement of Reasons

The resolutions portion of the conference has historically been a centerpiece of the conference. It has provided that opportunity for exchange and debate on issues related to the improvement of the administration of justice which is the entire statutory purpose for the Conference. Yet in recent years, the resolutions process has not served the role intended for it as a place for a "spit and growl" session among bench and bar, as envisioned for it by the 1976 Final Report of the Committee on Reorganization of the Ninth Circuit Judicial Conference and Conference Committees. Indeed, the resolutions portion of the program has come under criticism recently for presenting issues which are friendly, tame, or perhaps not even debatable.

The Lawyer Representatives Coordinating Committee believes this phenomenon may be explained, at least in part, by the practice (which grew up informally over the years and was formally recognized this year) of tallying votes of lawyer-members and judicial members separately and requiring a majority in both groups to carry a resolution. What this means in practice is that each of the major "interest groups" represented at the conference has an effective veto over any initiative brought by the other. This may mean that resolutions thought not likely to achieve the support of the majority of one group are never brought. It certainly means that there is no debate on "safe" resolutions.

The resolution offered in 1992 at Sun Valley on attorney *voir dire* provides an interesting example. The judges voted 70 to 46 against; the lawyers voted 82 to 9 in favor. So the resolution failed. There was no debate, other than one speaker in favor. Yet, had a simple majority rule been in effect, the resolution would have carried. To achieve the same outcome, the "no" voters would have needed to persuade 25 of their colleagues to change their votes. A full discussion of the issue would seem to have been ensured.

AMENDED
1995 Resolution No. 11

Fill Judicial Vacancies Irrespective of Legislation to Divide the Circuit

Sponsored by

Lawyer Representatives Coordinating Committee

WHEREAS, it is indispensable to fill judicial vacancies to promote the efficient administration of justice; and

WHEREAS, nominations currently pend to fill vacancies on the Court of Appeals; and

WHEREAS, legislation regarding whether to split the Ninth Circuit Court of Appeals has been introduced in Congress; and

WHEREAS, the appointment process for nominees to the Court of Appeals has been delayed pending action on the bill to divide the Circuit;

NOW, THEREFORE, BE IT RESOLVED THAT the Ninth Circuit Judicial Conference respectfully urges the United States Senate to continue expeditiously the process by which currently pending judicial nominees are considered for appointment to the Court of Appeals, independent of the controversy about whether to divide the Ninth Circuit.

Statement of Reasons

Judicial vacancies threaten the ability of the Court of Appeals to operate at full capacity. For too long, caseload and other judicial responsibilities have increased while vacancies tend to accumulate. Therefore, the nomination and appointment process must proceed apace to ensure the efficient administration of justice.

Coincidentally, legislation to split the Ninth Circuit has been introduced while judicial nominees await appointment by Congress. Consideration and appointment of nominees to the Court of Appeals is being delayed by certain senators until Congress acts upon the bill to divide the Circuit.

There is no logical connection between appointing sorely needed judges and the merit of legislation to split the Circuit. Linkage of the two matters, on balance, is detrimental. This resolution conveys the idea that the process of appointing judges is so important that it should proceed regardless of the debate over whether to maintain this Circuit.

1995 Resolution No. 12

Continued Funding for Post-Conviction Defender Organizations

Sponsored by

Lawyer Representatives

WHEREAS, post-conviction defender organizations (previously known as death penalty resource centers) have made an important contribution to our criminal justice system over the past decade by providing direct representation in federal *habeas corpus* death penalty cases, and by recruiting, assisting and training other lawyers to represent presons under judgment of death; and

WHEREAS, many appointed counsel accepted the enormous responsibility for providing representation in this area of the law, in which they had not previously practiced, in reliance on the availability of continuing expert assistance from a post-conviction defender organization, and may be unable to continue to provide such representation without such assistance; and

WHEREAS, pending federal legislation would substantially change the nature of *habeas corpus* litigation and make the assistance of post-conviction defender organizations even more imperative; and

WHEREAS, eliminating post-conviction defender organizations will threaten the quality of representation provided to persons under judgment of death, increase the costs of providing adequate representation, and disrupt the orderly litigation of death penalty cases;

NOW, THEREFORE, BE IT RESOLVED THAT the Ninth Circuit Judicial Conference respectfully urges the United States Congress to continue funding for post-conviction defender organizations in FY96.

Statement of Reasons

Post-Conviction Defender Organizations (PCDOs) have, through the years, provided expert and efficient assistance to lawyers who accept appointments to represent death row federal *habeas corpus* petitioners. These lawyers, many of whom have had little or no experience in this serious and complex area of the law, have accepted appointments anticipating the assistance of PCDOs. PCDO involvement in providing assistance to lawyers and the court has resulted in greater efficiency in the administration of justice, enormous savings in the cost of litigation and fairer resolution of these most important cases.

Congress is considering legislation to eliminate funding for PCDOs. The result will be delay and, in the estimation of Chief Judge Richard S. Arnold, Chair of the Budget Committee for the Judicial Conference of the United States, a doubling in the cost of providing counsel to handle representation in these matters. The proposed defunding of PCDOs seems unwise and shortsighted. The Ninth Circuit Judicial Conference should urge Congress to continue funding of these organizations that are so critical to the fair and efficient administration of justice.

1996 Conference Resolutions Tally

Resolutions are one of the most enduring ways in which the annual Ninth Circuit Judicial Conference makes an impact upon the administration of justice in the circuit. Each year the conferees consider a half-dozen or more carefully crafted resolutions that are designed to improve the operation of our courts, to make them more accessible, or to provide input to the judges and court administrators who run them.

New Procedures

This year the Conference Executive Committee modified the procedure for discussing resolutions. In the past, one hour of plenary session time was devoted to open public debate of the resolutions. Perhaps due to the size of the gathering, public debate has not been vigorous and too few individuals had an opportunity to meaningfully participate in the discussion. This year the procedure was changed so that resolutions were taken up during the smaller district lunch breakout sessions. The feedback from these sessions indicated that a far higher level of participation and discussion was achieved than in the past. A side benefit of the process was that the vote tally could be conducted on site and reported to the conference before adjournment.

Based upon the success of the new process, the Conference Executive Committee plans to extend it for an additional year, perhaps with the addition of a modest amount of plenary session time to discuss the two or three most interesting or controversial resolutions. The following is the final vote count for the 1996 conference resolutions—*9th Circuit News* will keep you apprised of the efforts to implement them.

Resolution No. 1: Complete the Research and Prepare the Final Report of the Ninth Circuit Task Force on Racial, Religious & Ethnic Fairness.

PASSED	YES	NO	ABSTAIN
Judges	164	10	0
Lawyers	116	1	0

Resolution No. 2: Encourage a Local Rule to Remind Court of Delayed Decisions.

PASSED	YES	NO	ABSTAIN
Judges	113	61	0
Lawyers	72	45	0

Resolution No. 3: Authorize a Study of the Impact of F.R.Civ. P. Rules 26(a)-(f).

FAILED	YES	NO	ABSTAIN
Judges	45	128	1
Lawyers	32	80	5

Resolution No. 4: Make Local Rules Available on Internet or Other Electronic Media.

PASSED	YES	NO	ABSTAIN
Judges	157	16	1
Lawyers	115	2	0

Resolution No. 5: Preserve the Practice of Convening Circuit Judicial Conferences Every Year.

PASSED	YES	NO	ABSTAIN
Judges	140	33	1
Lawyers	105	11	1

Resolution No. 6: Encourage Judicial Attendance at Future Ninth Circuit Judicial Conferences.

PASSED	YES	NO	ABSTAIN
Judges	153	20	1
Lawyers	103	13	1

Resolution No. 7a: Preserve the Resolutions Process.

PASSED	YES	NO	ABSTAIN
Judges	157	15	2
Lawyers	115	1	1

Resolution No. 7b: Retain It as Part of the Plenary Session of the Conference.

PASSED	YES	NO	ABSTAIN
Judges	129	41	4
Lawyers	89	28	4

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1996 RESOLUTIONS

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1996 RESOLUTIONS

Ninth Circuit Judicial Conference

DATE: August 1996

TO: All Members of the Ninth Circuit Judicial Conference

FROM: 1996 Resolutions Subcommittee:

District Judge Thomas S. Zilly, Chair
Circuit Judge Thomas G. Nelson
District Judge Ronald S.W. Lew
Magistrate Judge Joan S. Brennan
Stephen D. Pahl, Esquire
Michele A. Gammer, Esquire

RE: New Conference Resolutions Procedure

Seven resolutions have been submitted for consideration by the 1996 Ninth Circuit Judicial Conference. The resolutions have been placed on the conference agenda for debate and vote on

- **Wednesday, August 21, 11:45 a.m.-1:15 p.m., during district lunches**

We are trying a new procedure this year with conference resolutions. Resolutions will be discussed and voted upon *during the district lunches.* Your lawyer representative chair will facilitate the process and collect and tally the ballots for your district.

Voting will still be by secret written ballot. Judges and lawyer representatives will vote separately. A resolution may be adopted by the conference only if a majority of both groups concur.

Official ballots may be found on the back cover of this booklet (note: lawyer's ballots are on page 17, judge's ballots on the inside cover). Please turn in your ballots during the district lunch or turn them in to the conference registration desk by **5:00 p.m. on Wednesday, August 21.**

Evaluation. The Resolutions Subcommittee is very interested in your views on:

a) Do you prefer resolutions debates in plenary sessions or in the district lunches?
b) What suggestions do you have to improve the resolutions process?

Please be prepared to advise your lawyer representative chair of your views on these questions so the information can be conveyed to assist next year's Resolutions Subcommittee.

STATEMENT OF PURPOSE
POLICY AND GUIDELINES
FOR THE CONDUCT OF THE BUSINESS OF THE
NINTH CIRCUIT JUDICIAL CONFERENCE

Resolutions Subcommittee
Ninth Circuit Judicial Conference
August 1996

I. It is the statutory function and purpose of the Ninth Circuit Judicial Conference (28 U.S.C. Section 333), as confirmed by Order of December 12, 1978, to consider the business of the courts of the Ninth Circuit, to advise means of improving the administration of justice, and to assist in implementing decisions made by the judicial council as to the administration of the business of the courts of the Ninth Circuit. All representatives to the conference are expected to participate actively in the business of the conference.

II. It is the policy of the judicial council of the circuit and of the judicial conference of the circuit to encourage free, open, and frank discussion and debate among all representatives to the judicial conference concerning the proper business of the conference. It is expected that all representatives will conduct themselves with the mutual respect and courtesy that is so essential to the proper and orderly functioning of a deliberative body.

III. The chair of the conference, with the advice and consent of its Executive Committee, in advance of the annual meeting, will announce to the representatives the rules that will govern the conduct of the general business sessions of the conference, including the following:

(a) A resolutions subcommittee will be created composed of at least three members of the Executive Committee of the conference, including the chief judge of the circuit or his designee, a district court judge and a lawyer representative.

(b) The resolutions subcommittee may establish a timetable for the submission of resolutions, and procedures for their distribution to conference representatives.

(c) Resolutions may be submitted by any judge or lawyer representative, as well as by a delegation.

(d) The resolutions subcommission may eliminate resolutions not germane to the statutory purpose of the conference, see 28 U.S.C. Section 333; restate germane resolutions in a form suitable for consideration by the conference; fix the order in which resolutions shall be considered; and determined the time to be allotted for consideration of each resolution.

1996 Resolution No. 1

Complete the Research and Prepare the Final Report of the Ninth Circuit Task Force on Racial, Religious and Ethnic Fairness

Submitted by

The Ninth Circuit Task Force on Racial, Religious and Ethnic Fairness
and
The Lawyer Representatives Coordinating Committee

NOW, THEREFORE, BE IT RESOLVED THAT the Judicial Conference of the Ninth Circuit continue its work to assure fairness and equity in the administration of justice by:

(1) Authorizing the Task Force on Racial, Religious and Ethnic Fairness in the Courts to complete its research and to submit a final report following the receipt of suggestions and commentary from the conference of August 1996, and to provide information to the districts regarding its research, findings, and recommendations;

(2) Encouraging each district to review the final report and recommendations and to consider whether there are areas included within the study that require further analysis on a district level. Each district is requested to determine whether educational programs for the court, its staff, and the local bar may be desirable and whether changes to court procedures should be made to accommodate different racial, religious, and ethnic groups within the district. After consideration of the study, each district is urged to report to the task force what steps may be taken in the district to implement the recommendations;

(3) Directing the Task Force on Racial, Religious, and Ethnic Fairness to report back to the Ninth Circuit Judicial Conference on responses to the final report and implementation efforts planned or underway in each district and to suggest areas for further study and implementation;

(4) Urging the bench, bar, and staff of the Ninth Circuit to continue to promote fairness in federal court processes and procedures and to reaffirm the commitment to equal justice.

1996 Resolution No. 2

Encourage A Local Rule to Remind Court of Delayed Decisions

Submitted by

The Lawyer Representatives Coordinating Committee

WHEREAS the United States district court judges, lawyers and litigants of the Ninth Circuit have a mutual interest in timely decisions by the courts in all matters; and

WHEREAS the bench, the bar and the litigants benefit significantly from a mechanism for communicating to the court whenever a reasonable period of time has elapsed for a decision after submission of a matter to the court; and

WHEREAS some districts that have adopted said mechanisms have reduced delay in rendering decisions under submission; and

WHEREAS districts that have adopted the local rule recommended or a version of it include the District of Arizona, the Central District of California and the District of Oregon (see examples attached); and

WHEREAS communication between the bench and the bar will serve to expedite decisions by the court,

NOW, THEREFORE, BE IT RESOLVED THAT the judges and the bar of the Ninth Circuit encourage each district court to adopt the following or a similar local rule:

"If the court does not:

(1) as to any motion render its decision within one-hundred and twenty (120) days after the matter has been submitted to the court, or

(2) as to any trial without a jury, render its decision or advise all counsel of its intended decision on all issues before the court within one-hundred and twenty (120) days after submission of the matter to the court, all counsel jointly shall sign and promptly file with the court a request that such decision or intended decision be made without further delay. Such request shall be prepared by the moving party in the case of a motion and by the plaintiff in the case of a trial. It shall be joined in by all counsel, who shall have

Statement of Reasons

Reasons For:

There is a recognized need within many districts for a mechanism to speed up delayed decisions.

The bench, the bar and the litigants will all benefit from a mechanism which allows for communication between the lawyer and judge whenever a matter has been kept under advisement for longer than a reasonable period of time, i.e., 120 days after the matter has been submitted to the court.

Providing such a mechanism serves to reduce delay in decisionmaking, it will benefit the entire Judiciary which at times suffers the perception that there are no requirements for or consequences of delayed decisionmaking.

Some districts that currently have a similar local rule have reduced delays in decisionmaking on matters under submission. See examples from Arizona, C.D. California, and Oregon attached.

Having a local rule in place makes it easier for the chief judge to be aware of case delay problems and gives the chief judge explicit authority for dealing with them.

Reasons Against:

Judges may be resentful of or be embarrassed by receiving a notice that they are behind schedule on a matter under advisement.

Lawyers filing such notice, particularly where the plaintiff's counsel must initiate such notice in a trial situation and the movant in a pleading situation, may be disadvantaged by such filing, depending on the reaction of the judge.

The burden for reducing court delay should not fall upon the bar and the litigants; rather, there should be an effective internal procedure within the district courts to deal effectively with judges who are slow to rule on matters taken under advisement.

It is unfair to single out district court judges; bankruptcy judges and magistrate judges are also responsible for delayed decisions on occasion.

Sample Delay Notice
Local Rules

Local Rule 1.10 (o), D. Ariz. (1994)

(o) **Pending Motions Notification.** Whenever any motion or other matter has been taken under advisement by a District Judge or Magistrate Judge for more than one hundred and eighty (180) days, the attorneys of record in the case shall inquire of the Court, in writing, as to the status of the matter, and shall do so every fourteen (14) days thereafter until the submitted matter has been decided.

Local Rule 32, C.D. Calif. (1993)

RULE 32. TIME LIMITS FOR DECISIONS BY COURT

If the Court does not:

(1) as to any motion as defined in Rule 1.3 or Rule 7 hereof, render its decision within one-hundred and twenty (120) days after the matter has been submitted to the Court, or

(2) as to any trial without a jury, render its decision or advise all counsel of its intended decision on all issues before the Court within one-hundred and twenty (120) days after submission of the matter to the Court,

all counsel jointly shall promptly file with the Court a request that such decision or intended decision be made without further delay. Such request shall be prepared by the moving party in the case of a motion and by the plaintiff in the case of a trial. It shall be joined in by all counsel, who shall have the duty to cooperate with counsel preparing the request in its completion and filing. A copy of such request shall be served upon the Chief Judge.

If the Court does not render its decision or intended decision within thirty (30) days of the filing following such request, the Court shall within said thirty (30) days advise all counsel in writing of the date by which the decision or intended decision will be made. A copy of such written advice from the Court shall be served upon the Chief Judge.

Eff. Dec. 1, 1993.

Local Rule 205-2, D. Ore. (1991)

205-2 REMINDERS TO THE COURT

(a) In the event a judge has under advisement any matter, including, but not limited to, a motion or decision in a bench trial, for a period of more than sixty (60) days, each party affected by the undecided matter shall send to the judge a letter particularly describing the matter under advisement and stating the date the matter was taken under advisement.

As long as the matter remains under advisement, at intervals of forty-five (45) days thereafter, each affected party shall send a similar letter to the chairman of the Calendar Management Committee by delivery to the Clerk.

(b) Unless a trial date has already been set, if the assigned judge fails to schedule a preliminary pretrial conference as described by L.R. 235-3(a) within ten (10) days of the lodging of the pretrial order or order waiving the pretrial order, counsel for plaintiff, or plaintiff if not represented by counsel, shall send a letter to the assigned judge advising that no such conference has been set.

1996 Resolution No. 3

Authorize a Study of the Impact of F. R. Civ. P. Rules 26(a) through Rules 26(f) as Amended by Congress Effective December 1, 1993

Submitted by

Lawyer Representatives Coordinating Committee

WHEREAS Federal Rules of Civil Procedure Rules 26(a) through 26(f) were amended by Congress effective December 1, 1993, and;

WHEREAS several districts of the Ninth Circuit have "opted in" or "opted out" of selected portions of Rule 26's requirements, and;

WHEREAS districts "opting in" or "opting out" of selected provisions of Rule 26 have created numerous inconsistencies for practitioners and their clients who conduct business in multiple districts throughout the Ninth Circuit, and;

WHEREAS districts located in the same state have "opted in" or "opted out" out of provisions of Rule 26, creating numerous inconsistencies for practitioners and their clients who conduct business within the boundaries of particular states of the Ninth Circuit;

NOW, THEREFORE, BE IT RESOLVED THAT the Ninth Circuit Judicial Conference approve the establishment of a study of the impact of Federal Rules of Civil Procedure Rules 26(a) through 26(f), as amended effective December 1, 1993, so that information is available circuit-wide as to whether the so-called mandatory disclosure rules actually result in an improvement to the administration of justice within the Ninth Circuit.

1996 Resolution No. 4

Make Local Rules Available on Internet or Other Electronic Media

Submitted by

Lawyer Representatives Coordinating Committee

WHEREAS, federal court practitioners and parties appear before federal courts throughout the Ninth Circuit; and

WHEREAS, knowing and following the local rules and practices in the various districts is critical to the proper administration of justice before the federal courts; and

WHEREAS, publication of changes to the local rules and practices in nationally available publications and treatises often is delayed until the next annual edition; and

WHEREAS, new forms of electronic media, including the Internet, PACER, and electronic bulletin boards permit immediate, national access to current versions of local rules and practices;

NOW, THEREFORE, BE IT RESOLVED THAT the courts within this circuit make local rules and practices available on the Internet, PACER, electronic bulletin boards or other electronic media, and further, that the United States Court of Appeals for the Ninth Circuit make available on its bulletin board the electronic addresses for each district's local rules that are on line.

1996 Resolution No. 5

Preserve the Practice of Convening Circuit Judicial Conferences Every Year

Submitted by

The Lawyer Representatives Coordinating Committee

WHEREAS the judges and lawyers of the Ninth Circuit have conducted successful circuit judicial conferences each year for over 50 years; and

WHEREAS both the bench and the bar benefit significantly from the opportunity that the annual circuit conference provides to discuss and work together to resolve troublesome issues in the administration of justice in the Ninth Circuit; and

WHEREAS the litigants and the public benefit from the increased communication and exchange of ideas between the judges and lawyers that an annual circuit judicial conference provides; and

WHEREAS to lessen the frequency of the circuit judicial conference may substantially reduce the communication and avenues for cooperation between the bench and the bar that are essential to the smooth administration of the courts,

NOW, THEREFORE, BE IT RESOLVED THAT the judges and lawyers who work and practice in the courts of the Ninth Circuit urge the chief judge and the Judicial Council of the Ninth Circuit to continue the beneficial practice of holding circuit judicial conferences annually so that the United States Courts of the Ninth Circuit may better serve the people of the United States, litigants, and the bar to peaceably resolve civil and criminal disputes.

1996 Resolution No. 6

Encourage Judicial Attendance at Future Ninth Circuit Judicial Conferences

Submitted by

Lawyer Representatives Coordinating Committee

WHEREAS Congress has legislated that attendance at future judicial conferences be optional for members of the Judiciary, and

WHEREAS attendance and participation at the annual judicial conferences have been beneficial for both the bench and the bar, and

WHEREAS the interaction between the judges and the lawyer representatives at past judicial conference has allowed the Ninth Circuit conference to carry out its three general purposes: administrative, educational, and social, and

WHEREAS the need cannot be overstated for participation by each and every member of the Judiciary of the Ninth Circuit in carrying out the three purposes of the conference:

- To consider the business of the courts in the Ninth Circuit
- To advise means of improving the administration of justice in the Ninth Circuit
- To assist in implementing decisions made by competent authority for the administration of the business of the courts of the Ninth Circuit,

NOW, THEREFORE, BE IT RESOLVED THAT each judicial officer of the Ninth Circuit, including circuit judges, district judges, bankruptcy judges and magistrate judges, make every reasonable effort to attend every Ninth Circuit Judicial Conference.

1996 Resolution No. 7A and 7B

Preserve the Resolutions Process
and
Retain Resolutions as Part of the Plenary Session of the Conference

Submitted by

Lawyer Representatives Coordinating Committee

WHEREAS circuit conferences are, by statute, convened "for the purpose of considering the business of the courts and advising means of improving the administration of justice within the circuit" (28 U.S.C. §333); and

WHEREAS the statute further directs that the "court of appeals for each circuit shall provide by its rules for representation and active participation at such conference by members of the bar of such circuit" (28 U.S.C. §333(c)); and

WHEREAS the process by which resolutions may be submitted by any participant at the circuit conference for consideration by the entire conference is a uniquely effective method by which lawyers and others who are not serving on official committees may actively participate in the conference, and, conversely, the elimination or restriction of that process would materially impede the ability to participate by lawyers and others who are not judicial officers; and

WHEREAS the salutary purposes of the resolution process may be achieved with, and require only, a modest allocation of time from the agenda of the conference in plenary session;

NOW, THEREFORE, BE IT RESOLVED THAT:

A. The Ninth Circuit Judicial Conference retain the resolutions process as part of the annual circuit conference;

and

B. The resolutions debate and discussions take place in plenary session rather than in district lunches or some other venue involving fewer than all conference members gathered together at the same time.

BALLOT FOR JUDGES

	TITLE OF RESOLUTION	YES	NO
Resolution No. 1:	Complete the Research and Prepare the Final Report of the Ninth Circuit Task Force on Racial, Religious and Ethnic Fairness	☐	☐
Resolution No. 2:	Encourage A Local Rule to Remind Court of Delayed Decisions	☐	☐
Resolution No. 3:	Authorize a Study of the Impact of F.R. Civ. P. Rules 26(a) through Rules 26(f) as Amended by Congress Effective December 1, 1993	☐	☐
Resolution No. 4:	Make Local Rules Available on Internet or Other Electronic Media	☐	☐
Resolution No. 5:	Preserve the Practice of Convening Circuit Judicial Conferences Every Year	☐	☐
Resolution No. 6:	Encourage Judicial Attendance at Future Ninth Circuit Judicial Conferences	☐	☐
Resolution No. 7A	Preserve the Resolutions Process	☐	☐
and	and		
No. 7b:	Retain Resolutions as Part of the Plenary Session of the Conference	☐	☐

1997 Conference Resolutions Tally

Resolutions passed at circuit conferences can and do have a lasting impact upon the administration of justice. Every year the judges and lawyers at the conference consider a half-dozen or more well-crafted resolutions that seek to improve the operation of the courts, to make them more accessible, or to provide Congress, the judges, or court administrators with their views on how the courts should be run. This year was no exception, with the submission of eight resolutions for conference debate.

Revised Procedures

Last year, the Conference Executive Committee modified the procedure for discussing resolutions. Resolutions were taken up during the district lunch breakout sessions and voted on at that time, permitting a report of the final results before the conference concluded. Feedback indicated that participation in the discussions was high, but that time for plenary session discussion was still desired.

In an attempt to accommodate the request for plenary discussion, this year the Resolutions Subcommittee prepared and circulated the resolutions six weeks before the commencement of the conference. This gave districts a chance to discuss resolutions as a group in advance of the conference if they wished. At the conference, the subcommittee reserved 30 minutes for plenary discussion of just those resolutions which the districts indicated they wished to have discussed. Resolutions 1, 2, 3, 5, and 7 were brought to the floor for debate, with #1 on juror questions receiving the most discussion. The following is the final vote count for the 1997 conference resolutions. The *9th Circuit News* will keep you apprised of efforts to implement them.

Resolution No. 1: Allow Civil Jurors to Submit Questions to the Trial Judge.

FAILED	YES	NO	ABSTAIN
Judges	42	56	1
Lawyers	46	30	1

Resolution No 2: Adopt a Clear Definition of "Extended or Complex" for Criminal Justice Act Cases.

FAILED	YES	NO	ABSTAIN
Judges	32	64	3
Lawyers	50	25	2

Resolution No. 3: Amend the United States Arbitration Act to Restore the Viability of Arbitration by Allowing Limited Judicial Review Similar to that of Administrative Agency Decisions.

FAILED	YES	NO	ABSTAIN
Judges	40	59	0
Lawyers	44	30	3

Resolution No. 4: To Preserve the Independence of the Judiciary.

WITHDRAWN

Resolution No. 5: Fill All Judicial Vacancies Promptly and Appoint a Committee.

PASSED	YES	NO	ABSTAIN
Judges	72	20	7
Lawyers	73	3	1

Resolution No. 6: Support the Legislative Effort to Delink Judicial Salaries From Congress and To Provide Cost of Living Adjustments and Appoint a Committee.

PASSED	YES	NO	ABSTAIN
Judges	86	7	6
Lawyers	69	6	2

Resolution No. 7: Extend Reasonable Accommodation to All Persons with Disabilities.

FAILED	YES	NO	ABSTAIN
Judges	44	53	2
Lawyers	54	22	1

Resolution No. 8: Assure Fairness in the Courts: Fully Implement the Recommendations of the Ninth Circuit Task Force on Racial, Religious & Ethnic Fairness.

PASSED	YES	NO	ABSTAIN
Judges	80	10	9
Lawyers	71	4	2

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1997 RESOLUTIONS

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1997 RESOLUTIONS
Ninth Circuit Judicial Conference

DATE: June 1997

TO: All Members of the Ninth Circuit Judicial Conference

FROM: 1997 Resolutions Subcommittee:
Michele A. Gammer, Esq., *Chair*
Circuit Judge Sidney R. Thomas
District Judge Roslyn Silver
United States Attorney Nora Manella
Carolyn Ostby, Esq.

RE: 1997 Conference Resolutions Procedure

Seven resolutions have been submitted to date for consideration by the 1997 Ninth Circuit Judicial Conference. There may be one or two additional ones by the time of the conference.

In accordance with our new procedures, we hope that each district will take the opportunity to meet to discuss all the resolutions prior to the conference or during the district lunches at the conference. At least three of the resolutions will be placed on the conference agenda for debate on

- **Tuesday, August 19, from 11:15 a.m. until 11:45 a.m.**

Proponents and opponents will be given a brief opportunity to speak to each resolution selected for floor debate. Comments and debate from the floor are encouraged. Our parliamentarian will decide any questions concerning proper procedure according to Robert's Rules of Order.

Voting will be by written ballot after the debate. Judges and lawyer representatives will vote separately. A resolution may be adopted by the conference only if a majority of both groups concur.

Official ballots will be included with your conference registration materials that will be mailed to you in advance of the conference. Please deposit ballots in the boxes provided or turn them in to the conference registration desk.

1997 Resolution No. 1

Allow Civil Jurors to Submit Questions to the Trial Judge

Submitted by

The Lawyer Representatives Coordinating Committee

WHEREAS, diligent, interested jurors are essential components of the justice system; and

WHEREAS, the public's attitude toward jury service will be irnproved by steps that increase the dignity and satisfaction of jury service; and

WHEREAS, research indicates that in civil trials where jurors are permitted to ask questions of witnesses through the submission of written questions to the court, jurors feel significantly better informed; and

WHEREAS, the Arizona Supreme Court Committee on More Effective Use of Juries and the California Judicial Council's Blue Ribbon Commission on Jury System Improvement have each recommended that the courts of those states adopt procedures whereby jurors would be permitted to ask questions of witnesses, through the submission of written questions to the court; and

WHEREAS, the Arizona Supreme Court has formulated and implemented procedures for the submission of juror questions to the court during trial, and experience in the Arizona courts indicates that about two-thirds of the questions submitted by jurors to the court are allowed and answered;

NOW, THEREFORE, BE IT RESOLVED THAT the Ninth Circuit Judicial Conference encourage judges, in civil cases, to permit jurors to submit written questions to the court which may be asked of witnesses, subject to the discretion of the trial judge, the rules of evidence, and the opportunity of counsel to object outside of the presence of the jury.

The Blue Ribbon Commission on Jury System Improvement has also recommended to the California Judicial Council that the following paragraph be added to the state's Standards of Judicial Administration:

> (b) Trial judges should permit jurors during the trial to submit to the court written questions which, subject to the discretion of the trial judge and the rules of evidence, may be asked of witnesses who are still on the stand. Trial judges who decide to permit this practice should deliver in substance the following instruction to jurors before trial begins:
>
> During the course of this trial you may have some questions that you wish to have asked.
>
> If you wish to ask a question, please write out your question and hand it to the bailiff. The court will allow each attorney to examine the question.
>
> Whether your question will be asked by one of the lawyers or by the judge after you have submitted it depends upon many factors. The attorneys and the Court have a broad overview of the case and may choose not to ask the question. The question may call for an answer which the Court or attorneys may feel is inadmissible because of the Constitution or laws of the United States or the State of California. The question may call for an answer which may be unreliable or untrustworthy.
>
> You may not draw any inference when a question is not asked nor may you guess or speculate as to why the question was not asked nor what the answer might have been.

Reasons Against

The American civil jury system has operated successfully in its traditional manner for two hundred years—it should not be tampered with now in a faddish effort to "modernize" the system.

The unavoidable speculation and inferences that jurors may draw from the unasked question will add an entirely unpredictable and destabilizing dimension to the jury decision–making process that could jeopardize the entire system.

Allowing jurors to ask questions will delay the trial and create more opportunities for counsel to object and interfere with the smooth flow of a civil trial.

1997 Resolution No. 2

Adopt a Clear Definition of "Extended or Complex" for Criminal Justice Act Cases

Submitted by
The Lawyer Representatives Coordinating Committee

WHEREAS, the ends of justice are best served if private attorneys appointed to represent indigent defendants are fairly compensated; and

WHEREAS, fees for appointed counsel are regulated by statute at $75.00 per hour or less, with a $3,500.00 maximum; and

WHEREAS, attorneys may be permitted payment in excess of the statutory maxima only if the case is determined to be "extended or complex"; and

WHEREAS, there is a lack of a meaningful standard defining "extended or complex"; and

WHEREAS, the Ninth Circuit Judicial Council Ad Hoc Committee on Criminal Justice Act Problems has previously left the definition of "extended or complex" to each district; and

WHEREAS, a meaningful and uniform definition for "extended or complex" needs to be established; and

WHEREAS, a brightline definition of "extended or complex" is a case which requires more hours than the average criminal case disposed of by guilty plea in this circuit in 1987, the year the statutory maxima became effective;

NOW, THEREFORE, BE IT RESOLVED THAT the Judicial Council of the Ninth Circuit consider adopting the following definition of "extended or complex" to apply to all Criminal Justice Act cases within this circuit:

For the purposes of 18 U.S.C. § 3006A(d)(3), an attorney's representation will be deemed "extended or complex" if

(1) legal or factual issues are unusual, thus requiring the expenditure of significantly more time, skill and effort by the lawyer than would normally be required in the average criminal case disposed of by guilty plea in 1987 in this circuit, *or*

(2) significantly more time is reasonably required for total processing in the case than that required in the average criminal case disposed of by guilty plea in this circuit in 1987, including pre-trial and post-trial hearings, *and*

(3) payment in excess of the statutory maxima is necessary to provide fair compensation.

quantity or nature of the services demanded, are significantly greater than average." *Id.* at 989. "[T]he point of reference is the case commonly encountered, and the comparison must reveal enough margin of difference to justify a confident conclusion that excess compensation is essential to fairness." *Id.* Everyday judicial experience should mitigate the vagueness of the standard. *Id.*

B. A GUILTY PLEA IS THE "AVERAGE CASE"

It is clear that the "average case" for the purposes of applying this standard means the average for all criminal cases in a particular district. The standard should not be the average case of that particular type—e.g., the judge should not inquire whether this RICO case is more complex than the average RICO case. It is quite possible that all RICO prosecutions will be more complex (or extended) than the average case in this district.

It is difficult to draw a meaningful distinction between "extended" and "complex." Either one may justify excess fees; a case need not be both extended and complex. Both speak to the underlying issue of the amount of time required.

More than 90% of the criminal cases in this circuit and in all other circuits are resolved by guilty plea. It therefore seems apparent that the "average case," for the purpose of applying the "extended or complex" standard, should be the guilty plea case since that is truly the average case. Using this as a starting point, the average number of hours for a guilty plea in 1987, at the time §3006A(d)(2) became effective, setting the maxima at $3,500, would establish the baseline for a "nonextended" case. Anything beyond that average number of hours would fit the definition of "extended." This circuit can establish from the raw data available in Criminal Justice Act vouchers the average number of hours expended for a guilty plea in 1987, e.g., the date §3006A(d)(2) became effective.

C. *PRO BONO* COMPONENT

Experienced federal criminal practitioners in this circuit earn between $200.00 and $450.00 per hour; thus, at $75.00 per hour, approximately two-thirds of the hourly rate on Criminal Justice Act cases is *pro bono.* Additionally, since there is no uniform definition of "extended" or "complex," counsel may spend substantially more than 50 hours preparing and trying a case ($75.00 x 50 hours = $3,750.00), only to learn later the court did not regard the case as extended or complex, and the attorney's time beyond $3,500 is not compensated.

D. PROPOSED DEFINITION

The definition set forth in the resolution is recommended. Again, once a determination has been made that the representation was "extended or complex," the court must then determine whether the excess fees are necessary to provide "fair compensation."

1997 Resolution No. 3

Amend the United States Arbitration Act to Restore the Viability of Arbitration by Allowing Limited Judicial Review Similar to that of Administrative Agency Decisions

Sponsored by

The Ninth Circuit Senior Advisory Board

WHEREAS, the United States Arbitration Act (USAA), 9 U.S.C. §§ 1-208, was promulgated to reflect the legislative policy of the United States that commerce and the administration of justice would be enhanced by promoting a uniform and judicially-regulated system of consensual arbitration in the United States; and

WHEREAS, the usefulness of the United States Arbitration Act has been limited from the perspective of businesses because of the untrammeled discretion accorded to arbitrators which, because they are not subject to judicial review, has exposed companies entering into arbitration agreements to capricious and unpredictable awards potentially ruinous to their businesses; and

WHEREAS, consumer advocates and others have expressed concern that many types of arbitration are controlled by companies who frequently arbitrate and that arbitrators unduly favor such companies in rendering essentially unreviewable decisions; and

WHEREAS, these and related reasons have reduced the use of arbitration and called into question the continued viability of consensual arbitration as a favored means of resolving disputes; and

WHEREAS, to the extent that disputes formerly resolved by arbitration become litigated matters in the first instance, there is a risk of a corresponding increased burden upon an already over-stretched judicial system; and

WHEREAS, a simple amendment to the USAA to permit limited and restricted judicial review of the arbitration record to correct for glaring errors of law or fact, similar to the kind of review now exercised over administrative agency decisions, would suffice to correct this oversight in the original legislation; and

WHEREAS, such an amendment would return arbitration to its position as a preferred means of dispute resolution over litigation and thereby reduce the number of federal court filings;

Statement of Reasons

Reasons For

The United States Arbitration Act, promulgated in 1947, reflected the legislative policy of the United States that interstate and foreign commerce and the administration of justice would be enhanced by promoting a uniform and judicially regulated system of consensual private arbitration in the United States. Its goal was to secure the expeditious and inexpensive resolution of disputes, by arbiters having expertise in the area being adjudicated, and with a reasonable degree of finality, but subject to judicial protection against extreme abuse. However, as the national interest in the field of alternative dispute resolution (ADR) has increased, the desirability of pursuing private arbitration under the USAA has come into serious question.

Specifically, many businesses, and those who advise them, have come to feel that the untrammeled discretion accorded to arbitrators, without significant judicial review, has exposed companies entering into arbitration agreements to capricious and unpredictable awards potentially ruinous to their business. On the other side of the coin, consumer advocates have expressed concern that many types of arbitration are controlled by companies who frequently arbitrate and that arbitrators unduly favor such companies. One result of these concerns is to call into question the continued viability of consensual arbitration as a means of resolving disputes; and to the extent disputes formerly resolved by arbitration as a means of resolving disputes; and to the extent disputes formerly resolved by arbitration become litigated matters in the first instance, there is a risk of a corresponding increased burden upon an already over-stretched judicial system.

As a proposed means of ameliorating this condition, the Senior Advisory Board proposes consideration of the legislative amendment to § 10 of the USAA which is attached to this proposal and discussed below. What the legislation would accomplish is as follows:

1. Where the parties have so designated, an expanded review of errors of fact and law is made available.

2. However, the expanded standard of review is not simply whatever the parties should in their individual discretion designate. Rather, the expanded review adopts principles of review already available with respect to the review of administrative agency decisions and trial court results. In short, the proposed legislation adopts standards of review for substantial evidence and legal error resulting in substantial injustice.

3. The review would not involve a trial *de novo*, but rather a review of the arbitral record (and it would be the responsibility of the parties who seek to have such review to insure that there is an adequate arbitral record).

Proposed Amendment
United States Arbitration Act
(proposed amendment language in italics)

§ 10. Same; vacation; grounds; rehearing

(a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration --

(1) Where the award was procured by corruption, fraud, or undue means.

(2) Where there was evident partiality or corruption in the arbitrators, or either of them

(3) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced.

(4) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

(5) *Where the arbitration agreement provides in substance for a review of errors of law: where error of law has resulted in substantial injustice.*

(6) Where the arbitration agreement provides in substance for a review of errors of fact: where, upon a review of the whole record, the award is not supported by substantial evidence.

Where an award is vacated and the time within which the agreement required the award to be made has not expired the court may, in its discretion, direct a rehearing by the arbitrators.

(b) The United States district court for the district wherein an award was made that was issued pursuant to section 580 of title 5 may make an order vacating the award upon the application of a person, other than a party to the arbitration, who is adversely affected or aggrieved by the award, if the use of arbitration or the award is clearly inconsistent with the factors set forth in section 572 of title 5.

Resolution No. 4

To Preserve the Independence of the Judiciary

Submitted by

The Lawyer Representatives Coordinating Committee

WHEREAS, during the recent presidential campaign, leaders of the Executive and Legislative Branches took the unprecedented step of calling for the resignation or impeachment of a federal judge for a judicial ruling made in a pending case; and

WHEREAS, since the 1996 election, some leaders of Congress have engaged in a public campaign against judges who may render politically unpopular decisions, including conducting legislative hearings into the basis for specific judicial decisions, and making calls for their impeachment; and

WHEREAS, while the Judiciary should not be exempt from criticism of its actions and rulings, the nature of recent comments about judges oversteps the bounds of fair criticism, and such personal criticism may have the effect of intimidating judges from the conscientious discharge of their constitutional duties; and

WHEREAS, personal criticism of individual judges by leaders of the other branches of government weakens our constitutional structure and the independence of the Judiciary and can mislead the public as to the proper role of judges in a constitutional democracy; and

WHEREAS, continued criticism of a branch of government that is in certain instances barred from commenting on judicial decisions because of ethical constraints is a disservice to the cause of justice and erodes the public's confidence in the legitimacy and integrity of judicial authority;

NOW, THEREFORE, BE IT RESOLVED THAT the Ninth Circuit Judicial Conference expresses its deep concern about, and calls for a cessation of, inappropriate criticism of the Judiciary and personalized criticism of individual judges which oversteps the bounds of fair criticism, threatens the independence of the Judiciary, and undermines public confidence in the courts and the rule of law.

1997 Resolution No. 5

Fill All Judicial Vacancies Promptly and Appoint a Committee

Submitted by

The Lawyer Representatives Coordinating Committee and the Lawyer Delegation of the Central District California

WHEREAS, it is imperative to the administration of justice that Congress provide the circuits with an adequate number of judges to process the federal courts' caseloads; and

WHEREAS, Congress has allotted 28 judgeships to the United States Court of Appeals for the Ninth Circuit, a number that has not been increased since 1984, even though caseloads have increased 63% since then; and

WHEREAS, the Ninth Circuit Court of Appeals has 9 vacant judgeships, more than one-third of its full judicial complement of 28 judges; and

WHEREAS, Congress has allotted 99 judgeships to the United States District courts in the Ninth Circuit, spread over 15 districts, a number that has not been increased since 1990, even though caseloads have increased 23% since then; and

WHEREAS, the district courts in the Ninth Circuit have 12 vacant judgeships; and

WHEREAS, the Judicial Conference of the United States has developed time-tested formulas based upon caseloads, filings, and case weights to determine the minimally-required number of judgeships for a federal district or circuit court; and

WHEREAS, increased staff and technological assistance help federal judges process cases, but only individual judge time allocated to each case insures just and quality decision-making; and

WHEREAS, it is essential in order to preserve the quality of the federal court system in the Ninth Circuit, as well as all circuits across the country, to maintain an appropriate number of filled judgeships;

Statement of Reasons

Reason For

The caseload of the Ninth Circuit Court of Appeals has increased 63% since the last increase in judges. In addition, there are now one-third fewer judges sitting because of vacancies that have not been filled by the President and the Senate.

The caseload for the 15 district courts within the Ninth Circuit has increased 23% since the last increase in judges in 1990. In addition, there are now 12 fewer district judges because of vacancies that have not been filled by the President and the Senate.

It stands to reason that with an increase in caseloads and fewer judges, it is extremely difficult for the cases to be resolved within a timely fashion. Even with the increase in technology, increase in staffing and innovations by the judges and staff, it is nearly impossible to timely process the caseloads.

Not only is the current Judiciary and its staff overworked, but the litigants and society and harmed by the lack of judges for unfilled positions that already exist. The quality of justice is always at risk under such circumstances.

The importance of filling vacant judgeship positions should not be the subject of political wrangling—the independence and the very functioning of an entire branch of government is at stake. Ultimately the litigants and the society as a whole will suffer when the machinery of justice slows to a standstill because the other two branches have failed to fulfill their responsibilities to assure the efficient administration of justice.

Reasons Against

Caseloads in some federal judicial districts do not justify filling vacancies and a process of review of such positions takes time and is warranted to save taxpayer dollars.

The political process has always been a factor in judicial selection and properly so under our checks and balances three-branch system of government.

The process of filling judicial vacancies has often averaged a year or more from the announcement of the vacancy until it is filled—the current situation is not so unusual in the nation's history.

1997 Resolution No. 6

Support the Legislative Effort To Delink Judicial Salaries from Congress and To Provide Cost of Living Adjustments and Appoint a Committee

Submitted by

The Lawyer Representatives Coordinating Committee and the Lawyer Delegation of the Central District California

WHEREAS, the judges in the federal Judiciary have not received a salary increase since 1993; and

WHEREAS, the cost of living has increased since the federal Judiciary received its last pay increase; and

WHEREAS, the salaries for the federal Judiciary are linked to those of Congress; and

WHEREAS, a bill, H.R. 875, has been introduced in the House of Representatives, and a bill, S. 394, has been introduced in the Senate, to provide cost of living adjustments to the federal Judiciary and to delink the salaries of the federal Judiciary from those of Congress;

NOW, THEREFORE, BE IT RESOLVED THAT the Ninth Circuit Judicial Conference support H.R. 875 and S. 394 by urging Chief Judge Hug to appoint a committee of lawyer representatives and other lawyers to organize a unified effort to encourage passage of these bills.

The salaries of the members of Congress have also not increased since 1993, so the Judiciary has not been disadvantaged vis a vis its co-equal branch of government.

Some might argue that judges salaries are at least adequate and perhaps even generous in comparison to those of other government employees. This is especially true in light of the fact that judges receive the same salary for life and have life tenure.

1997 Resolution No. 7

Extend Reasonable Accommodation to All Persons with Disabilities

Submitted by

The Lawyer Delegation of the Eastern District of California

WHEREAS the State Bar of California has committed to hold to the letter and spirit of the Americans with Disabilities Act of 1990, and related state and federal laws; and

WHEREAS this commitment includes a dedication to the principle of full participation of persons with disabilities in court proceedings and activities within all jurisdictions, and to oppose any discrimination against such persons as may be manifest within the larger legal community; and

WHEREAS the Judicial Conference of the Ninth Circuit has established a general policy in the Guide to Judicial Policies and Procedures, Chapter III, Part G, bearing on participant access and participation in court proceedings; and

WHEREAS such participants are intended to include parties, attorneys, qualified jurors and witnesses, and such proceedings include trials, hearings, ceremonies and other programs and activities conducted by the court; and

WHEREAS the federal courts within the Ninth Circuit have committed to provide reasonable accommodations to persons with communication disabilities in compliance with Judicial Conference policy; and

WHEREAS persons with disabilities other than those concerned with communication are presently not specifically accorded an opportunity to petition for accommodation under the application of current policy; and

WHEREAS the absence of an opportunity for individuals with other disabilities to petition the court for accommodation denies a significant class of persons the rights, benefits and privileges of being full participants in court proceedings, programs and activities; and

Statement of Reasons

Reasons For

The Ninth Circuit is already fully apprised of the reasons for the ADA, as indicated by its initiative to provide reasonable accommodations to persons with communication difficulties. The administrative means for processing accommodation requests, therefore, are already in place, as is the general policy defining the current participants, the procedures and general criteria for assessing and acting on such requests.

By acknowledging the need for accommodation for parties, attorneys, jurors and witnesses with communication difficulties, the Ninth Circuit has already demonstrated its sensitivity to the basic issue: persons with disabilities should not be precluded from participating in the judicial proceedings within its jurisdiction. It would follow that a request for accommodation from a person with a disability other than with communication difficulties should not, in all fairness, be viewed as being less meritorious. The circuit's existing policy on accommodation does not reason that only persons with communication problems within the disability community have a right to participate or can meaningfully contribute to the judicial process.

Consistent with its leadership among judicial circuits in the country, it is important for the Ninth Circuit to manifest its support for the fairness implicit in the ADA with its intent to accord equitable treatment to all persons with disabilities, by increasing access to the courts within its jurisdiction, and by promulgating an enlightened accommodation policy. The impact of such a communication to the country at large, and most particularly to the disability community, cannot be underestimated. (See attached copy of California Rule 989.3)

Reasons Against

The resolution requests that the Judicial Conference of the Ninth Circuit take notice of the California Rule of Court 989.3 which could require accommodation for spectators. This circuit, however, might view the inclusion of this group for accommodation service as too onerous. Under existing circuit guidelines relating to accommodation for communications disabilities, service to spectators is not required, although the court may elect to do so in situations where it is determined to be appropriate.

The federal Judiciary is not covered under the ADA. The costs of such compliance may prove to be prohibitive.

1997 Resolution No. 8

Assure Fairness in the Courts: Fully Implement the Recommendations of the Ninth Circuit Task Force on Racial, Religious & Ethnic Fairness

Submitted by

The Ninth Circuit Lawyer Representatives Coordinating Committee

WHEREAS, the federal courts in the Ninth Circuit have a paramount interest in and commitment to the fair and unbiased administration of justice in the circuit, including specifically the prevention of all forms of bias in our court system, and specifically forms of bias based upon race, religion, and ethnicity; and

WHEREAS, the Ninth Circuit Task Force on Racial, Religious & Ethnic Fairness has submitted its findings and final report which include recommendations to assist the bench and bar in preventing all forms of bias based upon race, religion, and ethnicity;

NOW, THEREFORE, BE IT RESOLVED THAT the Ninth Circuit Judicial Conference hereby:

(1) Endorses the findings of the Ninth Circuit Task Force on Racial, Religious & Ethnic Fairness; and

(2) Urges the bench and bar of the Ninth Circuit to assist in implementing the recommendations of the Ninth Circuit Task Force on Racial, Religious & Ethnic Fairness; and

(3) Urges the bench and bar of the Ninth Circuit to continue to provide a leadership role in preventing all forms of bias in the courts and in reaffirming the circuit's fundamental commitment to equal justice.

1998
Conference Resolutions Tally

Often the circuit conference's most lasting impact upon the administration of justice is accomplished through the resolutions process, a process unique to the Ninth Circuit. Each year the judges and lawyers at the conference consider a handful of well-crafted resolutions that seek to improve the operation of the courts, to make them more accessible, or to provide Congress, the judges, or court administrators with their views on how the courts should be run. This year five resolutions were submitted for conference debate.

Since 1996, the conference resolutions process has been undergoing modifications to increase its effectiveness. Resolutions are now generally prepared far enough in advance of the conference so that they can be debated and discussed within the districts before the conference. Other districts continue to devote a portion of their district lunch meeting time during the conference to the debate of resolutions.

This year, the Resolutions Subcommittee, chaired by Peter J. Benvenutti, Esquire, of San Francisco, reserved a block of 30 minutes of time on the general session calendar to permit the plenary discussion of any resolutions that were deemed likely to benefit from and generate significant debate. At the conference, the agenda was modified on the last day and the Resolutions Subcommittee made the decision to conduct the balloting without plenary debate. The following is the final vote count for the 1998 conference resolutions: four of the five resolutions were passed by the conference. *9th Circuit News* will keep you apprized of efforts to implement them.

DISTRICT LUNCHES, like this one for the Eastern District of California at the 1998 Ninth Circuit Judicial Conference in Santa Barbara , provide each district with the opportunity to fully discuss and debate conference resolutions before they are voted on at the conclusion of the conference.

Resolution No. 1: Encouraging Counsel's Use of Technology in Presentations to the Courts.

PASSED	YES	NO	ABSTAIN
Judges	78	18	7
Lawyers	38	14	1

Resolution No 2: Filing on Briefs/Excerpts of Record on Electronic Medium.

PASSED	YES	NO	ABSTAIN
Judges	86	13	4
Lawyers	41	10	1

Resolution No. 3: Fully Utilize Federal Magistrate Judges to Manage and Try Civil Cases.

PASSED	YES	NO	ABSTAIN
Judges	82	20	1
Lawyers	40	10	2

Resolution No. 4: Include Greater Bankruptcy-Related Programming As part of the Annual Judicial Conference.

FAILED	YES	NO	ABSTAIN
Judges	46	48	9
Lawyers	22	27	3

Resolution No. 5: Retain the Bankruptcy Appellate Panel Option.

PASSED	YES	NO	ABSTAIN
Judges	96	5	2
Lawyers	45	4	3

1998 CONFERENCE RESOLUTIONS

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1998 RESOLUTIONS
Ninth Circuit Judicial Conference

DATE: June 1998

TO: All Members of the Ninth Circuit Judicial Conference

FROM: 1998 Resolutions Subcommittee:
Peter J. Benvenutti, Esq., *Chair*
Circuit Judge Betty Binns Fletcher
District Judge Terry J. Hatter, Jr.
John Carson, Esq.

RE: **1998 Conference Resolutions Packet and Procedures**

Five resolutions have been submitted to date for consideration by the 1998 Ninth Circuit Judicial Conference.

In accordance with our new procedures, we hope that each district will take the opportunity to meet to discuss all the resolutions prior to the conference or during the district lunches at the conference. A thirty-minute time slot has been reserved for possible debate of resolutions on the conference agenda:

- **Wednesday, June 24, from 11:00 a.m. until 11:30 a.m.**

Whether plenary debate is held on resolutions this year will be determined by a subcommittee of the Executive Committee. Each district will be given the opportunity to vote (by a show of hands) during its district lunch on Tuesday, June 23, on whether any resolutions warrant full plenary debate. The subcommittee will be guided in its decision by these votes.

If floor debate is permitted, proponents and opponents will be given a brief opportunity to speak to each resolution that is selected for debate. Comments and debate from the floor are encouraged. Our parliamentarian will decide any questions concerning proper procedure according to Robert's Rules of Order.

Voting will be by written ballot at any time before conference adjournment. Judges and lawyer representatives will vote separately. A resolution may be adopted by the conference only if a majority of both groups concur.

Official ballots are included at the end of these materials. Please deposit ballots in the boxes provided or turn them in to the conference registration desk.

STATEMENT OF PURPOSE
POLICY AND GUIDELINES
FOR THE CONDUCT OF THE BUSINESS OF THE
NINTH CIRCUIT JUDICIAL CONFERENCE

Resolutions Subcommittee
Ninth Circuit Judicial Conference
June 1998

I. It is the statutory function and purpose of the Ninth Circuit Judicial Conference (28 U.S.C. Section 333), as confirmed by Order of December 12, 1978, to consider the business of the courts of the Ninth Circuit, to advise means of improving the administration of justice, and to assist in implementing decisions made by the judicial council as to the administration of the business of the courts of the Ninth Circuit. All representatives to the conference are expected to participate actively in the business of the conference.

II. It is the policy of the judicial council of the circuit and of the judicial conference of the circuit to encourage free, open, and frank discussion and debate among all representatives to the judicial conference concerning the proper business of the conference. It is expected that all representatives will conduct themselves with the mutual respect and courtesy that is so essential to the proper and orderly functioning of a deliberative body.

III. The chair of the conference, with the advice and consent of its Executive Committee, in advance of the annual meeting, will announce to the representatives the rules that will govern the conduct of the general business sessions of the conference, including the following:

(a) A resolutions subcommittee will be created composed of at least three members of the Executive Committee of the conference, including the chief judge of the circuit or his designee, a district court judge and a lawyer representative.

(b) The resolutions subcommittee may establish a timetable for the submission of resolutions, and procedures for their distribution to conference representatives.

(c) Resolutions may be submitted by any judge or lawyer representative, as well as by a delegation.

(d) The resolutions subcommittee may eliminate resolutions not germane to the statutory purpose of the conference, see 28 U.S.C. Section 333; restate germane resolutions in a form suitable for consideration by the conference; fix the order

1998 Resolution No. 1

Encouraging Counsel's Use of Technology In Presentations to the Courts

Submitted by
The Lawyer Representatives Coordinating Committee and
The Resolutions Subcommittee

WHEREAS, recent years have seen a dramatic increase in the capabilities and ease of use of various forms of presentation technology; and

WHEREAS, studies show that presentation technology, properly employed, can assist significantly in the effective communication of evidence to, and the understanding and retention of evidence by, triers of fact; and

WHEREAS, presentation technology can enable counsel to expedite the presentation of their cases for: shorter trials, a reduced burden and hardship on juries, economy to the parties, and more efficient utilization of judicial resources; and

WHEREAS, the centers for the development of presentation technology are found within the Ninth Circuit, it is appropriate that the federal courts in the Ninth Circuit should be at the forefront of the use of such technology in their courtrooms;

NOW, THEREFORE, BE IT RESOLVED THAT the Ninth Circuit Judicial Conference:

(a) encourage counsel to employ presentation and other forms of technology in all appropriate settings in the presentation of their cases to trial and appellate courts, and

(b) encourage the courts within the Ninth Circuit to adopt practices, policies and procedures designed to encourage and facilitate the use of presentation and other forms of technology in the presentation of cases, wherever feasible.

1998 Resolution No. 2

Filing of Briefs/Excerpts of Record on Electronic Medium

Submitted by
The Lawyer Representatives Coordinating Committee and The Resolutions Committee

WHEREAS, it is an important and desirable objective for the courts to improve their efficiency in the consideration of matters that come before them; and

WHEREAS, existing and anticipated computer technology can facilitate the work of the court of appeals by enabling the court's judges and staff, among other things, to search parties' briefs and other submissions electronically for record references, conduct cite checks, and copy quotations and other lengthy material in the preparation of bench memoranda and opinions; and

WHEREAS, to enable the court effectively to employ existing and anticipated computer technology most effectively, the parties' paper submissions must generally be converted to electronic media on computer disk or compact disks; and

WHEREAS, given existing technology, it is relatively inexpensive for the parties who generate briefs, excerpts of the record, and other written submissions to provide to the court in electronic media their written submissions which already exist in that format, and far more efficient to request the parties to do so than it would be to impose that burden on the court;

NOW, THEREFORE, BE IT RESOLVED THAT the Ninth Circuit Judicial Conference:

(a) encourage counsel to submit, in addition to any brief, record excerpt, or other paper filed with or submitted to the court, a computer diskette or compact disk (CD) containing the same information to the extent it is readily available to counsel in electronic format; and

(b) urge the Ninth Circuit Judicial Council to develop rules and procedures designed to facilitate and standardize compliance with this resolution.

1998 Resolution No. 3

Fully Utilize Federal Magistrate Judges To Manage and Try Civil Cases

Submitted by
The Lawyer Representatives Coordinating Committee and
The Lawyer Delegation for the District of Oregon

WHEREAS, the federal courts are suffering a case load crisis due in part to the increasing number of felony criminal filings and complex civil filings; and

WHEREAS, both the criminal cases and the civil cases are increasing in complexity and are taking longer for district judges to dispose of; and

WHEREAS, the Speedy Trial Act requirement that criminal cases take precedence over civil cases has resulted in significant backlogs in the handling of civil matters in many districts; and

WHEREAS, the federal magistrate judges, if appropriately empowered to do so, could assist Article III judges in the handling of civil trials; and

WHEREAS, federal magistrate judges are already utilized in some districts in civil cases to the full extent allowed by the United States Constitution and the United States Code, as evidenced by, among other things, the increase in parties consenting to trial of civil cases by magistrate judges and concurrent designation of a right of appeal directly to the circuit court when the use of a magistrate judge has been selected; and

WHEREAS, this experience in using federal magistrate judges to try civil cases has resulted in a marked reduction in the time required to resolve civil matters;

NOW, THEREFORE, BE IT RESOLVED THAT the Ninth Circuit Judicial Conference strongly encourage all district courts to utilize federal magistrate judges to manage, try, and otherwise seek to resolve civil cases to the fullest extent permitted by the United States Constitution and United States Code.

4. The status and the capacity given to the federal magistrate judges to work and to effectively and efficiently help the district judges in turn defines the caseload that the district judges are left to manage.

5. Allowing and encouraging federal magistrate judges to work to the extent of their legal capacity, most particularly in trying civil litigation by consent, will result in magistrate judges' having greater life-time career satisfaction and will lessen the likelihood of their consideration of their present magistrate judge position as a stepping stone.

Against

1. The selection process for federal magistrate judges is not as rigorous as and is not the same as that for Article III judges, nor do magistrate judges have the independence that life-tenured Article III judges have.

2. Parties have a constitutional right to trial by an Article III judge.

3. Each district should be free to act independently of the Ninth Circuit in setting policy regarding the role of magistrate judges.

4. Because the public relies so heavily upon the judgments of the federal courts, the public may not be as likely to accept a decision by a federal magistrate judge as it would a decision by an Article III judge who has the protections of life tenure.

5. The increased use of federal magistrate judges to try civil cases may adversely affect the district's ability to carry out tasks already delegated to the magistrate judges.

[In preparation of this resolution and supporting documentation, the District of Oregon acknowledges with appreciation the assistance provided by 1994 Resolution No. 7, "Authorize Federal Magistrate Judges to Try [Criminal] Cases by Consent," submitted by Max Gillam, Esquire, of the Senior Advisory Board, which formed the basis for this resolution.]

WASHINGTON BRIEF

Magistrates No Longer Just Caddies

THOMAS M. COFFIN, the federal jurist who concluded that the Americans With Disabilities Act requires the Professional Golfers' Association, or PGA, to allow Casey Martin to use a golf cart in its tournaments, has not only never played a round of golf, but he has never walked an even more treacherous gauntlet: confirmation by the Senate to the bench.

That's because Mr. Coffin is U.S. Magistrate Judge Coffin, one of the 422 men and women appointed by the lifetime members of the federal trial court bench to eight-year terms as junior judges.

Well, maybe not so junior anymore.

When Congress passed the statute creating the magistrate position 30 years ago, it envisioned a corps of largely part-time judicial assistants who would help [illegible] actual, lifetime Art. III judges manage their civil and criminal dockets by handling a variety of tasks. Since the post's inception, part-time magistrates have largely disappeared, and the number of full-time slots has grown by a factor of seven. Magistrates today are doing a lot more of what they have always done, and a few new things as well.

Within certain limits, each district gets to use its magistrates as it chooses. On the civil side, they have commonly been assigned procedural issues, such as discovery disputes and settlement conferences; and on the criminal side, such preliminary matters as search warrants and initial appearances. The law has also long allowed them to handle civil trials as long as both parties consent. Once rare, such consent has grown more frequent: The 10,081 "civil consent" cases magistrates resolved in 1997 were 28 percent more than in 1994 and twice the number in 1987.

Thomas Coffin: *The magistrate judge tried a disabled golfer's claim.*

Oregon Is Unusual

It so happens that Oregon, where Judge Coffin sits, is a leader in magistrate use. About 15 years ago, it became the first district to place magistrates' names on the assignment wheel for civil cases. Only in recent years have a handful of other districts begun to do so as well. Litigants who draw a magistrate in these districts may still refuse their consent and request that a district judge handle their trials, but in Oregon such a refusal is the exception. Judge Coffin said the parties in the cases he draws grant their consent 90 percent of the time.

In the half-dozen districts besides Oregon that have placed magistrates on the assignment wheel, consent rates run from 15 percent to 50 percent.

One reason for the widespread acceptance by Oregon lawyers of magistrate trials, Judge Coffin said, is that many of the district's magistrates came to the federal bench by way of state judgeships, though he himself was a 20-year veteran federal prosecutor.

William J. Maledon, a sports lawyer who represented the PGA and is a name partner at Phoenix's Osborn Maledon P.A., said that consenting to Judge Coffin's handling of the case was not an easy decision, but one the parties made because of time constraints.

The *Martin* case was filed in Oregon's Eugene division the Wednesday before Thanksgiving. Judge Coffin drew it and scheduled a hearing two days later on the disabled golfer's request for a preliminary injunction, which he granted. For the PGA to get a full trial with the Eugene division's sole district judge would have meant waiting until spring—keeping the injunction in place during a tournament that Mr. Martin wanted to enter.

Robert B. Collings, a magistrate judge in Boston who served as the 1994-95 president of the Federal Magistrate Judges Association, said one reason magistrates now preside over 20 percent of all federal civil jury trials is that they can hear such suits sooner than can district judges, whose dockets tend to brim with criminal matters.

"Sentencing guidelines require judges to spend a lot more time on sentencing hearings than they did in the past, and Congress keeps increasing the number of federal crimes," Judge Collings said.

The expansion of federal criminal jurisdiction has affected magistrates as well. They held 52,679 hearings on search or arrest warrants in 1997, twice as many as 10 years before. The number of all preliminary criminal proceedings they handled rose 80 percent in that time, to 240,338 from 134,091.

Magistrates are appointed by the district's judges after candidates are selected by a screening committee. They are paid $125,764—92 percent of district judges' pay.

—HARVEY BERKMAN

1998 Resolution No. 4

Include Greater Bankruptcy-Related Programming As Part of the Annual Judicial Conference

Submitted by
The Lawyer Representatives Coordinating Committee and
The Lawyer Delegation for the Eastern District of Washington

WHEREAS, approximately 22% of the judicial officers of the 1997 Ninth Circuit Judicial Conference were bankruptcy judges; and

WHEREAS, approximately 47% of the clerks of court of the 1997 judicial conference were clerks of bankruptcy courts; and

WHEREAS, a number of the lawyer representatives of the 1997 judicial conference were practitioners in bankruptcy courts; and

WHEREAS, none of the pre-conference or conference programs addressed issues directly concerning bankruptcy courts or the practice of bankruptcy law in the courts; and

WHEREAS, of the 27 presenters at pre-conference and conference programs, only two bankruptcy judges and one bankruptcy court clerk were included on panels; and

WHEREAS, some increased bankruptcy programming has been incorporated into the 1998 judicial conference with no significant impact on the planning or presentation processes;

NOW, THEREFORE, BE IT RESOLVED THAT the planners of future Ninth Circuit Judicial Conferences attempt to incorporate bankruptcy issues and use bankruptcy judges, clerks, and practitioners in programs to an extent proportionate to their membership in each conference.

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1999 Ninth Circuit Judicial Conference Resolutions Results

Resolution No.	Title	Lawyer Votes	Judge Votes
#1	Appoint judges from each federal judicial district throughout the circuit.	36 Yes 43 No	47 Yes 67 No
#2	All dispositions should be signed.	37 Yes 39 No	33 Yes 83 No
#3	Reasoned dispositions should be required in all non-frivolous appeals.	38 Yes 34 No	22 Yes 91 No
#4	Require that parties' briefs include a request for oral argument and that they receive due consideration by the court.	40 Yes 34 No	29 Yes 82 No
#5	Amend circuit rule 36-3 to provide that unpublished decisions shall not be regarded as precedent, but may be cited by parties for their persuasive value.	55 Yes 21 No	58 Yes 56 No

***Resolutions 1-4 failed. Resolution 5 passed. A total of 79 lawyers and 115 judges voted. A resolution must receive a majority "yes" vote from both judges and lawyers to pass.**

NINTH CIRCUIT JUDICIAL CONFERENCE

1999 RESOLUTIONS

1999 CONFERENCE RESOLUTIONS

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1999 RESOLUTIONS
Ninth Circuit Judicial Conference

DATE: July 1999

TO: All Members of the Ninth Circuit Judicial Conference

FROM: 1999 Resolutions Subcommittee:
Hon. David A. Ezra, *Chair*
Hon. Sidney R. Thomas, *Circuit Judge*
Robert D. Lowry, Esq., *LRCC Vice Chair*

RE: **1999 CONFERENCE RESOLUTIONS PACKET AND PROCEDURES**

Two resolutions have been submitted to date for consideration by the 1999 Ninth Circuit Judicial Conference.

In accordance with our procedures, we hope that each district will take the opportunity to meet to discuss all the resolutions prior to the conference or during the district lunches at the conference. A thirty-minute time slot has been reserved for possible debate of resolutions on the agenda:

- **Wednesday, July 28, from 11:00 a.m. until 11:30 a.m.**

Whether plenary debate is held on resolutions this year will be determined by a subcommittee of the Executive committee. Each district will be given the opportunity to vote on whether any resolutions warrant full plenary debate (by a show of hands) during its district breakfast meeting, on Wednesday, July 28. The subcommittee will be guided in its decision by these votes.

If floor debate is permitted, proponents and opponents will be given a brief opportunity to speak to each resolution that is selected for debate. Comments and debate from the floor are encouraged. Our parliamentarian will decide any questions concerning proper procedure according to Robert's Rules of Order.

Voting will be by written ballot at any time before conference adjournment. Judges and lawyer representatives will vote separately. A resolution may be adopted by the conference only if a majority of both groups concur.

Official ballots are included at the end of these materials. Please deposit ballots in the boxes provided or turn them in to the conference registration desk.

STATEMENT OF PURPOSE
POLICY AND GUIDELINES
FOR THE CONDUCT OF THE BUSINESS OF THE
NINTH CIRCUIT JUDICIAL CONFERENCE

Resolutions Subcommittee
Ninth Circuit Judicial Conference
July 1999

I. It is the statutory function and purpose of the Ninth Circuit Judicial Conference (28 U.S.C. Section 333), as confirmed by Order of December 12, 1978, to consider the business of the courts of the Ninth Circuit, to advise means of improving the administration of justice, and to assist in implementing decisions made by the judicial council as to the administration of the business of the courts of the Ninth Circuit. All representatives to the conference are expected to participate actively in the business of the conference.

II. It is the policy of the judicial council of the circuit and of the judicial conference of the circuit to encourage free, open, and frank discussion and debate among all representatives to the judicial conference concerning the proper business of the conference. It is expected that all representatives will conduct themselves with the mutual respect and courtesy that is so essential to the proper and orderly functioning of a deliberative body.

III. The chair of the conference, with the advice and consent of its Executive Committee, in advance of the annual meeting, will announce to the representatives the rules that will govern the conduct of the general business sessions of the conference, including the following:

(a) A resolutions subcommittee will be created composed of at least three members of the Executive Committee of the conference, including the chief judge of the circuit or his designee, a district court judge and a lawyer representative.

(b) The resolutions subcommittee may establish a timetable for the submission of resolutions, and procedures for their distribution to conference representatives.

(c) Resolutions may be submitted by any judge or lawyer representative, as well as by a delegation.

(d) The resolutions subcommittee may eliminate resolutions not germane to the statutory purpose of the conference, see 28 U.S.C. Section 333; restate germane resolutions in a form suitable for consideration by the conference; fix the order

in which resolutions shall be considered; and determine the time to be allotted for consideration of each resolution.

(e) The resolutions subcommittee shall adopt such special rules as it may consider necessary for the orderly and expeditious disposition of resolutions on controversial topics. By way of example only, the subcommittee may require proponents and opponents of such resolutions to form teams composed of a limited number of representatives to present their respective views; may eliminate or appropriately restrict open floor debate; may request the chief judge of the circuit to preside at sessions where controversial topics are presented and debated; may fix the order in which the several identifiable groups of representatives to the conference shall vote; and; may determine that secret balloting shall be employed.

IV. The resolutions subcommittee shall have the responsibility for assuring that resolutions adopted by the conference receive consideration by the appropriate body.

(a) Ordinarily resolutions which are adopted by the conference shall be presented as an agenda item at the next meeting of the judicial council following the conference by the chair of the conference or his designee. The chairman's presentation may include a recommendation about the most appropriate follow-up. The council will in turn consider each resolution and take whatever action it deems appropriate, for example, referring it to a committee for study and recommendation, to the chief district judges or the court of appeals, or to the chief judge of the circuit for further transmittal.

(b) If it appears clear from the subject matter of the resolution that some body other than the judicial council will have primary responsibility for consideration and action, or the resolution on its face carries with it an implementing provision assigning that task to a particular body, the resolution may be referred directly by the resolutions subcommittee. In that event a report of the reference shall be made to the judicial council as part of the agenda item.

(c) In either case the Circuit Executive shall report to the Executive Committee and resolutions subcommittee on action taken and status of the resolution every sixty days.

(d) The chair of the conference or his designee shall report annually to the conference on the status of activity on resolutions and more frequently, through the Ninth Circuit Newsletter, as appropriate.

As Amended, January 1988

1999 Resolution No. 1

Appoint Judges From Each Federal Judicial District Throughout the Circuit

Submitted by

The Lawyer Representatives Coordinating Committee and The Resolutions Committee

WHEREAS, the United States Court of Appeals for the Ninth Circuit has an authorized complement, at this time, of twenty-eight (28) judges; and

WHEREAS, there are thirteen (13) federal judicial districts in the nine (9) states located within the area encompassed by the Ninth Circuit, plus two (2) federal judicial districts in territories (Guam and Northern Marianas) located within that area; and

WHEREAS, pursuant to Section 307 of Public Law 105-119, Section 44(c) of Title 28 of the United States Code provides that '[i]n each circuit (other than the Federal judicial circuit) there shall be at least one circuit judge in regular active service appointed from the residents of each state in that circuit;" and

WHEREAS, for many of the same reasons that resulted in the enactment of Section 307 of P.L. 105-119, it is desirable that, to the extent reasonably possible, a court of appeals judge should be appointed from the residents of, and immediately available to the district judges and to the practitioners within, each federal judicial district; and

WHEREAS, communications concerning issues of significance and immediacy between the Court of Appeals and district courts within the jurisdiction of the Ninth Circuit, both administrative and judicial in nature, would be assisted and given perspective by the existence of a Court of Appeals judge appointed from the residents of each district and the attendance of that judge at district conferences, district judges' meetings and other local professional gatherings, both for the purpose of communicating views from the district to the circuit and for the purpose of communicating views from the circuit to the district; and

WHEREAS, the handling of emergency matters such as writs, petitions, emergency stay requests, and the like, particularly in those districts in which the Court of Appeals does not sit and does not maintain a Clerk's Office, would be significantly ameliorated by the existence of a Court of Appeals judge from each district;

NOW, THEREFORE, BE IT RESOLVED THAT the Ninth Circuit Judicial Conference:

1. Recommend that each United States Court of Appeals shall, to the extent permitted by the number of authorized judgeships on that Court of Appeals, have one or more judges in active duty status appointed from the residents within each of the federal judicial districts located in each state within the territorial jurisdiction of that Court of Appeals; and

2. That, accordingly, the last sentence of 28 U.S.C. §44(c) be amended to add thereto,, after the word "state,," the words 'and,, to the extent permitted by the number of authorized judgeships for that circuit,, from each federal judicial district located in each state within that circuit.'

1999 Resolution No. 2

Sign All Dispositions/Require Due Consideration of Oral Argument Requests/Amend Circuit Rule 36-3

Submitted by

The Lawyer Representatives Coordinating Committee and The Resolutions Committee

WHEREAS, there has been a dramatic increase in the use of summary, memorandum, and unsigned and unpublished dispositions in the Ninth Circuit over the past decade: from a publication rate of 35.3% of dispositions in 1989, the Ninth Circuit fell to a publication rate of 19.7% in 1996;[1] and

WHEREAS, the unpublished dispositions are almost always unsigned;[2] indeed, Ninth Circuit Rule 36-1 prohibits disclosure of the author of a memorandum or order. The absolute numbers, and the percentage, of unsigned unpublished decisions has thus increased to more than three-quarters of all cases in our circuit over the last decade;[3] and

WHEREAS, the Ninth Circuit Rules do not authorize the use of summary or unexplained dispositions–as opposed to "reasoned disposition[s]" in opinions or memoranda–to conclude appeals; and

WHEREAS, there bas been a dramatic decrease in the number of cases in our circuit in which oral argument is permitted, from 60.8 % in 1989 to 41.8 % in 1996; and

WHEREAS, the more closely an author is identified with the product, the more individual responsibility the author takes for that work; and

WHEREAS, the increasing use of administrative tools such as the anonymous unpublished and unreasoned disposition, as well as cancellation of arguments, poses definite risks;

NOW, THEREFORE, BE IT RESOLVED THAT:

1. *All dispositions should be signed;*

2. *Reasoned dispositions should be required in all nonfrivolous appeals;*

3. *The rules should be amended to require parties, if they believe it will be beneficial,*

to request oral argument in their briefs, and to require due consideration by the Court of such requests; and

4. *Circuit Rule 36-3 should be amended to provide that unpublished decisions shall not be regarded as precedent, but may be cited by parties for their persuasive value.*

1. Gulati & McCauliff, On Not Making Law, 61 L. & Contemp. Problems 157, 220 (1998) (Table VIII).

2. Id. At 221. (Table IX, showing that in the Ninth Circuit, 1/2794 or 0% of unpublished opinions were signed, and in 1996 10/4321 or 0.2% of unpublished opinions in our circuit were signed.)

3. Id. At 222. (Table X, showing that in the Ninth Circuit in 1989, 1470/2794 or 52.6% of cases were disposed of by unsigned, unpublished opinions. In the Ninth Circuit in 1996, 3318/4321 or 76.8% of cases were disposed of by unsigned, unpublished opinions.

4. Ninth Cir. Rule 36-1 (defining "opinion" as "written, reasoned disposition of a case"; defining "memorandum" as written, reasoned disposition of a case...not intended for publication"; and defining "order" as "any other disposition of a matter...").

5. Gulati & McCauliff, On Not Making Law, 61 L. & Contemp. Problems 157, 220 (1998) (Table XI).

RESOLUTION TO THE NINTH CIRCUIT JUDICIAL CONFERENCE

WHEREAS, there has been a dramatic increase in the use of summary, memorandum, unsigned, and unpublished dispositions, in the 9th Circuit over the past decade: from a publication rate of 35.3% of dispositions in 1989, the Ninth Circuit fell to a publication rate of 19.7% in 1996[1]; and

WHEREAS, the unpublished dispositions are almost always unsigned[2]; indeed, Ninth Circuit Rule 36-1 prohibits disclosure of the author of a memorandum or order. The absolute numbers, and the percentage, of unsigned unpublished decisions has thus increased to more than three-quarters of all cases in our circuit over the last decade;[3] and

WHEREAS, the more closely an author is identified with the product, the more individual responsibility the author takes for that work;

NOW, THEREFORE, BE IT RESOLVED:

All dispositions should be signed.

---

[1]Gulati & McCauliff, On Not Making Law, 61 L. & Contemp. Problems 157, 220 (1998) (Table VIII).

[2]Id. at 221 (Table IX, showing that in the Ninth Circuit, 1/2794 or 0% of unpublished opinions were signed, and in 1996 10/4321 or 0.2% of unpublished opinions in our circuit were signed).

[3]Id. at 222 (Table X, showing that in the Ninth Circuit in 1989, 1470/2794 or 52.6% of cases were disposed of by unsigned, unpublished opinions. In the Ninth Circuit in 1996, 3318/4321 or 76.8% of cases were disposed of by unsigned, unpublished opinions.

RESOLUTION TO THE NINTH CIRCUIT JUDICIAL CONFERENCE

WHEREAS, the Ninth Circuit Rules do not authorize the use of summary or unexplained dispositions – as opposed to "reasoned disposition[s]"[4] in opinions or memoranda -- to conclude appeals; and

WHEREAS, the increasing use of administrative tools like the anonymous unpublished and unreasoned disposition poses definite risks;

NOW, THEREFORE, BE IT RESOLVED THAT:

Reasoned dispositions should be required in all nonfrivolous appeals.

---

[4]Ninth Cir. Rule 36-1 (defining "opinion" as "written, reasoned disposition of a case"; defining "memorandum" as "written, reasoned disposition of a case ... not intended for publication"; and defining "order" as "any other disposition of a matter.

RESOLUTION TO THE NINTH CIRCUIT JUDICIAL CONFERENCE

WHEREAS, there has been a dramatic decrease in the number of cases in our circuit in which oral argument is permitted, from 60.8% in 1989 to 41.8% in 1996[5];

NOW, THEREFORE, BE IT RESOLVED THAT:

The rules should be amended to require parties, if they believe it will be beneficial, to request oral argument in their briefs, and to require due consideration by the Court of such requests.

---

[5]Gulati & McCauliff, On Not Making Law, 61 L. & Contemp. Problems 157, 220 (1998) (Table XI).

RESOLUTION TO THE NINTH CIRCUIT JUDICIAL CONFERENCE

WHEREAS, the number, general availability, and importance of unpublished memoranda has greatly increased, and parties and the court frequently consider such unpublished decisions, even though current rules prohibit their being cited;

NOW, THEREFORE, BE IT RESOLVED THAT:

Circuit Rule 36-3 should be amended to provide that unpublished decisions shall not be regarded as precedent, but may be cited by parties for their persuasive value.

ARGUMENT IN FAVOR OF THE RESOLUTION

Increasingly, litigants are filing claims in the district courts without the assistance of counsel either in the preparation or the prosecution of those efforts. While a number of those claims appear to be frivolous, and can be disposed of without a substantial investment of time by the court or litigants, there remain a number of meritorious civil claims in which one party is unrepresented.

The impact of unrepresented litigants is felt in many areas. First, and foremost, most unrepresented litigants are not able to comply with the procedural requirements necessary to achieve a hearing on the merits in the district court. Moreover, even if they are able to achieve compliance with the procedural requirements, their understanding of often-complex areas of law hinders their ability to present their case in an appropriate manner.

In addition, the unfamiliarity of the unrepresented litigants with both the law and procedure means that both the court, and other parties, must spend more time than would be spent in dealing with the matter than if both sides were represented. Thus, the costs are not only to the individual litigants, but also to the system as a whole.

On an experimental basis, some districts have established panels of volunteer counsel who are prepared to take on meritorious cases. These panels, which accept cases pre-screened by the courts for merit, are established in light of the private bar's recognition of its ethical responsibility to ensure access to justice, and the court's recognition that more dispositions on the merits can be achieved in a more expeditious manner through the use of volunteer counsel. The early returns on these experimental programs have been positive, and demonstrate that such programs can result in an increase in public trust and confidence in the courts. This resolution would ask each district to explore the mechanisms that would work best in that district for providing such representation, including establishing such panels, and thus increasing access to justice for the citizens in their district.

RESOLUTION 1

WHEREAS, an increasing number of civil cases are filed each year by parties appearing in propria persona in each district court in this Circuit; and

WHEREAS, in many of these cases the matters presented for adjudication by the court are complex, either legally or factually; and

WHEREAS, many of these cases involve meritorious claims; and

WHEREAS, proceeding without assistance of counsel may result either in an inability to establish a case, or inefficient and ineffective use of the court's time, as well as that of the litigants, in prosecuting the matter; and

WHEREAS, lawyers practicing within the districts recognize their ethical responsibility to ensure access to justice for litigants,

Therefore let it be

RESOLVED, that each district shall prepare and implement an action plan to provide for the representation of litigants in meritorious claims filed in propria persona, including establishing panels of pro bono lawyers; and be it

FURTHER RESOLVED, that this Circuit requests the Federal Judicial Center to study the number of unrepresented litigants presently in federal court, and the nature of their claims, to provide guidance for the effective and efficient use of private volunteer counsel in meritorious matters.

AND WHEREAS, the handling of emergency matters such as writs, petitions, emergency stay requests, and the like, particularly in those districts in which the Court of Appeals does not sit and does not maintain a Clerk's Office, would be significantly ameliorated by the existence of a Court of Appeals judge from each district;

NOW THEREFORE, the following resolution is hereby presented to the Ninth Circuit Judicial Conference for its consideration, approval and adoption:

"BE IT RESOLVED:

1. **That each United States Court of Appeals shall, to the extent permitted by the number of authorized judgeships on that Court of Appeals, have one or more judges in active duty status appointed form the residents within each of the federal judicial districts located in each state within the territorial jurisdiction of that Court of Appeals; and**

2. **That, accordingly, the last sentence of 28 U.S.C. §44(c) be amended to add thereto, after the word 'state,' the words 'and, to the extent permitted by the number of authorized judgeships for that circuit, from each federal judicial district located in each state within that circuit.'**

Passed and recorded this ___day of August, 2000.

NINTH CIRCUIT JUDICIAL CONFERENCE

By_____
Honorable Procter Hug, Jr., Chief Judge
Chairman, Ninth Circuit Judicial Conference"

OFFICE OF THE CIRCUIT EXECUTIVE

UNITED STATES COURTS FOR THE NINTH CIRCUIT

95 SEVENTH STREET
POST OFFICE BOX 193939
SAN FRANCISCO, CA 94119-3939

GREGORY B. WALTERS, CIRCUIT EXECUTIVE
PHONE: (415) 556-2000
FAX: (415) 556-6179

TO: Retiring and In-Coming LRCC Members

FROM: Renée Lorda, *Asst. Circuit Executive (415/556-6175 & fax 415/556-6179)*

DATE: September 19, 2000

RE: **Results: Conference Resolutions and Senior Advisory Board Election**

In case you have not seen these results on the Ninth Circuit website, here they are:

Resolution 1: Each district shall prepare and implement our Action Plan to provide for the representation of pro se litigants in meritorious claims; Federal Judicial Center should develop a study of unrepresented litigants in Federal Court. **Approved**

Resolution 2: Appoint at least one circuit judge from each federal judicial district throughout the circuit. **Not approved.**

Resolution 3: For automatic inclusion of magistrate judges on each district's civil case assignment wheel, subject to Article III judge discretion for special assignments. **Not approved.**

Resolution 4: For inclusion on the Committee on Model Jury Instructions of a sitting magistrate judge. **Approved.**

Vote Tally

	Judges			Lawyers			Overall		
	Yes	No	No response	Yes	No	No response	Yes	No	No response
Resolution 1	115	39	1	67	17	4	182	56	5
Resolution 2	67	86	2	42	45	1	109	131	3
Resolution 3	50	102	3	32	55	1	82	157	4
Resolution 4	100	54	1	58	27	3	158	81	4

Senior Advisory Board Elections

- The Conference Executive Committee conducted elections for the Senior Advisory Board. Nominees were:

  Northern Unit: Katherine O'Neil (Portland)
  Carolyn Ostby (Billings)
  Les Weatherhead (Spokane)
  Middle Unit: Janet Chubb (Reno)
  Andrea Miller (Sacramento)
  Ann Taylor Schwing (Sacramento)
  Southern Unit: M. John Carson (Los Angeles)
  Rex Heeseman (Los Angeles)
  Donald Smaltz (Los Angeles)

- Election winners were: Carolyn Ostby, Ann Taylor Schwing and M. John Carson

Please distribute these results in your districts.

TO: All Lawyer Representatives
Lawyer Representative Coordinating Committee

FROM: Robert D. Lowry, Chair, LRCC (2000/2001)

Re: Resolutions for the 9th Circuit Judicial Conference

1. About Resolutions:

The Resolution portion of the 9th Circuit Judicial Conference may be the single-most important role on the Circuit level for the Lawyer Representatives of a particular District. Resolutions present the greatest opportunity for the collective voices of Lawyer Representatives to be heard at the District Court level, at the Circuit Court level, as well as in Congress and by the general public.

Resolutions absolutely do have the very significant potential for affecting change at all levels within the Circuit, by either changing an existing law, rule or policy, or by adding one anew. A most recent example is a Resolution of the 1999 Ninth Circuit Judicial Conference that, having been passed by affirmative vote of both the Lawyer Representative delegates as well as the judges, was formally referred to the 9th Circuit Rules Committee for development and possible implementation.

A District that for whatever reason does not take part in the Resolution process loses a significant opportunity for the opinions of its lawyers (not just Lawyer Representatives) to be heard. It also, frankly, wastes probably the most effective of the two main and very critical opportunities for lawyers throughout the Circuit to be heard and to have an affirmative impact on the administration of justice within the Circuit, the next in line being participation by district Lawyer Representative Chairs at the annual meeting the Chief Judges of the Ninth Circuit.

2. Developing Resolutions:

Typically, Resolutions that are considered at the annual 9th Circuit Judicial Conference are first a product of efforts by the Lawyer Representative of a given District within the Ninth Circuit, and then a fine-tuning first by the LRCC and then by the Judicial Conference Resolution Subcommittee.

6. CONCLUSION:

The main point is that ideas for Resolutions may come from endless sources, whether they be (1) formal Bar groups within a given District; (2) individual practitioners; (3) judges from whom ideas are specifically solicited; (4) other Ninth Circuit Judicial Conference and LRCC meetings and events, including annual meeting with chief judges; and (5) as well as, most certainly, court staff.

Please solicit and encourage them all, and solicit help and ideas rather than succumb to non-action. This is one of the greatest of the opportunities for Lawyer Representatives to have a direct and lasting and positive impact on the operation of the United States Courts for the Ninth Circuit.

2001 NINTH CIRCUIT JUDICIAL CONFERENCE
BALLOT VOTES

		Judges			Lawyers			Overall		
	Resolution	Yes	No	No Vote	Yes	No	No Vote	Yes	No	No Vote
Resolution No. 1:	In recognition of the achievements of the Standing Committee on ADR, support the development of court-annexed alternative dispute resolution programs in each district and the enhancement of the delivery and utilization of alternative dispute resolution services within the circuit; encourage implementation of ADR in districts that have not already initiated such programs; provide opportunities to discuss ADR at district or annual conferences; and call on the Standing Committee to provide resources to develop an ADR education program within the districts and training programs for neutrals, lawyers and judges to enhance their understanding of ADR.	85	12	3	55	1	1	140	13	4
Resolution No. 2:	Adopt repeal of Public Law No. 97-92 140 and support the recommendation of the ABA and FBA report to stop erosion of federal judicial compensation.	100	0	0	55	1	1	155	1	1
Resolution No. 3:	(It is recommended that) The Judicial Council of the Ninth Circuit shall appoint a task force to review jury reform in the Ninth Circuit.	74	25	1	56	1	0	130	26	1
Resolution No. 4:	(It is recommended that) The Judicial Council of the Ninth Circuit and judges throughout the Ninth Circuit will strive to encourage diversity in recruitment of clerkships.	89	9	2	55	1	1	144	10	3
Resolution No. 5:	(It is recommended that) Courtroom sharing should not be mandated and each district shall have the sole discretion to "opt in" or "opt out" of any courtroom sharing scheme proposed by the Office of Management and Budget for future courthouse construction projects.	95	4	1	48	6	3	143	10	4

2002 NINTH CIRCUIT JUDICIAL CONFERENCE
BALLOT VOTES

Resolution No. 1

Continuation and Enhancement of ADR and ADR Education Programs

The Ninth Circuit conference expresses continued appreciation to the Standing Committee on ADR for its ongoing work and renews support for the development of court-annexed programs for ADR programs in each district. The Standing Committee on ADR is called upon to develop educational materials including samples of court documents and forms, and report on the experience of district court ADR programs that provide for early intervention by January 1, 2003 for distribution to the Chief Judge of the Ninth Circuit and all other members of the Judicial Council, as well as to the Chief District Judges and Chief Bankruptcy Judges within the Circuit.

Judges			**Lawyers**			**Overall**		
Yes	*No*	*No Vote*	*Yes*	*No*	*No Vote*	*Yes*	*No*	*No Vote*
52	7	2	38	2	1	90	9	3

Resolution No. 2

Confidential Attorney Assistance and Intervention Programs

The Judicial Council of the Ninth Circuit encourages the establishment of confidential ways to identify attorneys at risk from substance abuse and mental illness and supports initiatives by local bar associations to rehabilitate those attorneys so they may practice law in a safe and competent manner.

Judges			**Lawyers**			**Overall**		
Yes	*No*	*No Vote*	*Yes*	*No*	*No Vote*	*Yes*	*No*	*No Vote*
55	4	2	38	2	1	93	6	3

Resolution No. 3

Appointment of a Task Force on Videoconferencing

Recommends that the Judicial Council of the Ninth Circuit appoint a task force to study and report on current videoconferencing practices used in the courts throughout the Circuit and identify potential opportunities and recommend procedures for using videoconferencing during all phases of the litigation process.

Judges			**Lawyers**			**Overall**		
Yes	*No*	*No Vote*	*Yes*	*No*	*No Vote*	*Yes*	*No*	*No Vote*

Judges			Lawyers			Overall		
41	17	3	27	13	1	68	30	4

Resolution No. 4 ***Amended***
CJA Panel Attorney Compensation

Support full funding of the Criminal Justice Act, sufficient funds to pay CJA Panel Attorneys at the rate of $150 per hour, with annual cost-of-living adjustments, as recommended by the Judicial Conference of the United States. Copies of this resolution will be transmitted to the President, the Attorney General, Members of Congress and other appropriate officials.

Judges			Lawyers			Overall		
Yes	*No*	*No Vote*	*Yes*	*No*	*No Vote*	*Yes*	*No*	*No Vote*
53	7	1	37	3	1	90	10	2

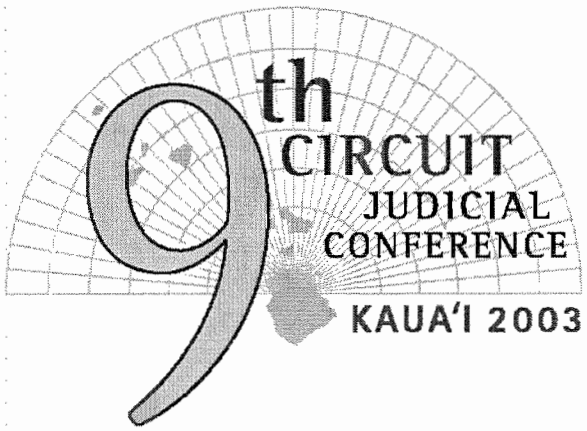
Resolution No. 5 ***Withdrawn***
Encouraging Attorney Voir Dire

The Ninth Circuit Judicial Conference encourages trial judges to grant counsel leave to conduct Voir Dire of a reasonable scope for a reasonable time as a matter of course.

Resolution No. 6
Article III Judges Speak or Write Yearly on Basic Freedoms

Each active Article III Judge of the Ninth Circuit should speak to or write for a wide non-lawyer audience at least once a year on the role of the judiciary in maintaining our basic freedoms.

Judges			Lawyers			Overall		
Yes	*No*	*No Vote*	*Yes*	*No*	*No Vote*	*Yes*	*No*	*No Vote*
19	39	3	17	20	4	36	59	7



Resolutions

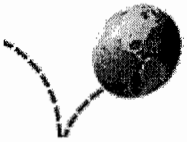
June 26, 2003

9:30 a.m.
Grand Ballroom
Hyatt Regency Kaua'i

Presentation and Voting

Brian T. Rekofke, *Chair*
Hon. Johnnie B. Rawlinson, *Circuit Judge*

Resolutions Committee
Conference Executive Committee of the Ninth Circuit



Renee Lorda

07/09/2003 03:32 PM

To: alans@blbglaw.com, bledd@perkinscoie.com, btr@wkdtlaw.com, boris.feldman@wsgr.com, brianbd@mto.com, cjb@htlaw.com, dmcauliffe@swlaw.com, albregts@hotmail.com, dgcampbell@omlaw.com, djg@randanco.com, djg@randanco.com, gal@itecnmi.com, hsaferstein@mintz.com, jlc@jonesvargas.com, jana@milberg.com, jeffw@mwbhl.com, jmeier@chgw.com, Katherine Monterola/CE09/09/USCOURTS@USCOURTS, mctoledo@orrick.com, mmaclean@karrtuttle.com, myoung@gibsondunn.com, mikereiss@dwt.com, pcarlton@dmllaw.com, pbenvenutti@hewm.com, peter.benzian@lw.com, pfriedman@mofo.com, Phyllis Riddell/CE09/09/USCOURTS@USCOURTS, rcreatura@gth-law.com, rtorres@torreslaw.com, ojv@my180.net, Robin Donoghue/CE09/09/USCOURTS@USCOURTS, RFAZIO@AWLAW.com, smilaw@lava.net, slsw@pge.com, tcreason@cmd-law.com, VALT@dh-t.COM, whg@gci.net, jmeier@chgw.com

cc:

Subject: Conference Resolution Results

2002-2003 LRCC Members:

While we are still in the process of revising our records and mailing lists to reflect the turnover to the 2003-2004 membership, we wanted to be sure everyone had these results. If you could please distribute these to your district lawyer representatives, this would be most appreciated. Aloha and mahalo to all, Renee

Resolution Results from the 2003 Judicial Conference

June 27, 2003

	Judges		Lawyers	
	Yes	**No**	**Yes**	**No**
Resolution #1	44	90	52	30 (citing to unpublished opinions)
Resolution #2	134	0	80	1(judicial pay raise)

RESOLUTION NO. 1

WHEREAS, the Standing Committee on Rules of Practice and Procedure of the Judicial Conference of the United States has published for comment Proposed Rule 32.1 as follows:

> **(a)** **Citation Permitted.** No prohibition or restriction may be imposed upon the citation of judicial opinions, orders, judgments, or other written dispositions that have been designated as "unpublished," "not for publication," "non-precedential," not precedent," or the like, unless that prohibition or restriction is generally imposed upon the citation of all judicial opinions, orders, judgments or other written dispositions.
>
> **(b)** **Copies Required.** A party who cites a judicial opinion, order, judgment, or other written disposition that is not available in a publicly assessable electronic database must file and serve a copy of that opinion, order, judgment, or other written disposition with the brief or other paper in which it is cited,

and;

WHEREAS, the Ninth Circuit Judicial Conference passed Resolution 1999-5 to amend Circuit Rule 36-3 to provide that unpublished decisions shall not be regarded as precedent, but may be cited by parties for their persuasive value.

NOW, THEREFORE, BE IT RESOLVED that the Ninth Circuit Judicial Conference recommends to the Ninth Circuit Judicial Council that it report to the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States the results of the vote of this conference, with a ""Yes"" vote indicating approval of Proposed Rule 32.1 and a ""No"" vote indicating disapproval of Rule 32.1.

STATEMENT FOR CONFERENCE RESOLUTION NO. 1
WHICH ASKS THE NINTH CIRCUIT TO RECOMMEND

THE ADOPTION OF PROPOSED RULE 32.

Proposed Rule 32.1 should be adopted for a number of reasons, including but not limited to:

1. The proposed rule resolves conflicting practices among the circuits regarding unpublished decisions.

2. There are useful occasions for citation to unpublished decisions, not recognized in existing Circuit rules.

3. There are no current restrictions forbidding citation to other non-precedential sources such as law reviews, newspapers and magazines, general literature, films and even advertising materials. Unpublished decisions are not less valuable than these to decision-makers.

4. Unpublished decisions are readily available on the internet to all parties. Therefore, the concern that only a privileged few will have access to them is no longer a justification for the rule prohibiting citation.

5. Courts are likely to be aware of unpublished decisions, the rule notwithstanding. The rule permits citation only for such persuasive weight as a court may find in them. It permits parties to explain why the court may *not* wish to follow the unpublished decisions of which the court may be aware.

6. The practice of issuing brief, non-precedential dispositions is efficient and healthy; the proposed rule does not require a court to issue non-precedential opinions or forbid it from doing so; nor does it dictate the circumstances under which a court may designate an opinion as non-precedential.

7. There is no evidence that the 4th, 6th, 8th and 10th Circuits, which permit citation to unpublished opinions, have suffered any declines in efficiency or quality of opinions as a consequence of such permission. (Source: American College of Trial Lawyers, *Opinions Hidden and Citations Forbidden, A Report and Recommendations, etc.,* March, 2002, www.actl.com/PDFs/Opinions.pdf, at p. 44)

8. The existing rule forbidding citation is not consistently and evenly enforced, which leads to unfairness.

RESOLUTION NO. 2

WHEREAS, the present value of salaries paid federal judges has diminished over time and their pay is no longer on par with others in the legal profession

and,

WHEREAS, this disparity has and will continue to diminish the ability to attract and retain quality judges from diverse backgrounds

and,

WHEREAS the Bipartisan National Commission on the Public Service (the Volcker Commission) has recommended an immediate and significant increase in judicial salaries as well as severing the statutory link between congressional compensation and judicial compensation which limits any raise for judges to an increase in congressional pay,

NOW THEREFORE BE IT RESOLVED, that the Ninth Circuit Judicial Conference does hereby support and endorse the recommendations contained in the 2003 report of the National Commission on the Public Service urging Congress to enact an immediate and significant increase in federal judicial salaries and to repeal the statutory link between congressional and judicial salaries.

THE 9TH CIRCUIT

2004

JUDICIAL CONFERENCE

Resolutions

July 22, 2004

11:15 a.m.

Serra Ballroom

Monterey Conference Center

Presentation and Voting

Brian T. Rekofke, *Chair*

Hon. Donald W. Molloy, *Chief District Judge*

Resolutions Committee

Conference Executive Committee of the Ninth Circuit

2004

Ninth Circuit Judicial Conference Resolution Vote Counts

	Judges			Lawyers		
	Yes	No	No Vote	Yes	No	No Vote
Resolution 1	92	8	1	66	1	2
Resolution 2	98	3	0	68	0	1

Resolution No. 1

Recommend that Congress support and enact the Judges Act , the Judicial Use of Discretion to Guarantee Equity in Sentencing Act of 2003; repeal the reporting requirements of the Feeney Amendment; and restore to the federal judiciary appropriate discretion in sentencing.

Whereas an independent judiciary is essential to a democracy; and

Whereas on the anniversary of the decision in *Brown v. Board of Education*, it is fitting to recognize that the federal judiciary has a unique role in safeguarding our most precious rights; and

Whereas a most important individual right is the right to one's personal liberty; and

Whereas Congress has significantly restricted the role of the federal judiciary in exercising discretion and judgment in criminal proceedings by enactment of mandatory minimum sentences, and specific guideline provisions within the Federal Sentencing Guidelines, which transfer inordinate power and discretion to federal prosecutors; and

Whereas Congress, as part of the so-called "Feeney Amendment" to the PROTECT Act, imposed reporting requirements related to the conscientious decisions of individual judges making downward departures; and

Whereas there are currently issues involving individual Federal Judges and their interaction with Congress that tend to chill the exercise of discretion according to the law in sentencing; and

Whereas the Judicial Use of Discretion to Guarantee Equity in Sentencing Act of 2003, or the "JUDGES ACT" would repeal the insidious provisions of the PROTECT ACT that do not directly relate to child kidnaping or child sex abuse;

NOW THEREFORE, BE IT RESOLVED that the Ninth Circuit Judicial Conference recommends that Congress:

(1) support and enact the Judges Act , the Judicial Use of Discretion to Guarantee Equity in Sentencing Act of 2003;

(2) repeal the reporting requirements of the Feeney Amendment;

(3) restore to the federal judiciary appropriate discretion in sentencing.

Resolution No. 2

Recommend to Congress that the United States courts be sufficiently funded to carry out their Constitutional responsibilities commensurately with their essential role as the Third Branch of the United States Government.

Whereas, the constitution of the United States entrusts principal responsibility for protection of the rights and liberties of all Americans to the United States Courts, which are "the citadel of the public justice and the public security"[1]; and

Whereas the United States Courts bear sole responsibility for the rendition of prompt justice in cases of violation of the criminal laws of the United States; and

Whereas the United States Courts also bear sole responsibility for the administration of justice under the civil laws of the United States, and of the bankruptcy laws; and

Whereas, the United States Judiciary is a co-equal branch of the government of the United States which must be funded sufficiently to meet its Constitutional duties; and

Whereas, there is pending a proposal in the United States Congress to freeze funding for the United States Courts at 2004 levels; and

Whereas, such a freeze, if adopted, would cause curtailment of civil jury trials, which were viewed by our Nation's Founders as an essential "safeguard to liberty; . . . the very palladium of free government"[2] for want of funds to compensate civil juries; and

Whereas, such freeze, if adopted, would cause curtailment of essential services related to pre-trial and post-conviction supervision of criminal defendants;

Now, therefore, be it resolved, that the Ninth Circuit Judicial Conference does hereby recommend that the United States Congress should put an urgent priority on ensuring that the United States Courts are funded sufficiently to carry out their Constitutional responsibilities commensurately with their essential role as the Third Branch of the United States government.

---

[1]Federalist 78

[2]Federalist 83

Statements Supporting Adequate Funding for the Judiciary

- The overall workload of the Courts has increased by about 10% between fiscal year 2001 and fiscal year 2004. From 2001 through 2003, Court of Appeals filings are up 11.2%, criminal case filings up 12.6%, and bankruptcy filings up 31.7%.

- Based on these increased caseloads and the escalation of costs, the 2005 budget would need to increase by 6.1% from 2004 levels simply to insure the same level of service as was necessary in 2004. A 9.2% increase is needed to fully fund the growing workload and meet expenses.

- Although the Third Branch of government, the court's budget is only two tenths of one percent of the total budget and far below the budgets of the Departments of State, Interior, Justice, Veterans Affairs, Agriculture, Commerce, Energy, Housing and Urban Development, and agencies such as NASA.

- The proposal to freeze funding for the courts at 2004 levels will severely and negatively impact the administration of Justice in all courts at all levels, including:

  District Courts: Significant delays in hearings; delays and/or suspension of civil jury trials for lack of funds to pay jurors. In addition, payments to court-appointed private attorneys in criminal cases would be halted in June 2005, and all civil jury trials would stop in July 2005 for lack of funds to pay jurors.

  Clerks Offices: Further reduction in all services, hours of operation, and closure of some offices every other Friday.

  Bankruptcy Court: Further reduction or omission of services, and delays in processing and completing payments to creditors and discharges for debtors.

  Pretrial Services: Significant decrease in the pre-trial ability to monitor defendants who are released from custody, but who pose risks to the community of further criminal conduct.

  Probation Services: The ability to supervise offenders including sex offenders, drug dealers and other criminals and to enforce conditions of probation such as drug testing will be drastically reduced, increasing the risk of recidivism.

  Circuit Court: The average processing time for appeals will increase from 15 to 20 months and reduced hours of operation for the clerk's office will result in delays in calendaring and all phases of the appellate process.

Resolutions

July 12, 2006

9:30 a.m.
Grand Ballroom
Hyatt Huntington Beach

Presentation and Voting

Andrew P. Gordon, Esq., *Chair-Elect, LRCC*
Hon. Robert S. Lasnik, *Chief District Judge*

Resolutions Committee
Conference Executive Committee of the Ninth Circuit

2006 Ninth Circuit Judicial Conference
Resolutions Result

Judges' Votes	YES	NO	NO VOTE
Resolution No. 1: **PASSED** Recommend that Congress implement increased funding for appointed counsel in criminal cases under the Criminal Justice Act 18 U.S.C. §§ 3006(A).	121	2	1
Resolution No. 2: **PASSED** Recommend that the President and Congress nominate and confirm qualified candidates to fill the judicial vacancies of the Circuit and the District Courts of the Ninth Circuit.	121	2	1

Lawyers' Votes	YES	NO	NO VOTE
Resolution No. 1: **PASSED** Recommend that Congress implement increased funding for appointed counsel in criminal cases under the Criminal Justice Act 18 U.S.C. §§ 3006(A).	86	1	2
Resolution No. 2: **PASSED** Recommend that the President and Congress nominate and confirm qualified candidates to fill the judicial vacancies of the Circuit and the District Courts of the Ninth Circuit.	85	1	3

RESOLUTION FOR CONGRESS TO IMPLEMENT INCREASED FUNDING FOR APPOINTED COUNSEL IN CRIMINAL CASES UNDER THE CRIMINAL JUSTICE ACT 18 USC §§ 3006(A)

SUBMITTED BY THE LAWYER REPRESENTATIVES COORDINATING COMMITTEE AND THE ADVISORY BOARD

WHEREAS, criminal litigation involving indigent defendants constitutes a substantial portion of cases in federal court;

WHEREAS, attracting and preserving competent counsel to accept appointment in criminal cases is indispensable to the fair administration of justice;

WHEREAS, the current maximum hourly rate for compensation of appointed counsel in non-capital cases is $92.00 per hour;

WHEREAS, the current maximum hourly rate for compensation of appointed counsel in capital cases is $163.00 per hour;

WHEREAS, the Judicial Conference of the United States has recommended increases of hourly rates for appointed counsel in non-capital cases to $113.00 and in capital cases to $166.00;

BE IT RESOLVED that the Conference of the United States Courts for the Ninth Circuit urges Congress to enact legislation adopting the recommendation of the Judicial Conference of the United States to increase the hourly rate of compensation to appointed counsel in criminal litigation under the Criminal Justice Act.

RESOLUTION

WHEREAS, there are presently a substantial number of judicial vacancies in the Circuit and District Courts of the Ninth Circuit as follows:

COURT	NO. OF VACANCIES	DATES OF VACANCIES
Ninth Circuit Court of Appeals	2	11/14/2003, 12/31/2004
Central District of California	4	12/08/04, 04/22/05, 10/24/05, 05/25/06
Southern District of California	1	09/19/04
Western District of Washington	1	03/09/05
Guam	1	04/01/04

WHEREAS, based on the number of case filings shown below, the Circuit and various District Courts of the Ninth Circuit would qualify for additional judgeships:

COURT	NO. OF WEIGHTED FILINGS PER JUDGESHIP UNLESS OTHERWISE NOTED
Ninth Circuit Court of Appeals	1,725 (filings per panel)
Arizona	656
Central District of California	546
Eastern District of California	848
Northern District of California	528
Idaho	443
Nevada	485
Oregon	579
Western District of Washington	611

WHEREAS, based on the need for additional judgeships combined with the large number of existing judicial vacancies and the extended length of time of such vacancies, the Circuit and the District Courts of the Ninth Circuit are overburdened and access to justice is impeded;

THEREFORE, IT IS RESOLVED that the Ninth Circuit Judicial Conference recommend to the President and Congress to nominate and confirm qualified candidates to fill the judicial vacancies of the Circuit and the District Courts of the Ninth Circuit forthwith.

2007 Ninth Circuit Judicial Conference

RESOLUTION

Recommending a change to the Judicial Conference of the United States' policy to permit photographing, recording and broadcasting non-jury, civil cases before the district courts.

Should the Ninth Circuit encourage the Judicial Conference of the United States to reconsider its position and permit circuits to adopt a rule allowing photographing, recording, and broadcasting non-jury, civil proceedings before the District Courts?

Judges			**Lawyers**			**Overall**		
Yes	*No*	*No Vote*	*Yes*	*No*	*No Vote*	*Yes*	*No*	*No Vote*
90	63	0	81	33	0	171	96	0

Bench, Bar Favor Allowing Juror Interviews

August 25, 2008
By Ninth Circuit Public Information Office

Judges and lawyers participating in the recent Ninth Circuit Judicial Conference largely favored a resolution that would allow legal counsel to interview jurors at the conclusion of both civil and criminal trials in federal courts.

The resolution was favored by judges, 93-29, and by attorneys, 100-9, in balloting that took place July 30 at the judicial conference in Sun Valley, Idaho. Conference approval will allow the resolution to be considered by the Judicial Council of the Ninth Circuit, the policy-making body for federal courts in the West.

Among the 15 federal trials courts in the Ninth Circuit, nine currently allow counsel to interview jurors after trial with certain conditions. Six courts prohibit counsel from interviewing jurors after trial, citing a Ninth Circuit legal precedent, *Northern Pacific Railway Co. v. Mely*, 219 F.2d 199, 202 (9th Circuit, 1954). The resolution seeks a circuit-wide policy permitting the practice.

Audio Recording

Resolution Materials

Jurors are under no obligation to talk with attorneys. The policy would only allow attorneys to approach jurors for interviews.

Proponents say lawyers can improve their advocacy skills by learning how jurors experienced different aspects of a trial, such as the presentation of evidence or cross-examination of witnesses. Opponents worry that overzealous lawyers will abuse the interview by seeking information about juror conduct and jury deliberations that might lead to a new trial or setting aside a verdict.

At the conference, judges and attorneys briefly debated the resolution prior to the vote. Among those favoring the resolution was Ninth Circuit Chief Judge Alex Kozinski, who occasionally sits as a trial judge and makes a practice of inviting jurors into chambers to talk about the trial just concluded. If jurors do not object, he said he will invite the attorneys to join the discussion.

Also favoring the resolution were Senior District Judge John C. Coughenour of Seattle and two Federal Public Defenders, Thomas Hillier of Seattle and Franny Forsman of Las Vegas. Senior District Judge H. Russel Holland of Anchorage and attorney Gary Grimmer of Honolulu spoke in opposition.

Judge Holland said jurors are not equipped to critique attorneys on their performance and may feel awkward and imposed upon if asked to do so. He said jurors may not feel the same confidence in a verdict when being interviewed individually by an advocate as they did as part of the jury during deliberations. He also suggested that lawyers, particularly after demanding, high-profile, trials, "may find avoiding exceeding the bounds of propriety almost irresistible."

Both federal defenders addressed the juror misconduct issue.

"It's a fact that there are going to be cases where a lawyer discovers juror misconduct and brings that to the attention of the court. It seems to me that, just like any other error in a trial, that should be taken care of and it's difficult to find that out without having contact with a jury," Mr. Hillier said.

"I don't think that lawyers tend to abuse that and if there is a situation where the court feels the motion isn't done correctly, then the answer is to deny the motion," he added.

Judge Kozinski, who subscribes to a "listserv' email exchange with judges elsewhere in the world, noted that the rule prohibiting access to jurors has deep roots in common law and that, in many common law jurisdictions, it is a felony for anyone to talk to a juror.

"Generally the answers we get from the judges in the other common law jurisdictions is that, once you get into dissecting what the jury does, who knows what you will find? You'll find all sorts of things that might be irregularities," he said.

"The answer you get from American judges is, 'But if there are such irregularities wouldn't you want to know about them."

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Office of the Circuit Executive
P.O. Box 193939 · San Francisco · CA 94119-3939
ph: (415) 355-8900 · fax: (415) 355-8901