

**THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED BY
UNITED STATES OF AMERICA**

ARTICLE 11 UNCAC

JUDICIAL AND PROSECUTORIAL INTEGRITY

UNITED STATES OF AMERICA (EIGHTH MEETING)

**Information requested from States parties in relation to integrity in
criminal justice institutions (arts. 7, 8 and 11)**

**In relation to measures concerning article 7 of the Convention and
the public sector, States parties and signatories may wish to cite and
summarize measures that:**

- Establish and strengthen systems to ensure transparency and accountability in the recruitment, hiring, retention, promotion and retirement of public officials in criminal justice institutions, including whether specific procedures exist for the recruitment and hiring of senior officials in criminal justice institutions, if they are different from other civil servants;
- Implement adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption in criminal justice institutions and the rotation, where appropriate, of such individuals to other positions; and
- Prescribe criteria concerning candidature for and election to public office for members of criminal justice institutions, if applicable, as well as measures to enhance transparency in the funding of candidatures and of contributions to political parties, where applicable.

The U.S. Constitution created a federal system of government in which power is shared between the federal government and the state governments. Due to this system, both the federal government and each of the state governments have their own court system and certain law enforcement responsibilities. This response is specific to the federal court system established under Article III of the U.S. Constitution, the federal judiciary and federal law enforcement agencies, and does not include courts established under any other federal jurisdiction, such as military courts.

Recruitment, Hiring, Retention:

Law enforcement responsibilities in the United States are divided between the federal government and state, county, and municipal governments. At the federal level, law enforcement responsibilities primarily fall under the executive branch. Federal law enforcement personnel are therefore subject to applicable merit hiring standards as other executive branch employees. The U.S. Office of Personnel Management (OPM) is the central human resources management agency for the executive branch. OPM develops civil service regulations consistent with the laws passed by Congress and is responsible for ensuring compliance with those laws and regulations. It delegates to the other executive branch agencies, including those with law enforcement responsibilities, the authority to operate various human resources functions, including the authority to competitively examine and hire employees.

In general, there are two basic categories of career public officials in the federal executive branch, both of which are hired under merit system principles: 1) competitive service employees, who are hired through a competitive examination process and must meet government-wide suitability and qualification standards; and 2) excepted service employees, who may be hired non-competitively but must still be found fit and qualified for their positions, either under government-wide standards or agency-specific standards. Each agency is responsible for developing selective factors, if appropriate. Personal favoritism, nepotism, and political influence are not permitted in the selection process. Any occurrence of non-merit favoritism is viewed as a “prohibited personnel practice.” The head of each agency is responsible for the prevention of prohibited personnel practices.

The U.S. Department of Justice is exclusively responsible for federal criminal prosecutions and primarily responsible for civil prosecutions. The Department of Justice employs career prosecutors whose tenures, except in special circumstances, are not for fixed terms. Career prosecutors are generally “excepted service appointments.” The official appointments are made by the Attorney General after a competitive selection process conducted by others in the Department. The hiring of career federal prosecutors is overseen by the Office of Attorney Recruitment and Management (OARM) in strict compliance with applicable federal hiring regulations. OARM reviews the suitability of every prosecutor offered a position at the Department based on a candidate’s completed security forms, fingerprint and financial background checks, as well as a full field FBI background investigation and tax and attorney bar check.

Promotions and mobility are typically within the purview of the career and appointed supervisors within each agency. In the Department of Justice, because offices, including Offices of the U.S. Attorney, vary in size from

dozens of prosecutors to hundreds of prosecutors, promotions within the offices are decided by the office's management team, depending on the structure of the office. As in the rest of the career service of the executive branch, decisions on performance reviews, promotions, reassignments, bonuses, discipline and other administrative actions are initially made by supervisors, following standard personnel procedures. Promotion to a small number of career supervisory positions within the Senior Executive Service is more formal, and must involve advertisement, a qualification process and interviews. Positions appointed by the President and confirmed by the Senate, which includes U.S. Attorneys, U.S. Marshals, and the heads of all executive agencies including those with law enforcement components, are not eligible for promotion.

Training:

Even prior to coming on board, prospective employees must be alerted to the importance of the Department of Justice's ethics program. As part of executive-branch wide requirements, agencies must issue notices to prospective employees in written offers of employment regarding the agencies' ethics programs and applicable ethics requirements.¹ Senior officials within the Department of Justice who are serving in presidentially appointed, Senate-confirmed (PAS) positions also receive substantial counselling with regard to the application of the federal conflict of interest laws prior to appointment and in conjunction with their preparation and submission of their first public financial disclosure report for purposes of their nomination and appointment.

In addition, agencies, including the Department of Justice, must issue notices regarding applicable ethics requirements to employees who are newly hired or promoted to supervisory positions.² The notices emphasize that, in their new roles as supervisors, these employees will have heightened personal responsibility for advancing government ethics.³ This notice must be issued within one year of appointment, which corresponds to the time period established in the regulations of the Office of Personnel Management for supervisory training.⁴

The ethics notices to prospective employees and new supervisors are complemented by ethics training requirements. Within 3 months from the time an employee begins work for a federal agency, including those with law enforcement responsibilities, the agency must provide the employee with initial ethics training. The initial ethics training must focus on ethics laws and

¹ 5 C.F.R. § 2638.303.

² 5 C.F.R. § 2638.306.

³ 5 C.F.R. § 2638.103.

⁴ 5 C.F.R. § 412.202(b).

regulations that the Designated Agency Ethics Official (DAEO) deems appropriate for the audience and must address concepts related to financial conflicts of interest, impartiality, misuse of position, and gifts. Agencies must also provide the employee a summary of the Standards of Ethical Conduct for Executive Branch Employees, relevant agency supplemental standards; and instructions for how to contact the DAEO.⁵

In addition, agency leaders must receive an ethics briefing around the time of appointment.⁶ This requirement applies to most civilians serving in presidentially appointed, Senate-confirmed positions, and supplements other applicable requirements. For the Department of Justice, this includes the Attorney General, U.S. Attorneys, and U.S. Marshals. During this individualized briefing, the agency ethics official discusses the appointee's basic recusal obligation, the mechanisms for recusal, the commitments made in the appointee's ethics agreement, and the potential for conflicts of interest arising from any financial interests acquired after the nominee financial disclosure report was filed.

Executive branch employees, including Department of Justice attorneys, are required to complete certain training requirements, determined by the type of position held, on an annual basis. This includes ethics training on financial conflicts of interest, impartiality, misuse of position, and gifts. Prosecutors can seek advice from a variety of sources, including an Ethics Advisor or the Departmental Ethics Office.

The Federal Bureau of Investigation (FBI) is one of the primary national security agencies at the federal level, with both law enforcement and intelligence gathering responsibilities. At the FBI, ethics function resides organizationally within the Office of Integrity and Compliance (OIC). The OIC administers the day-to-day operation of all aspects of the FBI Ethics and Integrity Program. This includes overseeing and administering the Ethics and Integrity Training Program to ensure compliance with all executive branch-wide regulations (as noted in the preceding paragraphs) and FBI policies. For new FBI Special Agents, ethics is woven into the curriculum of the FBI's New Agents' Training which is conducted at the FBI Academy. A course on ethical leadership is provided during regularly scheduled classes throughout the duration of the program.

Candidature

There are no federal law enforcement positions that are filled through elections.

⁵ 5 C.F.R. § 2638.304 .

⁶ 5 C.F.R. § 2638.305.

In relation to article 8 of the Convention and measures to establish or promote codes of conduct by criminal justice institutions, States parties and signatories may wish to cite and summarize measures that:

- Establish or improve procedures, rules and regulations for the reporting, including by members of criminal justice institutions, of acts of corruption to appropriate authorities and the mechanisms for the protection of reporting persons;
- Establish or strengthen existing disciplinary procedures and mechanisms to enforce codes of conduct or ethics, standards of professional conduct and conflict of interest legislation; and
- Detect and prevent possible conflicts of interest, such as systems requiring members of criminal justice institutions to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, income, assets and substantial gifts or benefits from which a conflict of interest may result, including as they take office and regularly during the performance of their public functions.

Reporting:

The United States has a system of laws and regulations governing the protection of public officials and private citizens who, in good faith, report acts of corruption and misconduct. The Whistleblower Protection Act (WPA) provides statutory protections for federal employees who engage in “whistleblowing,” that is, making a disclosure evidencing illegal or improper government activities. The protections of the WPA apply to most federal executive branch employees and become applicable when a “personnel action” is taken “because of” a “protected disclosure” made by a “covered employee.”

All executive branch employees, including those in federal law enforcement agencies, are required to report wrongdoing. The Department of Justice *U.S. Attorney’s Manual* outlines requirements that Department employees report to their United States Attorney or Assistant Attorney General, or other appropriate supervisor, any evidence or non-frivolous allegation of misconduct that may be in violation of any law, rule, regulation, order, or applicable professional standard. The supervisor shall evaluate whether the misconduct at issue is serious, and if so shall report the evidence or non-frivolous allegation to the Office of the Inspector General (OIG) or to the Office of Professional Responsibility (OPR). Similarly, the FBI requires its employees to report to

proper authority any known or suspected failures to adhere to the law by themselves or others.

The U.S. Office of Special Counsel (OSC), a federal executive branch agency, has a Disclosure Unit (DU) that serves as a safe conduit for the receipt and evaluation of whistleblower disclosures from federal employees, former employees and applicants for federal employment. The Special Counsel may order an agency head to investigate and report on the disclosure; and after any such investigation, the Special Counsel must send the agency's report, with the whistleblower's comments, to the President and to Congressional oversight committees.

Codes of Conduct:

All executive branch employees, including those in the Department of Justice and other federal law enforcement agencies, are bound by a series of ethics policies and provisions.⁷ All full-time non-career executive branch appointees (including U.S. Attorneys) are also subject to the Ethics Pledge as set forth in Executive Order 13770, which includes recusal obligations in addition to those imposed by statute or regulation, post-employment restrictions in addition to those imposed by statute, and a ban on accepting gifts from lobbyists or lobbying organizations.

All Department of Justice and federal law enforcement personnel are also subject to the Hatch Act, which generally prohibits executive branch employees from engaging in partisan political activity while on duty, in a federal facility or using federal property. Political activity is activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group. The statute carries serious penalties including removal from federal employment. Under the Hatch Act, stricter rules apply to employees serving in several federal law enforcement agencies, including but not limited to, the FBI, the Secret Service, and Office of Law Enforcement of the Bureau of Alcohol, Tobacco, and Firearms, the Criminal Division of the Department of Justice as well as career members of Senior Executive Service. These employees are prohibited from participating actively in political management or political campaigns even when off-duty. In addition, it is the long-standing practice of the Department to require political appointees to adhere to the prohibitions applicable to further-restricted employees.

Conflicts of Interest:

⁷ These include the Standards of Ethical Conduct for Employees in the Executive Branch and Principals of Ethical Conduct. In addition, employees are subject to the provisions of 18 U.S.C. § 201 et seq., making criminal certain bribery, graft, and conflict of interest activities by employees or former employees.

Executive branch employees are subject to various conflict of interest rules.⁸ Those holding certain non-career positions are also subject to more stringent restrictions on their outside activities and limitations on earned income.⁹ The Ethics in Government Act requires senior executive branch officials, including senior Department of Justice and federal law enforcement officials, to file public financial disclosure reports. Individuals in positions that require public financial disclosure must file their disclosures upon entry into the position, annually, and then upon leaving the position. Additionally, employees in positions requiring public financial disclosures must file periodic transaction reports of certain personal financial transactions in stocks, bonds, and other securities. These transaction reports are due within 45 days of the transaction or within 30 days of notification of the transaction.

Less senior career prosecutors and law enforcement officials file annual confidential financial disclosure reports, or Certifications to No-Conflicts of Interest, as described above. Confidential financial disclosure reports require similar information to the public financial disclosure reports but do not require the listing of values of assets, income, liabilities, and gifts or the listing of certain other interests such as cash bank accounts and diversified mutual funds that are unlikely to give rise to a conflict of interest.

The Standards of Ethical Conduct for Employees of the Executive Branch have administrative penalties which can include reprimand, suspension, demotion, transfer and firing. Administrative sanctions are imposed by the agency which employs the individual who has been found to have violated the administrative code of conduct following standard personnel procedures for imposing discipline. Individual prosecutors may face civil and criminal prosecution in addition to disciplinary action for violations of the policies. Consequences for violating criminal conflict of interest laws include imprisonment for one to five years, fines, community service and restitution to the Government.

An employee or individual who violates the Hatch Act shall be subject to administrative, civil, and/or criminal penalties. These penalties could include removal, reduction in grade, debarment from Federal employment for a period not to exceed 5 years, suspension, reprimand, or an assessment of a civil penalty.

⁸ These include, but are not limited to, the criminal conflict of interest statutes (18 U.S.C. § 201 et seq.), Executive Order 12674 on Principles of Ethical Conduct as amended by Executive Order 12731, the uniform Standards of Ethical Conduct for Employees of the Executive Branch at 5 C.F.R. Part 2635, and the Ethics Pledge as set forth in Executive Order 13770.

⁹ 5 U.S.C. app § 501 et seq.

In relation to article 11 and measures to promote the independence, integrity and impartiality of members of the judiciary and prosecution services, States parties and signatories may wish to cite and summarize measures that:

- Disseminate information and build awareness of existing national and international standards of judicial integrity, such as the Basic Principles on the Independence of the Judiciary, the Bangalore Principles on Judicial Conduct, the Guidelines on the Role of Prosecutors and the Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors;
- Implement or improve existing induction and ongoing training requirements and curricula for members of the judiciary and prosecution services, particularly in terms of codes of conduct, integrity and independence;
- Establish or improve existing mechanisms to evaluate performance of members of the judiciary and the prosecution services, including by promoting the transparency of evaluation reports, where appropriate;
- Procedures governing asset declarations by judges and how they are used to prevent conflicts of interest, including in relation to the assignment of cases;
- Improve transparency, accountability and efficiency in procedures for case assignment and distribution;
- Provide ethical guidance or advice to officials of criminal justice institutions in relation to the performance of their duties, their relationship with actors outside the judicial process, such as the media and non-governmental organizations, or with regard to their use of new technologies and social media; and
- Assess the risks of corruption as well as the integrity and effectiveness of the judiciary, prosecution service and court system more broadly, including by soliciting inputs from court users, other stakeholders and the general public.

Build Awareness of Existing National and International Standards of Judicial Integrity:

The Federal Judicial Center is the primary research and education agency of the federal judicial system. The Center supports the efficient, effective administration of justice and judicial independence. The Center has no policy-making or enforcement authority; its role is to provide accurate, objective information and education and to encourage thorough and candid analysis of

policies, practices, and procedures. Through its website, the Center provides a number of publicly available publications, including a number of ethics and codes of conduct reports, manuals, and reference guides. The Center has translated several of these documents into other languages to serve as reference to legal practitioners from other countries interested in learning more about the judicial conduct and integrity in the United States.

The standards of conduct that apply to federal judges are contained in the “Code of Conduct for United States Judges.” The Judicial Conference has continued to review and revise the Code of Conduct for United States Judges. The complete text of the Code of Conduct is made available to the public on the federal judiciary public website.¹⁰

Inductions/Ongoing Training:

The Federal Judicial Center conducts and promotes education and training for federal judges, including formal ethics training for both new and experienced judges. It also develops education and training programs for court personnel, such as those in clerks’ offices and probation and pretrial services offices. Ethics education and advice is also available to all federal judges through the Judicial Conference Committee on Codes of Conduct. The Committee’s jurisdiction is set by the Judicial Conference of the United States and broadly encompasses ethics policy for the judiciary. The Committee develops ethics codes and regulations, advises judges and employees on ethics matters, and develops ethics education programs. The Committee’s goal is to ensure that the ethics guidelines for judges effectively protect the fairness and impartiality of the judiciary, while also preserving judicial independence.

Through programs sponsored by the Federal Judicial Center, the Committee provides ethics education for new judges and provides ethics training for law clerks, staff attorneys, clerks and judicial assistants. Although judges’ participation in ethics education is not compulsory, ethics education is featured in most continuing education programs for both new and experienced judges. The Committee’s extensive training effort underscores the value and the importance the federal judiciary places on ethical conduct.

Evaluate Performance:

Justices of the Supreme Court, judges of the courts of appeals and the district courts, and judges of the Court of International Trade, are appointed under Article III of the Constitution. They are nominated and appointed by the

¹⁰ <http://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges>

President of the United States and must be confirmed by a majority vote of the Senate. Article III judges are appointed for life, and they can only be removed by the Congress through the impeachment process specified in the Constitution. Bankruptcy judges and magistrate judges are judicial officers of the district courts, but they are not Article III judges.

Magistrate judges are appointed by majority vote of the judges of the district court for eight-year terms. Bankruptcy judges are appointed by the circuit judges of the courts of appeals for 14-year terms. Bankruptcy judges and magistrate judges may be reappointed when their term expires. However, before reappointing a bankruptcy judge or a magistrate judge to an additional term, the appointing court must publish a public notice seeking comments on the incumbent judge's performance and convene a merit panel to recommend to the court whether the incumbent should be reappointed. Federal judges are not promoted to office or to a higher court. Each judge must be appointed to judicial office as explained above.

Asset Declaration/Conflicts of Interest:

All federal judges must file detailed annual financial disclosure reports under the Ethics in Government Act. These reports include extensive detail concerning all financial holdings, dates of acquisition and disposition, even of partial interests, board memberships, gifts and reimbursements. A judge's annual declaration is sent to the Judicial Conference of the United States, which has delegated its authority to the Judicial Conference Committee on Financial Disclosure. In addition, the Judicial Conference requires all judges to use an electronic conflicts screening system to ensure that judges do not inadvertently fail to recuse based on financial interests in a party. Under this mandatory policy, each judge must develop a list of financial interests that would trigger recusal. The system identifies potential financial conflicts, which enables the judge to decline an assignment or, if the case has been assigned, to recuse if necessary. Once a case is assigned, a judge has a continuing obligation, under the recusal statute and the Code of Conduct, to evaluate and monitor the case for potential recusal.

By statute, federal judges may not hear cases in which they have either personal knowledge of the disputed facts, a personal bias concerning a party to the case, any earlier involvement in the case as a lawyer, or a financial interest in any party or subject matter of the case.¹¹ The standards of conduct that apply to federal judges are contained in the "Code of Conduct for United States Judges." There is no "de minimus" exception for recusal based on a financial interest.

¹¹ 28 U.S.C. § 455,

Even owning a single share of stock in a party requires recusal. In addition, a judge cannot avoid recusal by placing assets in a blind trust, or by avoiding knowledge of the judge's financial holdings. With respect to disqualification due to a financial interest, recusal is not required if the judge (or spouse or minor child) divests the financial interest. However, divestiture is not permitted if the judge has an interest that could be substantially affected by the outcome of the proceeding.

Improve Conditions for Case Assignment:

The day-to-day responsibility for judicial administration rests largely with each individual court and its judges. Each court is given the responsibility by statute and administrative practice to appoint its own support staff and manage its own affairs. Every court with more than one judge must implement procedures for assigning responsibility for cases to its judges. Common methods of case assignment in the trial (district) courts include random assignment, rotational assignment, subject matter assignment, and assignment by geographic division of the court.

Most federal district and bankruptcy courts randomly assign a case to a particular judge at the time it is filed, and that judge has complete responsibility for the case until it is terminated. Random assignment generally helps to ensure an equitable distribution of workloads and prevents "judge shopping." Each district court determines how magistrate judges will be utilized for case assignment.¹² The assignment of judges to cases is also subject to the statutory and Code of Conduct provisions on recusal.

Ethical Guidance:

Judges can obtain ethics guidance in several ways. As a starting point, judges can do their own research. The statutes and the related case law, the Code of Conduct for United States Judges, the associated Commentary, and the ethics regulations adopted by the Judicial Conference are the basic resource documents. Beyond the Codes and regulations, the Committee has issued about eighty Advisory Opinions addressing judicial ethics topics that frequently arise. These published Advisory Opinions provide guidance that goes well beyond the bare terms of the recusal statutes and Code of Conduct, in order to assist judges in complying with their ethical obligations.

The published advisory opinions are available to judges and the public through the Judiciary's website.¹³

¹² See 28 U.S.C. § 636 (regarding the assignment of cases to magistrate judges).

¹³ <http://www.uscourts.gov/rules-policies/judiciary-policies/code-conduct/published-advisory-opinions>.

A judge can also request ethics advice directly from the Codes of Conduct Committee. The Committee provides informal ethics guidance on a broad range of issues. Judges can ask any committee member for an informal ethics opinion. Judges may also obtain informal ethics advice from experienced attorneys at the Administrative Office of the U.S. Courts who serve as counsel to the Committee. In cases where an informal opinion is not sufficient or the judge raises a novel issue, the judge may also seek “formal” ethics guidance. In that situation, the Committee issues a confidential letter of advice to the judge, usually within three weeks or less.

Assess the risks of corruption

The Judicial Conduct and Disability Act 1980 Act authorizes any person to file a complaint alleging that a federal judge has engaged in conduct "prejudicial to the effective and expeditious administration of the business of the courts." The late Chief Justice William H. Rehnquist, in 2004, created a committee, led by Supreme Court Justice Stephen Breyer, to review implementation of the Act.¹⁴ The Strategic Plan for the Federal Judiciary was approved by the Judicial Conference of the United States in 2010, and subsequently updated in 2015. Key aspects of the plan include pursuing improvements in the delivery of justice on a nationwide basis, enhancing access to the judicial process, and enhancing public understanding, trust, and confidence. The Plan states “accountability mechanisms must address critical risks and keep pace with changes in regulations.” This includes using technology to share information and solicit input about court procedures and policies from the public. Additionally, for every goal in the Strategic Plan, mechanisms to measure or assess the judiciary’s progress are developed. A review of the Strategic Plan also takes place every five years.

2. Please outline actions required to ensure or improve the implementation of the measures described above and any specific challenges you might be facing in this respect.

Examples of the types of challenges States parties and signatories may face include:

- Challenges in developing the proper legislative or regulatory framework for performance evaluations, the protection of persons reporting

¹⁴ [http://www.fjc.gov/public/pdf.nsf/lookup/breyer06.pdf/\\$file/breyer06.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/breyer06.pdf/$file/breyer06.pdf)

corruption cases within the criminal justice system or preventing conflicts of interest;

- Challenges in administering asset declaration and conflict of interest systems;

The United States does not have any challenges to report at this time.

3. Do you consider that any technical assistance is required in order to allow you to fully implement this provision? If so, what specific forms of technical assistance would you require?

The United States does not require technical assistance with regard to implementation of this provision.

**THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED
BY UNITED STATES OF AMERICA**

ARTICLE 11 UNCAC

JUDICIAL AND PROSECUTORIAL INTEGRITY

UNITED STATES OF AMERICA (FOURTH MEETING)

U.S. Submission for 2013 UNCAC Working Group on Prevention (Part I)

I - Information requested from States parties in relation to integrity in the judiciary, judicial administration and prosecution services (art. 11)

1. Has your country adopted and implemented article 11 of the UN Convention against Corruption?

States parties are encouraged to provide information on their implementation of policies and measures taken to strengthen integrity and to prevent opportunities for corruption among members of the judiciary.

Where appropriate, States parties may also wish to provide information regarding measures taken to strengthen integrity and prevent opportunities for corruption among their prosecution service.

Yes.

2. Please cite, summarize and, if possible, provide copies of the applicable policy(ies) or measure(s):

In particular, the Secretariat would be grateful for information regarding:

o the constitutional and legal framework applicable in States parties aimed at ensuring the independence and integrity of the judiciary and, where appropriate, the prosecution service;

o codes of conduct and disciplinary mechanisms applicable to members of the judiciary and prosecution service, including whether these were developed with reference to international standards such as the Bangalore Principles on Judicial Conduct or the Standards of Professional Responsibilities and Statement of the Essential Duties and Rights of Prosecutors.

o measures taken to ensure transparency and accountability in the selection, recruitment, , training, performance management and removal of members of the judiciary and the prosecution service;

o measures taken to improve the transparency and efficiency of procedures governing case assignment and distribution;
o policies and/or practices aimed at increasing transparency in the court process, for example by allowing public and media access to court proceedings, facilitating access to court judgements and raising public awareness through information sharing and outreach programmes.

Constitutional & Legal Framework aimed at Ensuring Independence & Integrity

Judiciary

The U.S. Constitution created a federal system of government in which power is shared between the federal government and the state governments. Due to federalism, both the federal government and each of the state governments have their own court system. This response is specific to the federal judiciary and does not address the state court systems.

The three branches of the federal government — legislative, executive, and judicial — operate within a constitutional system known as "checks and balances." This means that although each branch is formally separate from the other two, the Constitution often requires cooperation among the branches. Federal laws, for example, are passed by Congress and signed by the President. The judicial branch, in turn, has the authority to decide the constitutionality of federal laws and resolve other disputes over them, but judges depend upon the executive branch to enforce court decisions.

The Constitution gives Congress the power to create federal courts other than the Supreme Court and to determine their jurisdiction (Article I, Section 8). It is Congress, not the judiciary, that controls the type of cases that may be addressed in the federal courts (Article I). Congress has three other basic responsibilities that determine how the courts will operate. First, it decides how many judges there should be and where they will work. Second, through the confirmation process, Congress determines which of the President's judicial nominees ultimately become federal judges (Article II, Section 2). Third, Congress approves the federal courts' budget and appropriates money for the judiciary to operate (Article I).

Under the Constitution, the President appoints federal judges with the "advice and consent" of the Senate (Article II, Section 2). The President usually consults senators or other elected officials concerning candidates for vacancies on the federal courts. The Office of Legal Policy at the U.S. Department of Justice (DOJ) also advises and assists the President and the Attorney General in the selection and confirmation of federal judges. It oversees the DOJ's process for vetting, interviewing, evaluating, and seeking confirmation of the nation's judiciary, in close consultation with the White House Counsel.

As part of the vetting and confirmation process, individuals who are being considered for nomination and nominees are required to provide to the President and the Senate confirming committee significant information about themselves and their professional careers. The Federal Bureau of Investigation (FBI) also does a background check on each nominee. Nominees for federal judgeships are also required to file a financial disclosure report which is publicly available.

Once appointed, Supreme Court justices, as well as federal lower court judges, serve for life, unless they resign, retire, or are removed by Congress through the process of impeachment and conviction.

Judges must follow the ethical standards set out in the *Code of Conduct for United States Judges*, which contains guidelines to make sure a judge does not preside over a case in which he or she has any reason to favor one side over the other. For example, a judge must withdraw or recuse himself or herself from any case in which a close relative is a party, or in which he or she has any financial interest, however remote. Judges are required to file a financial disclosure form annually, so that all their stock holdings, board memberships, and other financial interests are on public record. They must be careful not to do anything that might cause people to think they would favor one side in a case over another. For this reason, they cannot give speeches urging voters to pick one candidate over another for public office or ask people to contribute money to civic organizations. Judges without life tenure are also subject to the *Code of Conduct for United States Judges*.

Congress has created a procedure for submitting a complaint that a federal judge has committed misconduct or become disabled. The process is governed by the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§ 351-364, and Rules for Judicial-Conduct and Judicial-Disability Proceedings, 248 F.R.D. 674 (2008). The Rules and a complaint form are available at federal court websites and clerk's offices.

<http://www.uscourts.gov/RulesAndPolicies/ConductAndDisability/JudicialConductDisability.aspx>

Prosecutors

Within the federal system, the U.S. Department of Justice (DOJ or Department) in the executive branch brings all prosecutions. DOJ is organized into several divisions located in Washington DC and ninety-four U.S. Attorney's Offices located through the United States. The Attorney General, the Deputy Attorney General and each of the Assistant Attorneys General in charge of DOJ's divisions, as well as each of the 93 U.S. Attorneys are appointed by the President with the advice and consent of the Senate. DOJ is staffed by career prosecutors. Although a particular Administration may set priorities for law enforcement, charging decisions in individual cases are made independently by DOJ. Federal

prosecutors are entrusted with discretion to decide when and if to bring a criminal prosecution. Resources which guide federal prosecutors' discretion are the Principles of Federal Prosecution (PFP) and the Principles of Federal Prosecution of Corporations (PFPC). Pursuant to these principles, a "determination to prosecute represents a policy judgment that the fundamental interests of society require the application of the criminal laws to a particular set of circumstances." See title 9 of the United States Attorneys' Manual, http://www.justice.gov/usao/eousa/foia_reading_room/usam/index.html.

All federal civil servants, including U.S. Attorneys, take an oath of office by which they swear to support and defend the Constitution of the United States of America. Through the oath, employees swear to faithfully discharge the duties of office. See http://www.opm.gov/constitution_initiative/oath.asp.

This requirement is expanded in the Standards of Ethical Conduct for Employees of the Executive Branch in its very first principle: "Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain." <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=06f812f26e7ed9f364bb87944757b912&rgn=div5&view=text&node=5:3.0.10.10.9&idno=5>

In addition to the requirements of the oath of office and the standards of conduct, U.S. Attorneys and supervisory attorneys file publicly available financial disclosure reports. The line assistant U.S. attorneys and special assistant U.S. attorneys file alternative confidential disclosures on a case-by-case basis. The financial disclosure system is established under 5 U.S.C. app section 101 et seq and implemented in 5 C.F.R. Part 2640. <http://www.gpo.gov/fdsys/pkg/USCODE-2009-title5/html/USCODE-2009-title5-app-ethicsing-titleI.htm> and <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=06f812f26e7ed9f364bb87944757b912&rgn=div5&view=text&node=5:3.0.10.10.8&idno=5>

DOJ ethics officials review each of the public and confidential financial disclosure reports, primarily for purposes of identifying potential or actual conflicts of interest. A conflict of interest is determined by applying the restrictions contained in certain statutes and standards in the context of the official duties and responsibilities of the individual. When information on a report indicates a potential conflict of interest with those duties and responsibilities, the ethics official works with the individual to determine appropriate steps he or she must take in order to avoid engaging in an official or private activity that will change the potential for a conflict into an actual conflict. Such steps may include: recusal from certain official actions, change of official assignments or duties, divestiture of an asset, resignation from an outside position, termination of an outside activity, or written waivers.

The purpose of financial disclosure reports in the executive branch is primarily to proactively identify and prevent conflicts of interest as opposed to detect illicit enrichment. These reports are not net worth statements. However, when information on a financial disclosure report indicates that an actual conflict of interest may have occurred, that matter is referred to appropriate authorities for further investigation and possible prosecution and/or administrative sanction. Making a false statement on a financial disclosure report is a crime.

When U.S. Attorneys, or their offices, become aware of an issue that could require a recusal in a criminal or civil matter or case as a result of a personal interest or professional relationship with parties involved in the matter, they must contact General Counsel's Office Executive Office for U.S. Attorneys. The requirement of recusal does not arise in every instance, but only where a conflict of interest exists or there is an appearance of a conflict of interest or loss of impartiality. If recusal is appropriate, the General Counsel's Office will coordinate the recusal action, obtain necessary approvals for the recusal, and assist the office in arranging for a transfer of responsibility to another office, including any designations of attorneys as a Special Attorney or Special Assistant to the Attorney General pursuant to 28 U.S.C. Sec. 515.

The Office of Professional Responsibility (OPR), reporting directly to the Attorney General, is responsible for investigating allegations of misconduct involving Department attorneys that relate to the exercise of their authority to investigate, litigate or provide legal advice, as well as allegations of misconduct by law enforcement personnel when they are related to allegations of attorney misconduct within the jurisdiction of OPR.

Misconduct allegations that OPR historically investigates include Brady, Giglio, Federal Rule of Criminal Procedure 16, and civil discovery violations; improper conduct before a grand jury; improper coercion, intimidation, or questioning of witnesses; improper introduction of evidence; lack of candor or misrepresentations to the court and/or opposing counsel; improper opening statements and closing arguments; failure to represent competently and diligently the interests of the government; failure to comply with court orders, including scheduling orders; unauthorized disclosure of confidential or secret government information; failure to keep supervisors apprised of significant developments in a case; and the exercise of prosecutorial discretion based on improper purposes.

The Counsel for Professional Responsibility leads the OPR. Under the Counsel's direction, OPR reviews allegations of attorney misconduct involving violation of any standard imposed by law, applicable rules of professional conduct, or Departmental policy. When warranted, OPR conducts full investigations of such allegations, and reports its findings and conclusions to the Attorney General and other appropriate Departmental officials. OPR also serves as the Department's contact with state bar disciplinary organizations.

The Office of the Inspector General (OIG) investigates allegations of misconduct by Department attorneys that do not fall within the jurisdiction of OPR and is required to notify OPR of the existence and results of any OIG investigation that reflects upon the professional ethics, competence or integrity of a Department attorney.

Codes of Conduct & Disciplinary Mechanisms

Judiciary

The federal court system governs the non-criminal conduct of its members at the national level through the Judicial Conference of the United States. The Judicial Conference is a body of 27 federal judges, composed of the following: the Chief Justice of the United States, who serves as the presiding officer; the chief judges of the 13 courts of appeals; the chief judge of the Court of International Trade; and 12 district judges from the regional circuits who are chosen by the judges of their circuits to serve terms of three years.

<http://www.uscourts.gov/FederalCourts/JudicialConference.aspx>

The Judicial Conference has adopted two primary codes of conduct: the Code of Conduct for United States Judges and the Code of Conduct for Judicial Employees. The Code of Conduct for United States Judges covers, among other topics, the following: judicial integrity and independence; the avoidance of impropriety and the appearance of impropriety; impartiality; adjudicative and administrative responsibilities; disqualification; extrajudicial activities and compensation related to extrajudicial activities; conflicts of interest; gifts; and refraining from political activity. The Code of Conduct for Judicial Employees covers, among other topics, the following: judicial integrity and independence; the avoidance of impropriety and the appearance of impropriety; performance of duties; conduct toward the public; use of confidential and other types of information; conflicts of interest; personal prejudice; outside activities; gifts; practice of law; and inappropriate political activity. The Judicial Conference Committee on Codes of Conduct renders advisory opinions concerning the application and interpretation of the Codes of Conduct for United States Judges and for Judicial Employees. In addition, the Judicial Conference has issued rules related to gifts (and outside earned income, honoraria, and employment).

<http://www.uscourts.gov/RulesAndPolicies/CodesOfConduct.aspx>

Justices and judges receive a lifetime appointment without diminution of pay and can only be removed by Congress after impeachment by the House and trial in the Senate. In addition to the impeachment process, actions the court system may take against a judge include private or public reprimand or censure, request for voluntary retirement, suspension of case assignments, and certification of disability of a judge to hold office. If appropriate, the Judicial Conference may transmit to the House a determination that consideration of impeachment may be

warranted. Employees of the judicial branch are subject to disciplinary action, including removal.

Prosecutors

All employees of the executive branch, including prosecutors, are subject to the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct), which are found in Part 2635 of Title 5 of the Code of Federal Regulations (5 C.F.R. Part 2635). The Standards of Conduct cover the following subjects: gifts from outside sources; gifts between employees; conflicting financial interests; impartiality in performing official duties; seeking other employment; misuse of position (i.e. use of public office for private gain, use of nonpublic information, use of Government property, use of official time); and outside activities.

In addition, the DOJ has issued, with the concurrence of the U.S. Office of Government Ethics, supplemental standards of conduct that, among other things, prohibit Department employees from engaging in the practice of law (except in narrow circumstances) or other litigation, investigations, grants or other matters in which the Department is a party. The supplemental regulations also require Department employees to obtain written approval before engaging in outside employment, not otherwise prohibited, that involves the practice of law, or a subject matter, policy, or program that is in the employee's component's area of responsibility (5 CFR Sections 3801.101-106).

The standards of conduct in the executive branch have administrative penalties which can include reprimand, suspension, demotion, transfer and firing. Administrative sanctions are imposed by the agency which employs the individual who has been found to have violated the administrative code of conduct following standard personnel procedures for imposing discipline.

Measures to Ensure Transparency & Accountability in Selection, Recruitment, Training, Performance Management, and Removal

Judiciary

Supreme Court justices, court of appeals judges, and district court judges are nominated by the President and confirmed by the United States Senate, as stated in the Constitution. The Constitution sets forth no specific requirements for judges. However, members of Congress, who typically recommend potential nominees, and the DOJ, which reviews nominees' qualifications, have developed their own informal criteria. The Senate Judiciary Committee typically conducts confirmation hearings for each nominee. Article III of the Constitution states that these judicial officers are appointed for a life term. The federal Judiciary, the Judicial Conference of the United States, and the Administrative Office of the U.S. Courts play no role in the nomination and confirmation process.

As part of the vetting and confirmation process, individuals who are being considered for nomination and nominees are required to provide to the President and the Senate confirming committee significant information about themselves and their professional careers. The FBI also does a background check on each nominee. Nominees for federal judgeships are also required to file a financial disclosure report which is publicly available.

Bankruptcy judges are judicial officers of the U.S. district court and are appointed by the majority of judges of the U.S. court of appeals to exercise jurisdiction over bankruptcy matters. The number of bankruptcy judges is determined by Congress. The Judicial Conference of the United States is required to submit recommendations from time to time regarding the number of bankruptcy judges needed. Bankruptcy judges are appointed for 14-year terms.

Magistrate judges are judicial officers of the district court and are appointed by majority vote of the active district judges of the court to exercise jurisdiction over matters assigned by statute as well as those delegated by the district judges. The number of magistrate judge positions is determined by the Judicial Conference of the United States, based on recommendations of the respective district courts, the judicial councils of the circuits, and the Director of the Administrative Office of the U.S. Courts. A full-time magistrate judge serves a term of eight years. Duties assigned to magistrate judges by district court judges may vary considerably from court to court. <http://www.uscourts.gov/Common/FAQS.aspx>

The Federal Judicial Center, created by Congress in 1967 “to further the development and adoption of improved judicial administration in the courts of the United States,” is the primary entity that educates and trains judges and employees of the federal courts. The Center produces its educational programs and resources in coordination with its Board and advisory committees. It also works closely with subject-matter experts from the courts, with scholars, and with staff from other government agencies to provide instruction on substantive legal topics, case and court management, and leadership development. The Center designs and produces educational programs and products using in-person seminars and workshops as well as distance-education methods, including web conferences, e-learning programs, audio conferences, videos, and other online resources.

Complementing the role of the Federal Judicial Center, the Judicial Conference Committee on Codes of Conduct develops and delivers continuing ethics education and publishes ethics education materials for all judges and judicial employees.

Prosecutors

In general, there are two basic categories of career public officials in the federal executive branch, both of which are hired under merit system principles: (1) competitive service employees (referred to in the hiring and ranking systems as General Service (GS) employees), who are hired through a competitive examination process and must meet government-wide suitability and qualification standards; and (2) excepted service employees, who may be hired non-competitively but must still be found fit and qualified for their positions, either under government-wide standards or agency-specific standards.

All career prosecutors are hired through the excepted service. The regulations governing the excepted service are found in 5 C.F.R. Part 213.

<http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=e9a12e19ed4300a755c698ecc34499ce&rgn=div5&view=text&node=5:1.0.1.2.22&idno=5#5:1.0.1.2.22.1>

Personal favoritism, nepotism, and political influence are not permitted in the selection process. Any occurrence of non-merit favoritism is viewed as a “prohibited personnel practice.” The head of each agency is responsible for the prevention of prohibited personnel practices; for the compliance with and enforcement of applicable civil service laws, rules, and regulations, and other aspects of personnel management; and for ensuring (in consultation with the Office of Special Counsel, an independent agency established by the Civil Service Reform Act) that agency employees are informed of the rights and remedies available to them under law (5 U.S.C. Section 2301).

With respect to training, the National Advocacy Center, which is operated by the DOJ’s Executive Office for United States Attorneys, trains federal, state, and local prosecutors and litigators in advocacy skills and management of legal operations; more than 10,000 legal personnel are trained annually.

<http://www.justice.gov/usao/eousa/ole/>

In addition, those prosecutors who file public and confidential financial disclosure reports are required to have annual ethics training so that they are reminded of the standards that apply to them in carrying out their government duties. This is in addition to the required initial ethics orientation provided to every new employee in the executive branch. The DOJ, like all executive branch agencies, is also required to have an ethics official or officials who are available to answer questions that any prosecutor or other employee within the agency might have with regard to potential conflicts of interest or the application of any of the provisions of the standards of conduct, civil ethics statutes, or criminal conflict of interest statutes.

Measures to Improve Transparency & Efficiency of Procedures Governing Case Assignment and Distribution

Judiciary

Judge assignment methods vary. The basic considerations in making assignments are to assure equitable distribution of caseloads and avoid judge shopping. By statute, the chief judge of each district court has the responsibility to enforce the court's rules and orders on case assignments. Each court has a written plan or system for assigning cases. The majority of courts use some variation of a random drawing. One simple method is to rotate the names of available judges. At times judges having special expertise can be assigned cases by type, such as complex criminal cases, asbestos-related cases, or prisoner cases. The benefit of this system is that it takes advantage of the expertise developed by judges in certain areas. Sometimes cases may be assigned based on geographical considerations. For example, in a large geographical area it may be best to assign a case to a judge located at the site where the case was filed. Courts also have a system to check if there is any conflict that would make it improper for a judge to preside over a particular case.

Most cases are handled in an expeditious manner. The Speedy Trial Act of 1974 (18 U.S.C. 3161) establishes standard time requirements for the timely prosecution and disposition of criminal cases in district courts. There is no similar law governing civil trial scheduling, and as a result, the scheduling of criminal cases is assigned a higher priority.

In 1990, Congress enacted legislation that directs each district court to devise and adopt a civil expense and delay reduction plan. One goal established under the legislation is for each civil case to be scheduled for trial within 18 months of filing the complaint.

The 2012 Annual Report of the Director of the Administrative Office of the US Courts presents statistics on the work of the Federal Judiciary for the fiscal year ending September 30, 2012, comparing 2012 data to data for prior years and, when possible, explaining increases or decreases in caseloads. Separate sections of the report address the appellate, district, and bankruptcy courts; the probation and pretrial services system; and other components of the Federal Judiciary. Caseload totals for the major programs of the Federal Judiciary appear in the table of judicial caseload indicators.

<http://www.uscourts.gov/Statistics/JudicialBusiness/2012.aspx>

Prosecutors

Although the distribution of caseload varies between districts, each U.S. Attorney's Office deals with every category of cases and handles a mixture of simple and complex litigation. Each U.S. Attorney exercises wide discretion in the use of his/her resources to further the priorities of the local jurisdictions and needs of their communities.

<http://www.justice.gov/usao/about/mission.html>

Each U.S. Attorney is afforded significant discretion to manage his or her office according to locally perceived priorities and needs, within the umbrella of overarching Department of Justice priorities.

http://www.justice.gov/usao/reading_room/data/CaseStats.htm

National caseload statistical data is available on DOJ's website.

http://www.justice.gov/usao/reading_room/data/CaseStats.htm

Policies/Practices aimed at Increasing Transparency in the Court Process

Judiciary

With certain very limited exceptions, each step of the federal judicial process is open to the public. An individual citizen who wishes to observe a court in session may go to the federal courthouse, check the court calendar, and watch a proceeding. Anyone may review the pleadings and other papers in a case by going to the clerk of court's office and asking for the appropriate case file. Unlike most of the state courts, however, the federal courts generally do not permit television or radio coverage of trial court proceedings.

Court dockets and some case files are available on the Internet through the Public Access to Court Electronic Records system (known as PACER), at www.pacer.gov. This system allows users to locate cases using the Case Locator and to obtain case and docket information from federal appellate, district and bankruptcy courts. In addition, nearly every federal court maintains a web site with information about court rules and procedures.

The right of public access to court proceedings is partly derived from the Constitution and partly from court tradition. By conducting their judicial work in public view, judges enhance public confidence in the courts and allow citizens to learn first-hand how the U.S. judicial system works.

In a few situations the public may not have full access to court records and court proceedings. In a high-profile trial, for example, there may not be enough space in the courtroom to accommodate everyone who would like to observe. Access to the courtroom also may be restricted for security or privacy reasons, such as the protection of a juvenile or a confidential informant. Finally, certain documents may be placed under seal by the judge, meaning that they are not available to the public. Examples of sealed information include confidential business records, certain law enforcement reports, and juvenile records.

The Administrative Office of the U.S. Courts also maintains a website that provides detailed information for various audiences, including teachers and students, media, jurors, researchers, and legal professionals. The site includes information on how the federal courts are structured and how they operate, judges

and judgeships, rules and policies governing the judicial branch, statistics, court records, and educational resources. <http://www.uscourts.gov/>

Prosecutors

Through its website, the Executive Office for United States Attorneys provides a wealth of information about the structure, mission, policies, and procedures of the Office, as well as annual statistical reports regarding the disposition of cases handled by U.S. Attorneys. On the homepage, visitors get an update on most recent convictions and have the opportunity to learn more about individual U.S. Attorneys through the “U.S. Attorney Weekly Spotlight” feature. Users also have quick links to featured resources such the most recent Annual Statistical Report, USA Bulletin, and other information documents such as the DOJ’s strategic plan and U.S. Attorney’s Manual.

<http://www.justice.gov/usao/>

Also, the homepage of the Executive Office for United States Attorneys has a link to the U.S. Attorneys “For Kids” web page, which includes information designed for youth on how a federal prosecutor does his/her job and a brief description of the structure and functioning of a courtroom.

<http://www.justice.gov/usao/eousa/kidspage/>

3. Please provide examples of the successful implementation of domestic measures adopted to comply with article 11 of the Convention:

The Secretariat would particularly welcome practical examples and case studies of successes in implementing domestic measures in the field of judicial integrity. Such examples may include:

- o cases in which the breach of a judicial or prosecutorial code of conduct has led to the application of disciplinary measures.*
- o examples of the effective use of mechanisms to facilitate the reporting of acts of corruption in the judiciary and the prosecution service and statistics regarding the number of complaints received through such mechanisms.*
- o the successful implementation of reforms related to case assignment and case management procedures resulting in a reduction in waiting times for the hearing and completion of cases.*
- o the successful implementation of educational and training programmes for members of the judiciary and prosecution service, including both initial formation and continuing education.*

Application of Disciplinary Measures

Judiciary

The procedures for filing and responding to complaints against judges are prescribed by statute, 28 U.S.C. 351-364. An individual who believes that a federal judge committed misconduct or has a disability may file a complaint with the proper court office. If the complaint is against a U.S. District Judge, a U.S. Bankruptcy Judge, or a U.S. Magistrate Judge, the complaint must be filed at the clerk's office of the United States Court of Appeals for the region ("circuit") in which the judge serves. If the complaint is against a judge of the U.S. Court of Appeals for the Federal Circuit, the complaint must be filed at the circuit executive's office for that court. If the complaint is against any other U.S. Circuit Judge, or against a judge of a national court (the Court of International Trade or the Court of Federal Claims), the complaint must be filed at the clerk's office of the court on which that judge serves. The proper court office is the only place authorized to receive complaints.

In most instances, the judge who considers a complaint will be the chief judge of the court in which it is pending. That judge may conduct a limited inquiry, interviewing witnesses and examining other available information. The consideration of a complaint is confidential, although, in extraordinary circumstances, the chief judge may publicly disclose the complaint's existence. Orders regarding a complaint will become public, but only after the complaint has received final action with no further right of review.

After considering a complaint, the chief judge may, by order, terminate it (by "dismissing" or "concluding" it) if there is reason to do so. Otherwise, the chief judge must appoint a special committee of judges to investigate the complaint. The chief judge must dismiss a complaint if it does not identify evidence tending to show misconduct or disability, or if it is conclusively refuted by objective evidence from transcripts, witnesses, or other sources. The chief judge must also dismiss a complaint if the facts it describes do not amount to misconduct or disability as defined by law.

If the chief judge has ordered that a complaint be dismissed or concluded, the complainant may petition the circuit judicial council (or national court, if applicable) for review. The complainant has 35 days to exercise this option. http://www.uscourts.gov/Viewer.aspx?doc=/uscourts/RulesAndPolicies/conduct/jud_conduct_and_disability_procedure.pdf

Opinions of the Committee on Judicial Conduct and Disability are available at <http://www.uscourts.gov/RulesAndPolicies/ConductAndDisability/JudicialConductDisability.aspx>

Further, Canon 3 of the Code of Conduct for Judicial Employees includes the following language: "A judicial employee should report to the appropriate supervising authority any attempt to induce the judicial employee to violate these canons."

As reported in the 2012 Annual Report of the Director of the Administrative Office, in September 2012, the Judicial Conference adopted a recommendation from its Committee on Judicial Resources to amend the 2010 Model Employment Dispute Resolution Plan, extending whistleblower protection to Judiciary employees. The Judiciary has channels that employees may use to report a violation of law or suspected fraud, waste, abuse, or mismanagement of funds by an employee or an entity doing business with the courts. Amending the Model Plan added an administrative remedy specifically addressing allegations that an employee faced an adverse personnel action as a result of whistleblowing.

As reported in the 2012 Annual Report of the Director of the Administrative Office, in April 2012, the Judicial Conference Committee on Audits and Administrative Office Accountability, asked courts and defender organizations for information about their format and processes for notifying Judiciary staff about available channels for reporting allegations of fraud, waste, and abuse. In response, more than 50 courts offered to share their procedures with interested court units.

Prosecutors

As noted above, allegations of misconduct involving Department attorneys that relate to the exercise of their authority to investigate, litigate, or provide legal advice, are the purview of the DOJ's OPR.

OPR receives allegations from a variety of sources, including judicial opinions and referrals, private individuals and attorneys, and other federal agencies. Some of the most important sources are internal Department referrals. All Department employees are obligated to report to their supervisors any evidence or non-frivolous allegation of misconduct, or they may bring the information directly to the attention of OPR. Supervisors, in turn, are obligated to report to OPR any matters in which the alleged misconduct is serious. Supervisors and employees are encouraged to contact OPR for assistance in determining whether the matter should be referred to OPR. Department employees are required to report to OPR all misconduct findings made by judges.

OPR provides the Attorney General with an annual report of its activities. These reports include statistical information on OPR's activities, significant policy changes and developments, and summaries of cases completed during the fiscal year.

<http://www.justice.gov/opr/reports.htm>

OIG investigates allegations of misconduct by Department attorneys that do not fall within the jurisdiction of OPR and is required to notify OPR of the existence and results of any OIG investigation that reflects upon the professional ethics, competence or integrity of a Department attorney. The OIG publishes a

semiannual report to Congress on its activities.

<http://www.justice.gov/oig/semiannual/>

Case Assignment and Case Management Reforms

As reported in the 2012 Annual Report of the Director of the Administrative Office of the United States Courts, a program of intercircuit and intracircuit assignment of Article III judges has provided short-term assistance to courts struggling with overwhelming caseloads. For the 12-month period ending September 2012, visiting judges participated in 3,794 appeals closed after oral hearing or submission on briefs. In the district courts, visiting judges closed 1,755 civil cases and cases involving 2,069 criminal defendants. During the same time period, the Judicial Conference Committee on Intercircuit Assignments recommended, and the Chief Justice approved, 215 intercircuit assignments. <http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/AdministrativeOffice/DirectorAnnualReport/annual-report-2012.aspx>

The Case Management/Electronic Case Files (CM/ECF) system is the Federal Judiciary's comprehensive case management system for all bankruptcy, district and appellate courts. CM/ECF allows courts to accept filings and provide access to filed documents over the Internet. CM/ECF keeps out-of-pocket expenses low, gives concurrent access to case files by multiple parties, and offers expanded search and reporting capabilities. The system also offers the ability to: immediately update dockets and make them available to users, file pleadings electronically with the court, and download documents and print them directly from the court system.

<http://www.pacer.gov/cmecf/>

The transition to a Next Generation of CM/ECF is well underway. The requirements gathering phase of the project concluded in March 2012, as groups of judges, chambers staff, clerks, and court staff identified and prioritized hundreds of requirements. The project also received input from the bar, academia, government agencies, and others through interviews, focus groups, and surveys of approximately 10,000 judiciary stakeholders. The project is in the design and development phase. The initial schedule calls for the first Next Generation release to be available to the courts in 2014, followed by full transition over several years. The first release will include central sign-on functionality, which will allow users of CM/ECF and PACER to maintain one account across all courts and to sign in one time to access multiple courts.

<http://www.uscourts.gov/FederalCourts/CMECF/AboutCMECF.aspx>

Educational and Training Programs

The Federal Judicial Center is the primary entity that educates and trains judges and employees of the federal courts. In 2012, the Center delivered 63 programs for 3,585 federal judges and 364 programs for 14,539 legal and court staff. "Programs" includes both in-person and distance-education programs. Center staff also assisted in the development and delivery of 19 programs produced by other organizations and attended

by 2,564 court staff. The Federal Judicial Center annual reports contain detailed statistical information listed by program type.

http://www.fjc.gov/public/home.nsf/autoframe?openform&url_r=pages/601

Further, as reported in the 2012 Annual Report of the Director of the Administrative Office, in fiscal year 2012, 14 new chief judge orientation programs were held for 20 district chief judges and ten orientation programs were held for 52 judicial nominees. These programs provide the judges with an overview and resources for their administrative and non-case related duties. Training on judicial ethics, including financial disclosure reporting requirements, is provided at training programs for newly appointed district and magistrate judges.

<http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/AdministrativeOffice/DirectorAnnualReport/annual-report-2012.aspx>

4. Have you ever assessed the effectiveness of the measures adopted to implement article 11? Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized.

States parties may wish, in particular, to provide information regarding efforts taken to:

- o evaluate the overall integrity and effectiveness of the court system. In describing such efforts States may wish to include what methodology and indicators were used, which institutions were responsible for implementation and what follow-up action was taken following evaluation.*

- o seek the views of court users as regards the integrity and effectiveness of the judiciary, prosecution service and court system more broadly. Such measures may include public or court user surveys, focus groups, the use of “score cards”, the analysis of complaints received and other similar measures.*

- o assess the impact of specific measures taken in furtherance of Article 11 such as the those mentioned in paragraph 2 above.*

The Judicial Conduct and Disability Act 1980 Act authorizes any person to file a complaint alleging that a federal judge has engaged in conduct "prejudicial to the effective and expeditious administration of the business of the courts." The late Chief Justice William H. Rehnquist, in 2004, created a committee, led by Supreme Court Justice Stephen Breyer, to review implementation of the Act.

[http://www.fjc.gov/public/pdf.nsf/lookup/breyer06.pdf/\\$file/breyer06.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/breyer06.pdf/$file/breyer06.pdf)

The Strategic Plan for the Federal Judiciary was approved by the Judicial Conference of the United States on September 14, 2010. Key aspects of the plan include pursuing improvements in the delivery of justice on a nationwide basis, reducing delay and unnecessary costs to litigants, and ensuring that court rules, processes and procedures meet the needs of lawyers and litigants. The Plan states that “the views of participants — including parties, lawyers and jurors — should be solicited as a first step in implementing these strategies.” For every goal in the Strategic Plan, a mechanism to measure or assess

the judiciary's progress will be developed. In addition, a review of the Strategic Plan will take place every five years.

5. Which challenges and issues are you facing in (fully) implementing article 11 of the Convention?

Examples of the types of challenges States parties may face in implementing article 11 of the Convention include:

o challenges in balancing efforts to increase the integrity and accountability of the judiciary, for example through the development of new evaluation procedures, with the protection of the independence of the judiciary.

o implementation challenges, such as the ability to enforce or otherwise encourage adherence to existing codes of conduct applicable to members of the judiciary or prosecution service.

o communication challenges, such as the ability to disseminate, publicise and promote new policies and practices to members of the judiciary, prosecution service or to the public more broadly.

The U.S. does not have any specific challenges to report at this time.

6. Do you consider that any technical assistance is required in order to allow you to fully implement this provision? If so, what specific forms of technical assistance would you require? States parties are encouraged to also provide a description of any such assistance already being provided and by whom.

No.