The Role and Responsibilities of Lawyer Representatives to the Ninth Circuit Judicial Conference

Revised November 2014

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Members of the 2014-2015 LRCC gathered at the James R. Browning United States Courthouse in San Francisco in September 2014.

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The Structure of the Ninth Circuit

The United States Courts for the Ninth Circuit consist of the United States Court of Appeals for the Ninth Circuit, 15 United States District Courts, and 13 United States Bankruptcy Courts in the nine western states of Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, and the two territories of Guam and the Northern Mariana Islands. The circuit includes 392 circuit, district, and bankruptcy judges, and full- and part-time magistrates—almost one-sixth of all the federal judicial officers in the nation.

Circuit-Wide Administration: Administratively, the Ninth Circuit operates on three distinct levels—the district court, the court of appeals, and circuit-wide. Circuit-wide, the nine-member Judicial Council of the Ninth Circuit serves as the chief policy-making body for all of the courts in the circuit. Presided over by the chief judge of the court of appeals, the Judicial Council is comprised of six circuit judges and five district judges, plus two non-voting observers: a chief bankruptcy judge and a magistrate judge.

The Office of the Circuit Executive is the administrative arm of the judicial council and carries out its directives. The council meets quarterly to establish broad policy objectives and to review personnel and caseload statistics. At this time, more than a dozen committees and task forces have been established to assist in its work. The circuit executive provides staff for these committees. A list of committees and task forces currently in effect is included in **Appendix A**. Lawyer involvement in judicial administration has been enhanced by lawyer participation on committees such as the Judicial Conference Executive Committee, the Advisory Board, and the Public Information and Community Outreach Committee. One of the principal functions of the council is to oversee the Ninth Circuit Judicial Conference Executive Committee to assure smooth and timely planning of the judicial conference each year.

Court of Appeals Administration: The United States Court of Appeals for the Ninth Circuit operates as an independent, autonomous entity that includes all of the circuit judges and is headed by the chief judge. The court executive/clerk of the court of appeals is the chief administrative officer and serves at the pleasure of the circuit judges. The clerk of the court of appeals performs similar functions to those of a district court clerk **(see following page)**. The court of appeals has created a seven-member rotating court executive committee that meets bimonthly, while the full court meets quarterly, to discuss and manage the business of the court of appeals. The court's committees investigate issues and make recommendations to the full court for action. A list of its committees can be found in **Appendix B**. Proposals suggested by these committees range from steps to streamline the appeals process to nominations for federal public defender or bankruptcy judge positions, from habeas corpus death penalty emergency rules to a 24-hour clerk's office hotline.

District Court Administration: Each district is an independent, autonomous entity that includes all its district and magistrate judges and is headed by the chief district judge. The chief district judge position is filled on the basis of seniority and must be relinquished at age 70 or after seven years of service, whichever comes first.

The clerk of court is the chief administrative officer in the district and serves at the pleasure of the district judges. The clerk's office manages the court's personnel, financial, and space and facilities matters, and oversees all filing and docketing functions.

United States magistrate judges are appointed by the district judges and use the services of the district court clerk's office. Bankruptcy courts have their own chief judge and often maintain their own separate bankruptcy clerk's office as well.

In addition to the chief judge and district judges who meet periodically at court meetings to discuss the business of the courts, each district court usually creates several committees to address common concerns, such as attorney admissions, local rules, budget and finance, and magistrate judge selection.

Lawyer's Role: This brief overview illustrates that the work of the courts has extended far beyond the trial and appeal of cases. Of necessity, the courts have established a wide variety of mechanisms to assist them in their work. Lawyers and bar organizations are encouraged to play an important role in this process. Lawyer representatives are in a particularly favorable position to provide assistance to the courts because of their close involvement with the court system and the representative nature of their service to the courts.

Lawyer representatives play their most visible role in the business of the circuit through their active participation in the annual judicial conference and the year-long activities leading up to the conference that each district undertakes.

Ninth Circuit Judicial Conference

Purpose and Attendance: Each circuit is permitted by 28 U.S.C.§333 to hold a conference of all its active judges annually or biennially "for the purpose of considering the business of the courts and advising means of improving the administration of justice within the circuit." Pursuant to amendments in 1996, judicial attendance at the conference is discretionary. The statute also provides the basis for participation by lawyers as equals in the conference: "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."

2015 Ninth Circuit Judicial Conference: The 2015 Ninth Circuit Judicial Conference is scheduled for July 13-15, 2015, at the Marriott Marquis in San Diego. Initial participants should check in Sunday, July 12.

Executive Committee: In the Ninth Circuit, the annual judicial conference is planned and implemented by a committee of the Ninth Circuit Judicial Council—the 25-member Judicial Conference Executive Committee. All segments of the court and bar are represented on the executive committee, including four circuit judges, four district judges, one bankruptcy judge, one full-time magistrate judge, and nine lawyer representatives.

The nine lawyers who serve on the executive committee are:

- The current chair of the Lawyer Representatives Coordinating Committee (LRCC);
- The chair-elect and vice-chair of the LRCC;
- Six lawyers elected by the lawyer representatives for staggered three-year terms who must be lawyer representatives at the time of their election, one of whom shall be a U.S. Attorney or Federal Public Defender; and
- The liaison for the Ninth Circuit Advisory Board

Conference Structure: Since it was completely reorganized in 1976, the conference has been structured in basically the same way each year. Traditionally, the conference has lasted three and one-half days, running Monday through Thursday or Tuesday through Friday, typically ending at 12 p.m. Committee policy seeks to hold the conference in the summer, preferably in July or early August, in a non-urban resort setting within the circuit, preferably at a single facility that can accommodate all attendees. At times, an overflow property is required but, the headquarters hotel is the site of all general sessions, group functions, and business meetings. In 1996, the executive committee recommended holding an experimental short-format conference in an urban setting. The first such one-and-one-half day business conference was held in Portland, Oregon, in 1997.

See the table on the following page for a typical three and one-half days conference agenda. In addition to these activities, district dinners and a bench/bar breakfast or lunch are scheduled to

Judicial Conference Executive Committee
Program
Budget & Finance
Resolutions
Activities

The executive committee has created four subcommittees to conduct its work: program, budget and finance, resolutions, and activities. The full committee ordinarily meets three times in person between conferences often by conference call. The staff from the Office of the Circuit Executive is directed to carry out its plans for the judicial conference.

combine business and social opportunity for the bench and bar to meet and interact.

Role of the Lawyer Representatives at the Conference: In addition to attending the general conference sessions and participating in the social activities, lawyer representatives have several specific responsibilities at the annual judicial conference:

- To attend the separate meeting of the lawyer representatives;
- To participate in the election of the vice-chair of the Lawyer Representatives Coordinating Committee (LRCC) and at-large lawyer representatives to the executive committee;
- To attend their district meeting during the conference if one is scheduled;
- To participate in and vote during the resolutions process; and
- To serve as facilitators, reporters, or discussion leaders as requested.

These responsibilities give lawyer representatives an opportunity to work together to assure that the conference learns the lawyers' position on various topics of concern to the federal courts and to the federal bar. Elections for lawyer representative positions on the executive committee, which have three-year terms, are important to assure a full voice for lawyers in planning the conference. The position of chair of the conference executive committee rotates among a circuit judge, a district judge, a bankruptcy or magistrate judge, and a lawyer representative, so the selection of members to the committee is an important function with long-term effects. Only those lawyer representatives with a strong interest in the year-long work of the conference, and a willingness to commit the time needed, should be selected to serve on the executive committee.

	Typical Conference Agenda
DAY 1	Separate meetings of the constituent groups of the conference: circuit judges, district court judges, bankruptcy judges, magistrate judges, and lawyer representatives. Late afternoon opening session, including a "state of the circuit address by the chief judge. Welcoming reception for all conference participants.
DAY 2	General session presentations that usually conclude by noon or early afternoon.
DAY 3 & 4	Structured similarly to Day 2. Individual district meetings, debate and voting on conference resolutions and an address or panel discussion with a U.S. Supreme Court justice.
SOCIAL ACTIVITIES	One morning or afternoon may be reserved for a conference golf tournament, tennis tournament, and fun-run. (These activities are not funded by appropriated monies and are managed by lawyer representative volunteers.) A spouses program provides additional activities to encourage expanded partiicipation in the conference.

Whenever possible, each district holds a meeting at the conference to discuss agenda topics discussed by the chief judge, lawyer representative chair, and the executive committee. More recently, this meeting has also provided an opportunity for districts to discuss the merits of various resolutions submitted to the conference. This is also a chance to begin planning the meetings and projects of the district for the coming year.

Last and most importantly, the single best piece of advice to lawyers attending the conference is: speak up and be heard! This is your chance and your forum to constructively contribute to the administration of justice on a circuit-wide basis. Don't hesitate to suggest or make recommendations for the improvement of the courts.

The Lawyer Representative's Role Throughout the Year

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

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

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

Lawyer representatives gathered for a meeting at the 2014 Ninth Circuit Judicial Conference held in Monterey, California.

to serve as lawyer representatives in one of the 15 judicial districts that comprise the circuit. The Order of the Judicial Council spells out five criteria necessary for a lawyer to qualify for selection as a lawyer representative:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Other Projects:

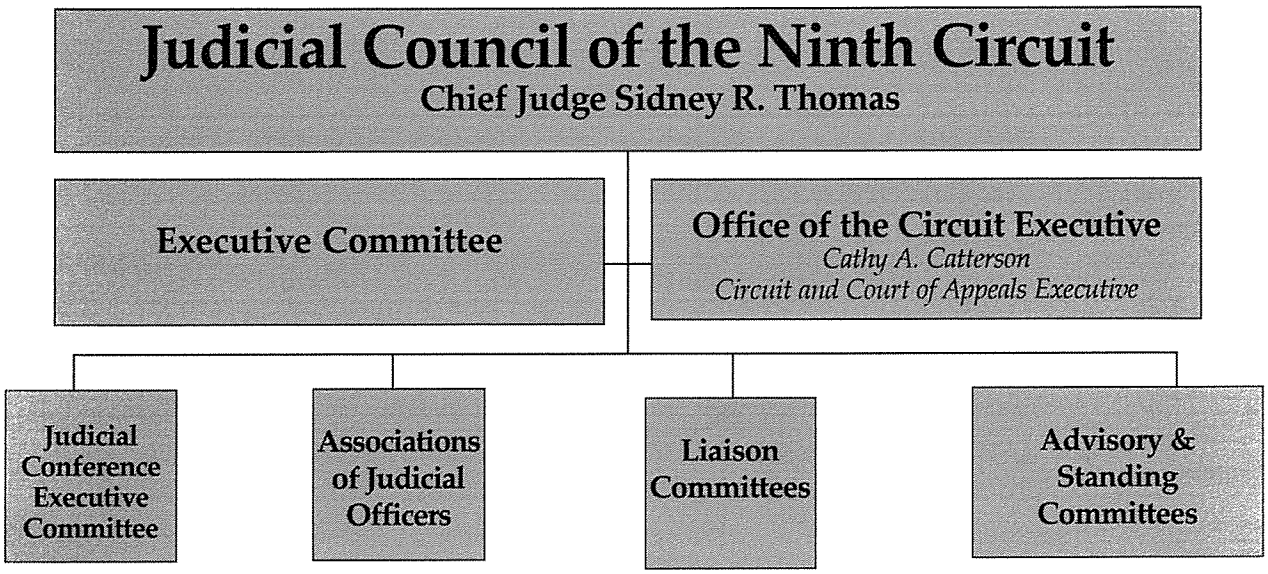
The range of projects that a district delegation, or the Lawyer Representatives Coordinating Committee, can become involved in is as broad as the creativity and imaginations of the members of those bodies. One delegation worked to fund and establish a lawyers' lounge in its courthouse. Another has become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

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

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

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

APPENDIX A



Judicial Conference Executive Committee

Lawyer Representatives Coordinating Committee (LRCC)

Associations of Judicial Officers

Conference of Chief District Judges

Conference of Chief Bankruptcy Judges

Magistrate Judges Executive Board

Liaison Committees

District Clerks

Bankruptcy Clerks

Chief Probation & Chief Pretrial Officers

Advisory & Standing Committees

Advisory Board

Alternative Dispute Resolution

Capital Case

CJA Oversight

Court-Council Committee on Reappointments of Bankruptcy Judges

Courts and Community Committee

Fairness Committee

Federal Public Defenders

Information Technology

Jury Instructions

Jury Trial Improvement

Ninth Circuit Judges Education

Pacific Islands

Pro Se Litigation

Space & Security

Wellness