

Facts About

The American Judicial System



*“Facts are stubborn things; and whatever may be our wishes,
our inclinations, or the dictates of our passions, they cannot
alter the state of facts and evidence.”*

— John Adams, December 1770



American Bar Association
Division for Media Relations and Public Affairs

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Facts About the American Judicial System was created for use by members of the news media. It is intended to provide an overview of facts and data about the American judiciary and judicial system. Note that data are current as of the book's printing, but may change over time and should be confirmed before being used.

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The Judicial Process

 **Question 1** What is the purpose of the judicial system?

Answer The American system of justice long has guaranteed citizens the right to have their legal disputes heard and resolved by an impartial judge or jury. The dispute resolution system now firmly established in the United States is an adversarial one—that is, the parties to a lawsuit take opposing sides when they appear before the neutral finder of fact. Usually vigorously represented

by lawyers, the litigants—the parties to a lawsuit—present their evidence to the judge or jury for a determination of liability or guilt. Traditionally it has been thought that such an approach to the resolution of legal disputes is the most effective way for the judge or jury to arrive at the truth and to reach a fair finding.

In recent years, the use of alternative dispute resolution, including mediation and arbitration, has become increasingly popular and accepted as a means for parties to resolve their legal disputes.

Source: *Understanding the Federal Courts*, Administrative Office of the United States Courts.

 **Question 2** How are the courts set up in the United States?

Answer The United States has one integral court system divided into two components. One set of courts exists at the federal government level and another set of courts is set up in each of the 50 states and the District of Columbia. While such a system may seem duplicative, the courts have different responsibilities, and access to the two court systems provides citizens with the greatest potential to have their legal disputes resolved quickly and justly.

Most U.S. citizens' contact with a court system is with state courts, for these are the courts that have been given the power to hear (i.e., they have "jurisdiction" over) many if not most of the matters that affect people's daily lives. Legal issues involving matters such as divorce, child custody and child support, real estate and real property, contracts, personal injury claims, probate of estates, and most criminal matters are handled in the state courts.

In fact, an estimated 98 percent of all cases are heard at the state level.

The federal judiciary, created under the authority of Article III of the U.S. Constitution, has jurisdiction over "cases or controversies" arising from federal questions and "diversity of citizenship" jurisdiction. In general, that means that federal courts decide cases involving the U.S. government, the U.S. Constitution, acts of Congress or treaties, or controversies between the states or between the U.S. and a foreign government. They also hear disputes between citizens of different states.

Federal and state courts have concurrent—or co-existent—jurisdiction over certain matters, such as crimes involving drugs, which means litigants can choose whether to litigate their dispute in federal or state court. Some legal matters, however, can be litigated only in either federal or state court. Bankruptcies and admiralty cases, for example, are handled exclusively in the federal courts.

Sources: American Bar Association, *Law & The Courts, Volume II: Court Procedures*, 1998; Wasby, Stephen L., *The Supreme Court in the Federal Judicial System*, Nelson-Hall Publishers, Chicago, 4th ed. 1996.

The Federal Judiciary



Question 3 How does the U.S. Constitution define the role of the federal judiciary as it relates to the other branches of government?

Answer The federal judiciary, established under Article III of the U.S. Constitution, is one of three equal but distinct branches of the federal government. The other two branches are the executive branch, which consists of the President, other executive departments, administrative agencies and military services, and the legislative branch, or Congress.

Our country's system of government rests on the successful cooperation—as well as the “checks and balances”—among these three branches of the federal government. The legislative branch—or Congress—makes the laws, while the President and other executive branch departments execute and enforce the laws. It is the job of the federal judiciary to apply and interpret the laws and to resolve disputes arising under them. The founding fathers and subsequent generations of leaders have recognized that the judicial branch must remain independent in order to effectively and impartially fulfill its mission.

Source: *Understanding the Federal Courts*, Administrative Office of the United States Courts.



Question 4 Is the judicial branch truly independent of the other two branches of government?

Answer The Constitution establishes the independence of federal judges by guaranteeing them decisional independence and by establishing the judicial branch as separate and distinct from the other two. It does this in three significant ways: First, Article III judges—judges in the country's constitutional courts—serve during a period

of good behavior. That means that once appointed to the bench, federal judges keep their jobs unless removed from office by Congress for commission of bribery, treason, or other “high crimes and misdemeanors.” Second, Article III judges are constitutionally protected from having their salary reduced while in office. And third, under the Constitution, the federal courts can be called upon to exercise only judicial powers and to perform only judicial work.

Source: The Federal Judiciary Homepage: www.uscourts.gov.

“The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.”

Article III, Section 1. U.S. Constitution

**Question 5** What is an Article III court?

Answer Courts created under Article III of the Constitution are known as Article III, or constitutional courts. Constitutional courts—which include the U.S. Supreme Court, federal courts of appeals and federal district courts—are the tribunals that have been established to handle cases and controversies that arise under the Constitution. They also handle matters assigned to them by Congress, as described below. The Supreme Court is the only court specifically created by the Constitution.

Source: Wasby, Stephen L., *The Supreme Court in the Federal Judicial System*, Nelson-Hall Publishers, Chicago, 4th ed. 1996.

**Question 6** What are Article I courts?

Answer Under Article I of the Constitution, Congress can create legislative courts. Congress has created a number of these courts, often expressly to help carry out a specific congressional statute. These courts also can have duties beyond the judicial realm, including administrative and quasi-legislative responsibilities.

Three territorial courts—in the U.S. Virgin Islands, Guam and the Northern Mariana Islands—function as U.S. district courts, yet were created under Article I and Article IV of the Constitution, and are Article IV courts,

relating to congressional authority over the territories. These courts perform their federal role, but may also operate in the same way as state and local courts.

Judges in Article I and Article IV courts have no constitutional guarantee of “good behavior”—or lifetime—tenure, but rather serve a specific number of years. Judges in the territorial courts, for example, are appointed for 10 years.

Sources: Carp, Robert A., Stidham, Ronald, *The Federal Courts*, Congressional Quarterly Inc., Washington, D.C., 1991; The Federal Judiciary Homepage: www.uscourts.gov.

**Question 7** What are the Article I courts?

Answer *The U.S. Court of Appeals for the Armed Forces.* Formerly the U.S. Court of Military Appeals, this court originally was created by Congress in 1951. At that time, Congress also enacted the Uniform Code of Military Justice, which established a military judicial system. The President, with the advice and consent of the Senate, appoints the five civilian judges on this Washington, D.C.-based court for 15-year terms.

The U.S. Tax Court. Established by Congress in 1924, this court decides controversies between the Internal Revenue Service and taxpayers involving underpayment of federal income, gift and estate taxes. The President

appoints 19 judges for terms of 15 years. With offices in Washington, D.C., this court also hears cases in approximately 80 cities.

The U.S. Court of Veterans Appeals. Congress created this court in 1988 to exercise exclusive jurisdiction over decisions of the Board of Veterans' Appeals, whose claimants' motions are for all types of veterans' and survivors' benefits. Among the cases it hears most frequently are those involving disability benefits, loan eligibility and educational benefits. The court's seven judges, appointed by the President with the advice and consent of the Senate, serve 15-year terms. The court is based in the District of Columbia, but as a national court it may sit anywhere in the U.S.

See question 17 for discussion of the U.S. Court of Federal Claims.

Sources: *Understanding the Federal Courts*, Administrative Office of the U.S. Courts; The Federal Judiciary Homepage: www.uscourts.gov.

**Question 8** How is the federal court system set up?

Answer Viewed as a pyramid, the federal court system has as its top level the U.S. Supreme Court. On the next level are 13 U.S. Courts of Appeals and the U.S.

Court of Appeals for the Armed Forces. On the next level are 94 U.S. district courts and such specialized courts as the U.S. Court of Federal Claims, the U.S. Tax Court, the U.S. Court of Veterans Appeals and the U.S. Court of International Trade.

Source: The Federal Judiciary Homepage: www.uscourts.gov.



Question 9 What's the role of the Supreme Court?

Answer The Supreme Court is the highest appellate court in the country and the court of last resort for appeals from cases heard in the other federal and state courts. The Supreme Court has what is known as both original and appellate jurisdiction. Its original jurisdiction—which means no other court hears the case before it comes to the Supreme Court—is over disputes between two or more states and in cases where ambassadors or public ministers are parties to a suit.

Its appellate jurisdiction—which means its authority to review cases that already have been decided by a lower court—permits the Court to hear appeals from federal circuit courts and from state courts of last resort.

Under authority granted it by Congress, the Supreme Court determines its own caseload. The Court decides

about 100 or fewer of some 5,000 or more cases that it is asked to review each year. It usually accepts only those cases that involve important interpretations of the Constitution, acts of legislative bodies and treaties. Most of its decisions in those cases are announced in published opinions.

The Court usually disposes of the other cases that it has been asked to consider by issuing a short decision rejecting the matter either because the subject matter is not proper or the case is not sufficiently important to justify review by the Court. In these cases, the decision of the last court that considered the matter is the final judgment.

When the Supreme Court decides to hear a case, the parties are required to file written briefs and the Court generally hears oral argument. Justices sit en banc for oral arguments, which means they all sit together in open court.

Sources: Wasby, Stephen L., *The Supreme Court in the Federal Judicial System*, Nelson-Hall Publishers, Chicago, 4th ed. 1996; The Federal Judiciary Homepage: www.uscourts.gov.



Question 10 How many judges sit on the Supreme Court?

Answer The Court has nine members, who are called justices rather than judges. The justices are appointed by the President with the consent of the Senate. The Chief Justice has additional administrative duties related both to the Supreme Court and to the entire federal court system. The other eight members of the court are known as associate justices.

Sources: Wasby, Stephen L., *The Supreme Court in the Federal Judicial System*, Nelson-Hall Publishers, Chicago, 4th ed. 1996; The Federal Judiciary Homepage: www.uscourts.gov.



Question 11 When and where does the Supreme Court meet?

Answer The Supreme Court begins its formal term on the first Monday in October and works until the business of the term is completed, usually in late June or July. The Supreme Court building is located across the street from the U.S. Capitol Building in Washington, D.C.

Sources: Carp, Robert A., Stidham, Ronald, *The Federal Courts*, Congressional Quarterly Inc., Washington, D.C., 1991; The Federal Judiciary Homepage: www.uscourts.gov.



Question 12 How do cases get to the Supreme Court?

Answer There is no “right” to have a case heard by the Supreme Court; instead the Court grants a *writ of certiorari* at its discretion, and only when there are important reasons for doing so. Among the things the Court considers are:

- whether two federal courts of appeals have ruled differently on the same question of law
- whether a federal court of appeals has decided a federal question in a way that conflicts with the decision of a state court of last resort (the highest court in the state)

- whether a federal court of appeals has far departed from the accepted course of judicial proceedings, or has sanctioned such a departure by a lower court
- whether a state court of last resort has decided a federal question in a way that conflicts with the decision of another state’s court of last resort or of a federal court of appeals
- whether a state court or a federal court of appeals has decided an important question of federal law in a way that conflicts with prior decisions of the Supreme Court, or a question of federal law that has not been, but should be, ruled on by the Supreme Court.

Sources: Wasby, Stephen L., *The Supreme Court in the Federal Judicial Systems*, Nelson-Hall Publishers, Chicago, 4th ed. 1996; Supreme Court Rule 17, adopted June 30, 1980



Question 13 What’s the difference between a federal court of appeals and a federal district court?

Answer U.S. district courts are the trial courts of the federal court system. These courts have jurisdiction to hear nearly all categories of federal cases, including both civil and criminal matters.

The federal courts of appeals are intermediate courts, inferior to the U.S. Supreme Court but higher than U.S.

district courts. These courts hear appeals from the district courts and federal and administrative and regulatory agencies located within their geographic circuit, at the request of a litigant who is unhappy with the result.

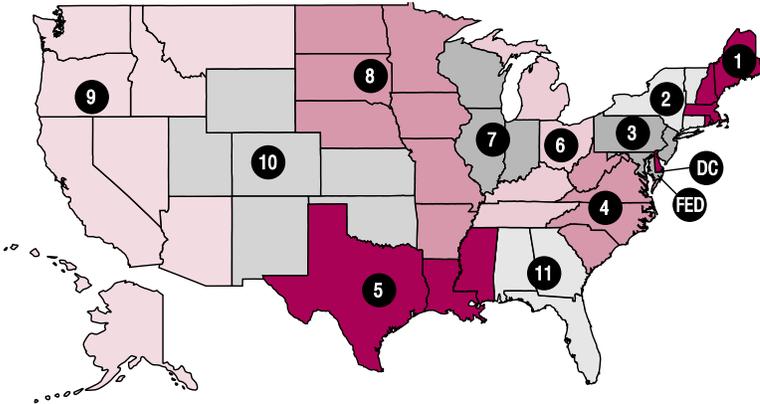
Generally sitting as three-judge panels, courts of appeals review the printed transcripts of completed district court cases and rule whether the decisions were correct or in error.

Source: Carp, Robert A., Stidham, Ronald, *The Federal Courts*, Congressional Quarterly Inc., Washington, D.C., 1991.



Question 14 How many circuits are there, and where are they located?

Map 1 / U.S. Circuits



Source: <http://app.comm.uscourts.gov/circuits.gif>

Answer There are 12 geographic-based judicial circuits, each with a court of appeals known as the U.S. Court of Appeals, and at least one district court. In addition, there is the Washington, D.C.-based U.S. Court of Appeals for the Federal Circuit.

The First Circuit, with six judgeships, is the smallest court. The Ninth Circuit, with 28 judgeships, is the largest. There are 167 judges on the 12 regional courts of appeals.

Sources: Title 28, U.S.Code, Section 41; Title 28, U.S.Code, Section 44.

Table 1 / Location and Size of the U. S. Courts of Appeals

Courts of Appeals	Districts Included in Circuit	Number of Authorized Judgeships
Federal Circuit	United States	12
District of Columbia Circuit	District of Columbia	12
First Circuit	Maine, Massachusetts, New Hampshire, Rhode Island, and Puerto Rico	6
Second Circuit	Connecticut, New York, and Vermont	13
Third Circuit	Delaware, New Jersey, Pennsylvania, and the Virgin Islands	14
Fourth Circuit	Maryland, North Carolina, South Carolina, Virginia, and West Virginia	15
Fifth Circuit	Louisiana, Mississippi, and Texas	17
Sixth Circuit	Kentucky, Michigan, Ohio, and Tennessee	16
Seventh Circuit	Illinois, Indiana, and Wisconsin	11
Eighth Circuit	Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota	11
Ninth Circuit	Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Guam, and the Northern Mariana Islands	28
Tenth Circuit	Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming	12
Eleventh Circuit	Alabama, Florida, and Georgia	12

Source: <http://app.comm.uscourts.gov/appeal-dir.htm>



Question 15 What's the role of the U.S. Court of Appeals for the Federal Circuit?

Answer Created in 1982 by merging the U.S. Court of Claims and the U.S. Court of Customs and Patent Appeals, the U.S. Court of Appeals for the Federal Circuit is different from all other courts of appeal in that it has nationwide jurisdiction over appeals of a variety of specialized cases. Its jurisdiction includes appeals of cases decided by the U.S. Court of International Trade and the

U.S. Court of Federal Claims, the U.S. Court of Veterans Appeals, the International Trade Commission, the Board of Contract Appeals, the Patent and Trademark Office and the Merit Systems Protection Board.

It also handles appeals from certain decisions of the secretaries of the Department of Agriculture and the Department of Commerce, and cases from district courts involving patents and minor claims against the federal government.

The court has 12 judges.

Sources: www.inter-law.com; The Federal Judiciary Homepage: www.uscourts.gov.



Question 16 How many federal districts are there, and where are they located?

Answer In all there are 94 federal judicial districts. There are 89 districts in the 50 states and one each in Puerto Rico and the District of Columbia. Each state has at least one district, and no district crosses state lines. There also are district courts located in the U.S. Virgin Islands, Guam and the Northern Mariana Islands. Some states, such as Colorado, are composed of a single judicial district. Other states, such as California, have as many as three judicial districts.

Sources: 28 U.S.Code, Sections 81-144; The Federal Judiciary Homepage: www.uscourts.gov.



Question 17 Do any federal trial courts encompass the whole country?

Answer While most federal trial courts hear only cases that arise from activities conducted in their geographic district, or because one of the litigants is a resident of the state in which the district is located, two special trial courts—the U.S. Court of International Trade and the U.S. Court of Federal Claims—have nationwide jurisdiction over certain types of cases. The former, created by Congress in the Customs Court Act of 1980, deals with cases involving international trade and customs issues. Previously named the U.S. Customs Court, the Court of International Trade was created under Article III of the Constitution and has the same powers as federal district courts. Appeals from this court are taken to the U.S. Court of Appeals for the Federal Circuit.

Because it is an Article III court, the nine judges of the U.S. Court of International Trade are appointed for life by the President, with the advice and consent of the Senate. They sit in New York City and from time to time in other cities.

The U.S. Court of Federal Claims is the other court with nationwide jurisdiction over a variety of cases. This court hears most claims for money damages in excess of \$10,000 against the U.S., including disputes over federal contracts, federal takings of private property for public use, constitutional and statutory rights of military personnel and their dependents and federal government contractors suing for breach of contract.

Formerly the U.S. Claims Court, this Article I court was established in 1982 as successor to the trial division of the U.S. Court of Claims and the U.S. Court of Customs and Patent Appeals. The President with the advice and consent of the Senate appoints 16 judges to the Court of Federal Claims for terms of 15 years. It is headquartered in Washington, D.C., but cases also are heard at other locations.

Source: The Federal Judiciary Homepage: www.uscourts.gov.



Question 18 How are judgeships created? How many federal judges are there?

Answer Article III judgeships are created by legislation enacted by Congress. New Article III judgeships were last created in December of 1990 in legislation establishing 11 new Article III court of appeals judgeships and 74 new district court judgeships.

There currently are 825 federal district and circuit court judgeships.

Sources: "Race and the Law," *American Bar Association Journal*, February, 1999; Title 28, U.S.Code, Section 133; The Federal Judiciary Homepage: www.uscourts.gov.



Question 19 How are Article III judges chosen?

Answer Justices of the U.S. Supreme Court, judges of the courts of appeals and the district courts, and judges of the U.S. Court of International Trade are appointed under Article III of the Constitution by the President, with the advice and consent of the Senate. Members of Congress typically recommend potential nominees, particularly for the district courts, who then may be nominated by the

President. Following confirmation hearings in the Senate Judiciary Committee, a simple majority of the U.S. Senate must approve nominees.

The American Bar Association Standing Committee on Federal Judiciary plays a key role in evaluating the professional qualifications of potential nominees for positions on the federal bench. The 15-member committee represents all the U.S. circuits. The committee's extensive evaluation of each nominee is done on a confidential basis for the White House prior to the President's decision to nominate an individual.

Source: The Federal Judiciary Homepage: www.uscourts.gov.



Question 20 What are the qualifications to become a federal judge?

Answer Surprisingly, there are no constitutional or statutory qualifications for judges nominated to serve on any federal court—from the U.S. Supreme Court to federal district courts. Judges don't have to pass any examination or meet any age requirement, nor are they required to have been born in the U.S. or be legal residents. They don't even have to have a law degree.

Those who are nominated and confirmed to the federal bench, however, typically are well-regarded private or government attorneys, state court judges, magistrate judges or bankruptcy judges, or law professors.

Source: The Federal Judiciary Homepage: www.uscourts.gov.



Question 21 How many federal judges are minorities and women?

Answer As of February 1999, 82 federal judges are black, 36 are Hispanic, seven are Asian-American, two are American-Indian and there is one Arab-American. Another 124 are white women.

Source: Alliance for Justice, Washington, D.C.



Question 22 Can federal judges ever be removed from office?

Answer Under the Constitution, Article III federal judges can be removed from office against their will only through impeachment for and conviction of "Treason, Bribery, or other high Crimes and Misdemeanors."

See questions 72-75 for more information on judicial discipline.

Source: U.S. Constitution.



Question 23 What kinds of cases do federal courts hear?

Answer Federal courts can hear and decide those cases over which the Constitution gives them authority. Legal disputes that can be heard by federal judges are referred to in the Constitution as “cases or controversies.” There are two main sources of cases or controversies that come before the federal courts: those with a “federal question” and those that involve “diversity of citizenship.”

Federal question jurisdiction is the federal courts’ power to hear cases involving the interpretation and application of the U.S. Constitution, acts of Congress, and treaties. Federal courts hear cases that involve the U.S. government, as well as controversies between the U.S. and a foreign government and those between the states.

Litigants also may bring cases to federal court based on “diversity of citizenship,” which means that all

persons on one side of the case are citizens of states different from all persons on the other side. Diversity jurisdiction also includes cases between U.S. citizens and those of another country.

Diversity jurisdiction is critical for citizens because it ensures that out-of-state litigants forced into the state court of their opponent can avoid the reality or perception of local bias. Allowing those parties to have their claim heard in a federal court guarantees impartiality.

An important limit to diversity jurisdiction is that any case filed in federal court on the basis of diversity of citizenship must involve more than \$75,000 in potential damages. Claims below that amount without another basis for federal jurisdiction must be filed in state court. And litigants always are free to take their claims to state court, regardless of the amount of money.

Congress has also given the federal courts concurrent jurisdiction with state courts over certain matters, such as crimes involving drugs.

Source: *Understanding the Federal Courts*, Administrative Office of the United States Courts.

Table 2 / Federal Judicial Caseload

Case filings, years ending June 30, 1993-1997

	1993	1994	1995	1996	1997	% change 1997 over 1993
U.S. Courts of Appeals*						
Total	49,770	48,815	49,671	51,524	52,271	5.0
Civil	31,788	32,299	33,753	35,859	35,426	11.4
Prisoner Petitions	12,529	12,772	14,488	16,750	16,188	29.2
Criminal	11,885	11,052	10,171	10,653	10,740	-9.6
Drug	6,023	5,406	4,558	5,119	4,879	-19.0
Other	6,097	5,464	5,747	5,002	6,105	0.1
U.S. District Courts						
Civil Caseload						
Total	228,562	235,996	239,013	272,661	265,151	16.0
Prisoner Petitions	52,454	56,283	62,597	69,352	64,262	22.5
Contract	38,240	31,988	31,619	33,413	38,858	1.6
Personal Injury	37,409	44,734	41,102	63,222	48,266	29.0
Civil Rights	26,483	31,521	35,666	40,476	43,166	63.0
Other	73,976	71,470	68,129	65,198	70,599	-4.6
Criminal Caseload**						
Total	45,669	44,919	44,184	47,079	48,682	6.6
Drug	12,329	11,356	11,304	12,068	13,121	6.4
Other	33,340	33,563	32,880	35,011	35,561	6.7
U.S. Bankruptcy Courts						
Total	918,734	845,257	858,104	1,042,110	1,316,999	43.3
Chapter 7	638,916	578,903	581,390	712,129	917,274	43.6
Chapter 11	20,579	17,098	13,221	12,859	11,159	-45.8
Chapter 12	1,434	976	904	1,063	1,006	-29.8
Chapter 13	257,777	248,246	262,551	316,024	387,521	50.3

*Excludes the U.S. Court of Appeals for the Federal Circuit

** Excludes transfers



Question 24 How does one file a case in federal court?

Answer To begin a suit, an individual or corporation, known as the plaintiff, files a written document called a complaint with the clerk of a federal district court and “serves” a copy of the complaint on the defendant—that is, a copy of the complaint is handed to the defendant or to someone at his or her home or office. The complaint describes the plaintiff’s injury, explains how the defendant caused the injury and asks the court to order relief.

In filing a civil suit, a plaintiff may, among other things, seek money damages to compensate for the injury or may ask the court for an injunction, which orders the defendant to stop the conduct that is causing the harm.

Parties beginning a civil action in a federal district court must pay a filing fee, which currently is set at \$150. Those who are unable to pay the filing fee may apply to proceed in forma pauperis (in the manner of a pauper). If permission is granted, they may sue without paying costs.

Source: Title 28, U.S.Code, Section 1914. *Understanding the Federal Courts*, Administrative Office of the United States Courts.



Question 25 What if I have a criminal claim against a person?

Answer As in state courts, individuals do not file criminal charges in federal courts. The government, usually the U.S. Attorney’s Office, is responsible for initiating criminal proceedings in federal district courts and for prosecuting federal crimes. An aggrieved individual should file a complaint with the local U.S. Attorney’s Office. He or she may also be able to bring a civil suit for damages arising out of the same conduct.

Source: The Federal Judiciary Homepage: www.uscourts.gov.



Question 26 Does the federal government bring civil cases?

Answer Yes. The Civil Division of the Department of Justice represents the government in civil cases and is, in fact, the most frequent litigant in the federal court system. Its cases involve government activities ranging from the

defense of challenges to presidential actions, national security issues, benefit programs and energy policies to such commercial issues as contract disputes, banking insurance, patents, fraud and debt collection. One of its best-known current cases is its massive antitrust action against software giant Microsoft.

Source: U.S. Department of Justice webpage: www.usdoj.gov.



Question 27 Where do bankruptcy courts fit in?

Answer Federal courts have exclusive jurisdiction over all bankruptcy matters. Bankruptcy courts are considered adjuncts of federal district courts.

Through the bankruptcy process, individuals or businesses that no longer can pay their creditors may seek either a court-supervised liquidation of assets, or a reorganization of their financial affairs in which they set up a plan to pay off their debts.

Chapter 7 of the Bankruptcy Code is the most common form of bankruptcy used by individuals. In having most of their debts discharged, debtors get a so-called “fresh start” under Chapter 7. Large corporate debtors most often use reorganization under Chapter 11, while a Chapter 13 reorganization is used by individual wage earners. A Chapter 12 reorganization plan is available for family farmers. Chapter 9 reorganization is for cities, towns or quasi-governmental organizations such as sanitation districts, school districts or municipal hospitals.

Source: *Understanding the Federal Courts*, Administrative Office of the United States Courts.



Question 28 How does an individual file for bankruptcy? Is there a charge?

Answer An individual filing for bankruptcy must file a petition to begin a bankruptcy case. A statement of assets and liabilities and schedules listing creditors also are necessary.

The amount of the filing fee depends on the chapter of the bankruptcy code under which a petitioner files. In Chapter 7, a petitioner must pay a \$175 fee, which includes a \$130 filing fee, a \$30 miscellaneous fee, and a \$15 trustee fee.

Source: The Federal Judiciary Homepage: www.uscourts.gov.



Question 29 How are bankruptcy judges appointed?

Answer Federal bankruptcy judges are considered judicial officers of the district court. They are selected by a majority of the active judges of the court of appeals for the circuit in which the judicial district is located. There are more than 300 bankruptcy judges who are appointed for renewable terms of 14 years.

Source: The Federal Judiciary Homepage: www.uscourts.gov.



Question 30 How are judges assigned to cases?

Answer Each court has its own written system for assigning cases. The chief judge of each district court is in charge of the court's rules and orders on case assignments. The most common method for assigning judges to a case is a random drawing.

Source: The Federal Judiciary Homepage: www.uscourts.gov.



Question 31 What are federal magistrate judges?

civil cases and other criminal misdemeanor cases with the consent of the parties, and conducting proceedings referred to them by district judges, such as settlement conferences in civil cases.

Answer A federal magistrate judge is a judicial officer of the district court and is appointed by a majority of a district court's active judges. Magistrate judges exercise jurisdiction over matters assigned by statute as well as matters delegated by district judges. Their duties can vary considerably from court to court, but generally fall into four categories: conducting initial proceedings in criminal cases, trying certain criminal misdemeanor cases, trying

Congress created the judicial office of federal magistrate in 1968. The position title was changed to magistrate judge in 1990. Full-time magistrate judges serve a term of eight years. A part-time magistrate judge's term of office is four years.

There are more than 400 magistrate judges.

Source: The Federal Judiciary Homepage: www.uscourts.gov.



Question 32 What are administrative law judges?

Answer Federal administrative law judges (often called ALJs) are employees of the executive branch of government, not the judicial branch. They conduct hearings and make decisions in proceedings involving the executive departments and independent administrative

agencies for which they work. Hearings before an ALJ are quasi-judicial in nature—that is, they are not considered full-blown judicial trials and there is no trial by jury.

The position of ALJ was established by the Administrative Procedure Act, enacted in 1946.

There are also ALJs at the state level.

Source: "The unseen bench: Increasing the roles of administrative law judges," *Chicago Lawyer*, February 1999.



Question 33 Is information about federal cases available?

Answer Yes. Except in very rare circumstances, information is available for any case filed in the federal courts. Court documents can be obtained by actually going to the court and reading or copying the documents. More and more case-related information is also available electronically. All federal courts now have automated systems that allow interested parties to search and retrieve case-related information through personal computers at the public

counters and through a dial-in, fee-based service called PACER (Public Access to Court Electronic Records).

Additionally, federal courts are increasingly posting home pages and making their decisions and court-related information available to the public for free over the Internet.

Source: The Federal Judiciary Homepage: www.uscourts.gov.



Question 34 What do federal judges earn? How is their compensation determined?

Answer All federal judges receive salaries that are set by Congress. In 1998, the salary of the Chief Justice of the United States was \$175,400. Associate Supreme Court Justices earned \$167,900. U.S. Courts of Appeals judges earned \$145,000, while U.S. District Court judges made \$136,700. Full-time U.S. Magistrate Judges and U.S. Bankruptcy Judges made \$125,764, while the salaries of part-time Magistrate Judges ranged from \$3,167 to \$58,065.

Source: The Federal Judiciary Homepage: www.uscourts.gov.



Question 35 How big is a federal district judge's caseload?

Answer Most federal district judges have an annual caseload of more than 480 civil and criminal filings, up 13 percent in the last five years.

Source: The Federal Judiciary Homepage: www.uscourts.gov.



Question 36 Is there mandatory retirement for federal judges?

Answer No, there is not. Under the so-called “Rule of 80,” federal judges are permitted to retire with full pay and benefits when the sum of their age and number of years on the bench equals 80. Beginning at age 65, for example, a judge may retire at his or her current salary after performing 15 years of active service as an Article III judge ($65 + 15 = 80$). A sliding scale of increasing age and

decreasing service results in eligibility for retirement compensation at age 70, with a minimum of 10 years of service ($70 + 10 = 80$).

Congress also permits judges who are eligible to retire to choose “senior” status instead of accepting full retirement. As senior judges, they keep their offices and staffs, and get subsequent cost of living allowances, but have a reduced caseload. Senior judges typically handle about 15 percent of the federal courts’ workload annually.

Sources: 28, U.S.Code, Section 371c; The Federal Judiciary Homepage: www.uscourts.gov.



Question 37 How does military law differ from the law most citizens face?

Answer Military law is the purview of the U.S. Court of Appeals for the Armed Forces. This court, formerly the U.S. Court of Military Appeals, was created in 1951, at the same time Congress enacted the Uniform Code of Military Justice, which established a military justice system. The system was designed to balance the need to maintain discipline in the armed forces and to give members of the military services who are accused of crimes rights that are comparable to those of accused persons in the civilian community.

The court’s jurisdiction encompasses questions of law arising from trials by court-martial in the U.S. Army, Navy, Air Force, Marine Corps and Coast Guard in cases where a death sentence is imposed, where a case is certified for review by the Judge Advocate General of the accused’s service, or where the accused, who faces a bad conduct discharge or more serious sentence, petitions and shows good cause for further review.

Five civilian judges are appointed for 15-year terms.

Source: *Understanding the Federal Courts*, Administrative Office of the U.S. Courts



Question 38 Are federal trials ever televised?

Answer Television or radio coverage of federal trial court proceedings is not permitted. However, federal appellate judges have the option of permitting the televising of civil appellate proceedings.

Source: *Understanding the Federal Courts*, Administrative Office of the United States Courts.



Question 39 What is the governance structure of the federal courts?

Answer Each court in the federal system has a chief judge who, in addition to hearing cases, assumes administrative duties relating to the operation of the court. The judge who has served on the court the longest and who is under 65 years of age is designated chief judge. Chief district and courts of appeals judges may serve for a maximum of seven years. They may not serve as chief judge beyond the age of 70.

Each circuit has a judicial council, consisting of the chief judge and an equal number of court of appeals and district judges. One of the council's main jobs is caseload management. They also act on complaints about a judge's misconduct or disability.

The Judicial Conference of the United States is the chief policymaking body for the federal courts. The Chief Justice of the United States is the presiding officer of the Judicial Conference. Twenty-six other judges serve on the Judicial Conference—the chief judge of each of the federal circuits, one district judge from each of the 12 regional circuits, and the chief judge of the U.S. Court of International Trade. The conference meets semiannually for two-day sessions. Besides establishing policy, the Judicial Conference also identifies legislative requirements, recommends revisions to the federal rules of practice and procedure, and has other administrative responsibilities.

The Administrative Office of the U.S. Courts manages administration of the federal judicial system. Charged with implementing the policies of the Judicial Conference, it also works in program management and policy development. It is this office that handles public affairs for the federal judiciary.

Source: The Federal Judiciary Homepage: www.uscourts.gov.



Question 40 What is the Federal Judicial Center?

Answer The Federal Judicial Center conducts research and studies the operation of the federal courts, develops recommendations for improving federal court administration for the Judicial Conference to consider, develops and conducts training programs for federal court personnel, provides staff assistance to the Judicial Conference on request, and cooperates with the State Justice Institute in research on the administration of justice.

Source: The Federal Judiciary Homepage: www.uscourts.gov.

The State Judiciary

 **Question 41** What function does the state judiciary serve?

Answer The vast majority of legal disputes in the U.S. are handled at the state court level. State courts have the power to decide nearly every type of case, subject only to the limits of the U.S. Constitution, their own state constitutions and statutes. Most of state court precedent comes from common law, a legal system that originated in England and depends upon the articulation and acceptance of legal principles in judicial decisions over a long period of time.

State and local courts are the judicial forums with which citizens are most likely to have contact. Such courts are found in nearly every city and many towns in the country. They handle criminal matters, legal business concerning probate of estates, juvenile, traffic and family matters, real estate and business contracts, and personal injury claims.

In many states, special courts are set up to deal exclusively with such subjects as probate, juvenile, and domestic relations. And some “small claims” or “pro se” courts specifically are set up to hear claims under a certain dollar amount.

Source: American Bar Association, *Law & The Courts, Volume II: Court Procedures*, 1998.

 **Question 42** How are the state courts structured?

Answer State courts are set up much like those in the federal system. At the top level in each state are courts of last resort (usually called supreme courts). These courts usually consider appeals from their states’ intermediate appellate courts, although about one-third of the states do not have intermediate appellate courts. Intermediate appellate courts (which usually sit in panels of three to nine judges) rule on appeals from trial courts.

Most of the states’ trial courts are courts of general jurisdiction, which means they have the authority to hear all kinds of civil and criminal cases. Parties begin their lawsuits by filing complaints against defendants in these courts and all matters up to and including jury trial take place here. In most states, these courts are called district (to be distinguished from federal district courts), superior, county or circuit courts. Sometimes the names of various state courts can be confusing, though. The major trial court in New York is known as the Supreme Court, for example, while New York’s highest court is the Court of Appeals.

Source: Lee, Katherine J., *Courts & Judges, How They Work*, Halt, Inc., 1987.



Question 43 What are courts of limited jurisdiction?

Answer In addition to trial courts of general jurisdiction, most states have trial courts, known as “inferior” courts or courts of first impression, which have limited jurisdiction over specific matters. These can include justice-of-the-peace courts, magistrate courts, police courts, domestic relations courts, juvenile courts and city and municipal courts. Their reach and makeup vary greatly from state to state.

Source: Carp, Robert A., Stidham, Ronald, *Judicial Process in America*, Congressional Quarterly Inc., Washington, D.C., 1993.



Question 44 How are state court judges selected?

Answer The method used to select state court judges is less uniform than the one used in the federal court system and varies not only from state to state but also in different levels of courts and different geographic locations within the same state. It is possible, however, to roughly classify the states’ judicial selection processes into two general categories: those that elect judges and those that appoint them.

Judicial candidates in those states that elect judges generally run for office in either a contested partisan election, in which they declare a political party, or in a nonpartisan contested election, in which they run without party affiliation. In some states, the governor appoints state court judges. They also can be appointed or elected by the state legislature. Finally, judges in many states come to the bench through merit selection.

Source: Carp, Robert A., Stidham, Ronald, *Judicial Process in America*, Congressional Quarterly Inc., Washington, D.C., 1993.

Table 3 / Judicial Selection Methods in the States

Merit Selection through Nominating Commission*	Gubernatorial (G) or Legislative (L) Appointment without Nominating Commission	Partisan Election	Nonpartisan Election	Combined Merit Selection and Other Methods
Alaska	California (G)	Alabama	Georgia	Arizona
Colorado	Maine (G)	Arkansas	Idaho	Florida
Connecticut	New Hampshire (G)	Illinois	Kentucky	Indiana
Delaware	New Jersey (G)	Louisiana	Michigan	Kansas
District of Columbia	Virginia (L)	North Carolina	Minnesota	Missouri
Hawaii		Pennsylvania	Mississippi	New York
Iowa		Texas	Montana	Oklahoma
Maryland		West Virginia	Nevada	South Dakota
Massachusetts			North Dakota	Tennessee
Nebraska			Ohio	
New Mexico			Oregon	
Rhode Island			Washington	
South Carolina			Wisconsin	
Utah				
Vermont				
Wyoming				

*The following 10 states use merit plans only to fill midterm vacancies on some or all levels of court: Alabama, Georgia, Idaho, Kentucky, Minnesota, Montana, Nevada, North Dakota, West Virginia and Wisconsin.

Source: American Judicature Society, 1986, revised March 17, 1998.



Question 45 What is merit selection?

Answer A model merit selection plan begins with the involvement of permanent, nonpartisan commissions made up of both lawyers and nonlawyers. These commissions recruit, investigate and evaluate judicial applicants and then provide the governor with a list of three to five names of the most highly qualified candidates. The governor then selects an individual from the list to fill the vacancy. Once named to the bench through merit selection, judges generally run in noncompetitive referendum elections for retention.

Increasingly, states are favoring merit selection plans. Thirty-four states and the District of Columbia now use merit selection to choose all or some of their judges. In 1940, Missouri became the first state to adopt a merit selection plan, and since then other states that have adopted such plans are said to have variations of “the Missouri Plan.”

Source: American Judicature Society, Chicago, Illinois.



Question 46 Do state judges serve set terms of office?

Answer Yes, most do. State court judges in only three states—Massachusetts, New Hampshire and Rhode Island—enjoy the lifetime tenure guarantee that is given to federal judges. Judicial terms in the states generally range from four to 14 years.

Source: Lee, Katherine J., *Courts & Judges, How They Work*, Halt, Inc., 1987.



Question 47 Do state court judges take senior status?

Answer Most states have mandatory retirement plans for judges. Minimum ages for retirement range from 65 to 75, with 70 being the most common retirement age.

Source: Carp, Robert A., Stidham, Ronald, *Judicial Process in America*, Congressional Quarterly Inc., Washington, D.C., 1993.



Question 48 Who determines how much state court judges make, and what do they earn?

Answer State legislatures determine the salaries of their judges. The 1998 salaries of associate justices of the states' highest courts ranged from \$77,092 to \$137,314. Supreme Court Justices in Florida, for example, made \$137,314, while high-court judges in Wyoming made \$85,000.

Salaries of judges of states' intermediate appellate courts ranged from \$79,413 to \$124,200. And the pay of judges of general jurisdiction trial courts ranged from \$72,042 to \$115,300. General trial court judges in Ohio made \$85,300, while in Illinois they made \$104,830 to \$112,491.

Source: "What Lawyers Earn," *The National Law Journal*, June 1, 1998. The National Center for State Courts, Williamsburg, Va.



Question 49 How big is a state trial court judge's caseload?

Answer In 1996, roughly three out of five states reported between 1,000 and 2,000 filings per judge. Ten states reported more than 2,000 and 10 states reported less than 1,000.

Source: B. Ostrom & N. Kauder, eds., *Examining the Work of State Courts, 1996: A National Perspective from the Court Statistics Project* (National Center for State Courts, 1997).



Question 50 What are the requirements for being a state court judge?

Answer Most states require that judges, except for judges of the peace, be lawyers admitted to practice for a certain number of years, and have residency and state citizenship requirements.



Question 51 Can state court trials be televised?

Answer Unlike the federal system, most states allow their court proceedings to be televised. Proponents argue that such accessibility to the courts enhances the justice system and point out that the success of such ventures as Court TV prove there is a public interested in court proceedings. Others, however, criticize the spectacle that televised court proceedings can become, mentioning such widely publicized trials as that of O.J. Simpson.

Table 4 / **Cameras in the Courtroom, State-by-State**

State	Civil	Civil Trial	Criminal Appeal	Criminal Trial	Status Appeal	Consent Required?
Alabama	•	•	•	•	Permanent	C,P
Alaska	•	•	•	•	Permanent	C,P(c)
Arizona	•	•	•	•	Permanent	C
Arkansas	•	•	•	•	Permanent	P
California	•	•	•	•	Permanent	C
Colorado	•	•	•	•	Permanent	C
Connecticut	•	•	•	•	Permanent	C
Delaware		•		•	Experimental	C
D.C.						
Florida	•	•	•	•	Permanent	
Georgia	•	•	•	•	Permanent	C(1)
Hawaii	•	•	•	•	Permanent	C(2)
Idaho	•	•	•	•	Exp./Perm.	C(2)
Illinois		•		•	Permanent	
Indiana		•		•	Experimental	C
Iowa	•	•	•	•	Permanent	C,P(c)
Kansas	•	•	•	•	Permanent	
Kentucky	•	•	•	•	Permanent	C
Louisiana		•		•	Permanent	
Maine	•	•	•	•	Permanent	C
Maryland	•	•		•	Permanent	C,P(2)
Massachusetts	•	•	•	•	Permanent	
Michigan	•	•	•	•	Permanent	C
Minnesota	•	•	•	•	Exp./Perm.	C(2),P(2)
Mississippi						
Missouri	•	•	•	•	Permanent	C
Montana	•	•	•	•	Permanent	
Nebraska	(3)	•	(3)	•	Exp./Perm.	
Nevada	•	•	•	•	Permanent	C
New Hampshire	•	•	•	•	Permanent	C
New Jersey	•	•	•	•	Permanent	C
New Mexico	•	•	•	•	Permanent	
New York		•		•	Permanent	C
North Carolina	•	•	•	•	Permanent	
North Dakota	•	•	•	•	Permanent	C
Ohio	•	•	•	•	Permanent	C
Oklahoma	•	•	•	•	Permanent	C,P(c)
Oregon	•	•	•	•	Permanent	C(2)
Pennsylvania	•				Experimental	C
Rhode Island	•	•	•	•	Permanent	
South Carolina	•	•	•	•	Permanent	C
South Dakota						
Tennessee	•	•	•	•	Permanent	C,P(c)
Texas	•	•		•	Permanent	C,P
Utah	(4)	•	(4)	•	Permanent	C
Vermont	•	•	•	•	Permanent	
Virginia	•	•	•	•	Permanent	
Washington	•	•	•	•	Permanent	C
West Virginia	•	•	•	•	Permanent	C
Wisconsin	•	•	•	•	Permanent	
Wyoming	•	•	•	•	Permanent	C(2)

C Consent required from the court
P Consent required from the parties
(c) in certain cases

(1) Except in the Georgia Supreme Court
(2) At the trial level only
(3) Audio only
(4) Still photography only

General Questions About the Judiciary

 **Question 52** What is courtroom protocol? What is the judge's role in the courtroom?

Answer Many people think of the old-time television courtroom drama “Perry Mason” when they think of typical courtroom scenes. In fact, the protocol observed in that TV courtroom adventure of years ago does have similarities to scenes that still exist in today's courtrooms. Lawyers, spectators and others in the court still rise when the judge enters, for example. Witnesses still raise their right hand and promise that their testimony is truthful, and they still face cross-examination, often at the hands of skillful trial lawyers.

The judge's role is to oversee the trial, explaining the process to jurors and establishing the daily schedule. Judges also must rule on motions before the court such as whether to admit certain evidence. They also must rule on objections and other trial procedures. Most important, it is up to the judge to ensure that the trial is efficient and fair to all the parties.

 **Question 53** What is the difference between a bench trial and a jury trial? Do defendants select which trial they want?

Answer A bench trial is a trial before a judge only—that is, there is no jury present. Bench trials occur when a defendant waives his or her right to a jury trial. A jury trial is not always available in civil cases.

Source: THE ELECTRIC LAW LIBRARY: www.lectlaw.com

 **Question 54** Why do most parties choose jury trials?

Answer The right to have their cases decided by a group of their fellow citizens is among the most fundamental rights a citizen has. Over time, it has been shown that jurors perform a vital role in the American system of justice.



Question 55 Is there a guaranteed right to a jury trial?

Answer The right to a jury trial in a civil suit in federal court is guaranteed by the Seventh Amendment to the Constitution. Most state constitutions also afford such a right, at least for some cases.

In criminal cases, the right to a jury trial can be found in Article III, Section 2, of the U.S. Constitution and in the Sixth Amendment. That right is binding on the states through the due process clause of the Fourteenth Amendment.



Question 56 Who may serve as a juror?

Answer In the federal system, the Jury Act calls for random selection of citizens' names from voter records. Some courts supplement voter lists with such sources as lists of licensed drivers or tax rolls.

Each federal judicial district has a formal written plan for the selection of jurors, a copy of which is available from the clerk of the court's office.

There is a recognized right for deaf and blind persons to serve as jurors.

Source: Title 28, U.S.Code, Sections 1861-1878.



Question 57 How does an individual get called for jury service?

Answer Questionnaires are sent to individuals whose names have been drawn in the random selection process. Those receiving questionnaires must complete and return them to the clerk's office. The clerk of the court (or in some states a separate office) then reviews the questionnaires to determine whether an individual meets the legal qualifications for jury service. Those who meet the requirements then receive a summons.

Source: The Federal Judiciary Homepage: www.uscourts.gov.



Question 58 Are there individuals who can't serve as jurors?

Answer In the federal system, individuals are legally disqualified from jury service

- if they are not a citizen of the United States, 18 years old or older, who has resided for a period of one year within the judicial district;

- if they are unable to read, write, and understand the English language with a degree of proficiency necessary to fill out a qualification form;
- if they are unable to speak the English language;
- if they are incapable by reason of mental or physical infirmity to render jury service; or
- if they have felony charges pending against them or they have been convicted of a felony and their civil rights have not been restored.

Similar standards exist in each state.

Source: Title 28, U.S.Code, Sections 1861-1878.



Question 59 Are there any exemptions from jury service?

Answer Three groups are exempt from jury service under the federal Jury Act: members of the armed forces on active duty, members of professional fire and police departments, and "public officers" of federal, state or local governments who are actively engaged in the performance of public duties.

State laws vary.

Source: Title 28, U.S.Code, Sections 1861-1878.



Question 60 What is the composition of a jury?

Answer A federal civil trial jury typically is made up of six to 12 persons. A federal criminal trial jury usually is made up of 12 members, unless the defendant and prosecutors agree in writing to fewer jurors. Verdicts in both civil and criminal cases in federal court must be unanimous.

Unanimity is not required in military cases.

In state civil cases, especially in courts of limited jurisdiction, juries in many jurisdictions have only six members, although that number can be increased. In criminal misdemeanor cases there also are sometimes fewer than 12 jurors. In serious criminal cases, however, 12 jurors generally are required.

A requirement that state court juries be unanimous has changed in recent years in many states. In misdemeanor and civil cases, for example, states often provide verdicts based on the agreement of three-fourths or five-sixths of the jurors.

Sources: *Understanding the Federal Courts*, Administrative Office of the United States Courts; American Bar Association, *Law & The Courts, Volume II: Court Procedures*, 1998.



Question 61 Are there different kinds of juries?

Answer Outside the military system, there are two types of juries at the federal level and in almost all the states. The most familiar kind of jury is the group of citizens that serves in civil or criminal trials. These individuals—often called petit jurors from “petit,” the French word for “small”—hear evidence in a case and determine whether a defendant in a civil trial is liable, or whether a defendant in a criminal trial is guilty or not guilty.

The other kind of jury is the grand jury, a group of men and women brought together to listen to evidence of criminal allegations presented by prosecutors. It is the job of a grand jury to decide whether probable cause exists to believe that a person has committed the crime of which he or she has been accused, and to decide whether formal charges—an indictment—will be lodged against the

suspect. Grand jurors do not have to agree unanimously to issue an indictment, although state law often requires a vote of two-thirds to three-quarters to indict.

Grand juries are called “grand” precisely because they generally are much larger than the “petit” juries used at trial. While the size of a grand jury varies depending on the jurisdiction, it usually consists of more than 12 individuals and can be as many as 23 persons.

In about half the states, grand juries are used to bring charges for felonies. In the other states, prosecutors have discretion to use them or to file charges on their own.

Like trial jurors, grand juries are selected from voter registration or drivers’ license lists. They are convened by the court to serve for a certain period of time, sometimes as long as a period of months. But grand jury sessions typically aren’t held every day. Rather, they are held only a few days each month.

Source: *Understanding the Federal Courts*, Administrative Office of the United States Courts.



Question 62 Does one get paid for jury service?

Answer Federal jurors are paid \$40 a day. State jurors also are paid for their work, although rates vary from state to state.

Source: The Federal Judiciary Homepage: www.uscourts.gov.



Question 63 What communication do judges have with a jury during trial?

Answer Judges have no private communication with juries during a trial. Instead, the judge speaks to the jury in open court in the presence of all the parties, and more formally through the court’s jury instructions on the law.



Question 64 What are a judge's instructions to a jury?

Answer Following closing arguments in a trial, judges instruct jurors about the rules, principles and standards of the particular legal concept presented at trial. They also inform the jury that its verdict must be based on the evidence presented at trial. Judges also explain the standard of proof that must be reached for a finding of guilt or liability.

The jury may often take the judge's written instructions to the jury room for use during deliberations.

Source: American Bar Association, *Law & The Courts, Volume II: Court Procedures*, 1998.



Question 65 What does a plaintiff have to show in order to win a case?

Answer In a civil case, the plaintiff must usually convince a jury by a "preponderance of the evidence" (i.e., that it is more likely than not) that the defendant is responsible for the injury or harm the plaintiff has suffered. A higher standard of "clear and convincing evidence" applies in certain cases.



Question 66 What is the burden of proof in a criminal trial?

Answer To get a conviction, the government's burden of proof against a defendant must be "beyond a reasonable doubt." That means the evidence presented by the prosecution must be so strong that there can be no reasonable doubt that the defendant committed the crime.



Question 67 How is a judge's order enforced following a trial?

Answer A jury's verdict doesn't take effect until the judge enters a judgment on the decision—that is, the judge must order that the verdict be filed in public records. If the defendant subsequently doesn't pay the damages awarded to the plaintiff in a civil case, the

plaintiff may ask for an execution of the judgment or seizure of bank accounts or a part of the judgment debtor's wages in a procedure called "garnishment." In such a case, the clerk of the court delivers the execution to the sheriff, directing the sheriff to take and sell the defendant's property and apply that money to the amount of the judgment.

Source: American Bar Association, *Law & The Courts, Volume II: Court Procedures*, 1998.



Question 68 What constitutes grounds to appeal a trial verdict?

Answer If one party feels that an error of law has been made during the trial, and if the trial judge refuses to grant a post-trial motion for a new trial, then the dissatisfied party may appeal to a higher court. The most common grounds for appeal are that the judge allegedly admitted evidence that should have been excluded,

refused to admit evidence that should have been allowed, failed to give proper jury instructions or erred in other trial procedures.

An appeal is not a retrial or a new trial of the case. Appellate courts do not usually consider new witnesses or new evidence, nor do they second guess the trial court's or jury's findings of fact.

Source: Coffin, Frank M., *On Appeal, Courts, Lawyering and Judging*, W.W. Norton & Co., New York, 1994.



Question 69 How does the appellate process work?

Answer Attorneys begin laying the groundwork for an appeal by objecting to alleged errors during trial. Their objections go into the trial record and become part of the trial transcript, which may be reviewed by an appellate court.

As a general rule, the losing party in a decision by a trial court in the federal system is entitled to appeal the decision to a federal court of appeals. Litigants not satisfied with a decision made by a federal administrative

agency also may file a petition for review. Similarly, parties dissatisfied with state trial court decisions generally can appeal to their states' appellate courts.

To appeal, a notice usually must be filed with the trial court within a short period of time, usually about 30 days, after the entry of judgment by the court clerk.

An appellate court deciding an appeal may call for the lower court to enforce its earlier verdict (affirm), may modify the lower court's decision, or may reverse the decision, possibly requiring the lower court to hold a new trial or to resolve certain issues itself (remand). Generally a trial court will be reversed only for an error of law.

Sources: *Understanding the Federal Courts*, Administrative Office of the United States Courts; Coffin, Frank M., *On Appeal, Courts, Lawyering and Judging*, W.W. Norton & Co., New York, 1994.



Question 70 What if a party has a legal dispute but doesn't want to go to court?

Answer Any process that helps people put an end to their disputes is called dispute resolution. Alternatives to dispute resolution in the courts are becoming increasingly common, especially as both federal and state caseloads grow and as litigants realize how much time, money and toll the court process and protracted litigation can take.

The most common forms of alternative dispute resolution are mediation and arbitration. Mediation is a non-adversarial process in which a neutral person, the

mediator, meets with the disputing parties to help them reach a settlement of their dispute. In arbitration, the parties submit their dispute to a neutral third person or persons. The arbitrator makes a decision after hearing arguments and reviewing evidence. In arbitration, the parties generally have agreed in advance to be bound by and comply with that decision. Parties to the popular television show *The People's Court*, for example, agree that the decision of the judge will be final.

In nearly 30 states, court-annexed arbitration or mediation is automatic for cases under a certain dollar amount.

Source: American Bar Association, *Law & The Courts, Volume II: Court Procedures*, 1998.



Question 71 Have courts kept up with the technology explosion?

Answer Except in very rare circumstances, information is available about any case filed in both federal and state courts. Increasingly, that information is available to the public through technological means, including online and even on the Internet. Almost all federal and numerous state courts have automated systems that allow for the search and retrieval of case-related information

through personal computers at the public counters and, in the federal system, through a dial-in service called PACER (Public Access to Court Electronic Records). These systems allow the public to gain direct, rapid and easy access to official court information and records from outside the courthouse.

Courts are also improving their internal communications, allowing separate chambers to be connected electronically.

Source: The Federal Judiciary Homepage: www.uscourts.gov.



Question 72 How are judges disciplined?

Answer In the federal courts, Article III judges can be removed from office only by impeachment by the House of Representatives and conviction by the U.S. Senate. Under the Constitution, grounds for impeachment are "Treason, Bribery, or other high Crimes and Misdemeanors." In the history of our country, the House has voted to impeach 13 federal judges. Eleven were tried and seven actually have been convicted in a trial before the

Senate and removed from office. Impeachment and removal generally have been for crimes, corruption or abuse of office. No federal judge has been removed based on his or her substantive judicial opinions.

Short of impeachment, federal judges also can be disciplined for lesser violations by the Judicial Conference and/or by the Judicial Councils in each circuit, which are responsible for judicial discipline. Sanctions meted out to federal judges include a public or private reprimand, stripping a judge of case assignments, certifying disability or requesting voluntary retirement.

Source: American Bar Association, Chicago, Illinois.

 **Question 73** What about disciplining state court judges?

Answer All state constitutions provide for the impeachment, removal and other discipline of state judges. Grounds for disciplining judges are spelled out in each state's constitution, statutes or court rules.

All 50 states and the District of Columbia have created judicial disciplinary commissions that investigate, prosecute, and adjudicate cases of judicial misconduct. They also impose or recommend to a higher body a variety of sanctions ranging from censure, reprimand and suspension to removal in cases in which it has been determined that misconduct occurred. Members of these commissions usually include judges, lawyers and private citizens.

Source: Carp, Robert A., Stidham, Ronald, *Judicial Process in America*, Congressional Quarterly Inc., Washington, D.C., 1993.

 **Question 74** How do judges know what's ethical?

Answer Federal judges follow the Code of Conduct for United States Judges, a set of ethical principles and guidelines adopted by the Judicial Conference of the United States. The Code of Conduct provides guidance for judges on issues of judicial integrity and independence, judicial diligence and impartiality, permissible extra-judicial activities, and the avoidance of impropriety or even the appearance of impropriety.

Some 47 states and the District of Columbia have adopted, in substance, the American Bar Association's Model Code of Judicial Conduct, while the remaining three states have enacted their own rules. Standards govern judges' conduct during judicial proceedings, as well as speech, business activities, civic and charitable involvement and political and other associations. The current Model Code was adopted by the ABA in 1990.

In general, judges may not hear cases in which they have either personal knowledge of the disputed facts, a personal bias toward a party to the case, earlier involvement in the case as a lawyer, or a financial interest in any party or subject matter of the case.

Source: *Understanding the Federal Courts*, Administrative Office of the United States Courts.

 **Question 75** What if an individual has a complaint against a judge?

Answer In 1980 Congress passed the Judicial Councils Reform and Judicial Conduct and Disability Act. This act establishes a statutory procedure to deal with complaints against any federal district judge, circuit court judge, bankruptcy judge or magistrate judge. To bring a

complaint, individuals submit written statements to the clerk for the chief judge of the circuit court of appeals or applicable national court on which the judge sits. A chief judge can also initiate a proceeding based on informal complaints received.

Complaints about the behavior of state court judges can be filed as a grievance with the state's judicial conduct organization.

Source: Title 28, U.S. Code, Section 372(c).

SOURCES AND BIBLIOGRAPHY

Acheson, Patricia C., *Our Federal Government, How It Works*, Dodd, Mead & Co., New York, 1984.

American Bar Association, *Law & The Courts, Volume II: Court Procedures*, 1998.

Carp, Robert A., Stidham, Ronald, *The Federal Courts*, Congressional Quarterly Inc., Washington, D.C., 1991.

Carp, Robert A., Stidham, Ronald, *Judicial Process in America*, Congressional Quarterly Inc., Washington, D.C., 1993.

Coffin, Frank M., *On Appeal, Courts, Lawyering and Judging*, W.W. Norton & Co., New York, 1994.

Lee, Katherine J., *Courts & Judges, How They Work*, Halt, Inc., 1987.

B. Ostrom & N. Kauder, eds., *Examining the Work of State Courts, 1996: A National Perspective from the Court Statistics Project* (National Center for State Courts 1997).

Radio-TV News Directors Association

Supreme Court Rule 17, adopted June 30, 1980

Wasby, Stephen L., *The Supreme Court in the Federal Judicial System*, Nelson-Hall Publishers, Chicago, 4th ed. 1996.

Government website addresses:

U.S. Department of Justice website:
<http://www.usdoj.gov>

The Federal Judiciary Homepage, including the Administrative Office of the United States Courts:
<http://www.uscourts.gov>

Federal Judicial Center:
<http://www.fjc.gov>

Federal Regulations:
<http://law.house.gov/4.htm>

U.S. Code:
<http://uscode.house.gov/usc.htm>

Other court-related website addresses:

National Center for State Courts:
<http://www.ncsc.dni>

THE ELECTRIC LAW LIBRARY:
<http://www.lectlaw.com>

