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Judicial
Conf.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

March 8, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Inquiry from Samuel W. Phillips

Samuel Phillips, Circuit Executive of the United States Court of Appeals for the Fourth Circuit, has written seeking information on the high cost of litigation, which is the theme of the Fourth Circuit Judicial Conference scheduled for June 23-25. In particular, he indicates that it is his understanding that our office is working on an Executive Order to impose a ceiling on money that can be spent under the Equal Access to Justice Act. The legal fee cap referred to by Phillips is a legislative proposal being devised by OMB. I have delayed responding to Phillips because of repeated representations from OMB that the proposal in its latest form was on the verge of being released (OMB does not favor sending out its old proposal), but I do not think we should delay any longer. I have prepared a draft indicating that OMB -- not our office -- is exploring legislative fee cap proposals, and advising that we will send Phillips a copy when a proposal is released. I have also suggested that Phillips contact Jon Rose, whose office is working on alternative dispute resolution and other responses to the high cost of litigation.

Attachment

THE WHITE HOUSE

WASHINGTON

March 8, 1983

Dear Mr. Phillips:

Thank you for your letter advising that the theme of the upcoming Fourth Circuit Judicial Conference will be "The High Costs of Litigation." In that letter you requested information on a proposal to place a ceiling on money that can be spent under the Equal Access to Justice Act.

The Office of Management and Budget has been studying the problem of the high costs of litigation for some time. That office is exploring possible legislative initiatives to address this problem, and one of the possibilities being considered is a fee cap for Federal fee-shifting statutes other than the Equal Access to Justice Act, which already contains a \$75 per hour maximum rate. Other reforms being considered would apply to all Federal fee-shifting statutes.

I had delayed responding to your inquiry in expectation that a proposal would soon be released. It is my understanding that one may be released in the near future, and I will be happy to send a copy to you should that happen. In the meantime, you may want to contact Assistant Attorney General Jonathan Rose, who heads the Office of Legal Policy at the Department of Justice. That office is reviewing various means of alleviating the high cost of litigation, including the development of alternative means of dispute resolution.

Sincerely,

Orig. signed by FFF

Fred F. Fielding
Counsel to the President

Mr. Samuel W. Phillips
Circuit Executive
United States Court of Appeals
Fourth Circuit
P.O. Box 6G
Richmond, Virginia 23214-1850

FFF:JGR:aw 3/8/83 ✓
cc: FFFielding/JGRoberts/Subj./Chron

THE WHITE HOUSE

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March 8, 1983

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Sincerely,

Fred F. Fielding
Counsel to the President

Mr. Samuel W. Phillips
Circuit Executive
United States Court of Appeals
Fourth Circuit
P.O. Box 6G
Richmond, Virginia 23214-1850

FFF:JGR:aw 3/8/83
cc: FFFielding/JGRoberts/Subj./Chron

**WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET**

O - OUTGOING

H - INTERNAL

I - INCOMING

Date Correspondence Received (YY/MM/DD) 1/1

Name of Correspondent: Louise W. Phillips

MI Mail Report

User Codes: (A) _____ (B) _____ (C) _____

Subject: Information on Litigation Costs and Model Executive Order Recommending a Ceiling on the Money Spent under the Equal Access to Justice Act

ROUTE TO:	ACTION	DISPOSITION			
Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>CO Holland</u>	<u>ORIGINATOR</u>	<u>83101128</u>			<u>1/1</u>
<u>WAT 18</u>	<u>↓</u>	<u>83101428</u>		<u>S</u>	<u>83102108</u>
		<u>1/1</u>			<u>1/1</u>
		<u>1/1</u>			<u>1/1</u>
		<u>1/1</u>			<u>1/1</u>

ACTION CODES:

- A - Appropriate Action
- C - Comment/Recommendation
- D - Draft Response
- F - Furnish Fact Sheet to be used as Enclosure
- I - Info Copy Only/No Action Necessary
- R - Direct Reply w/Copy
- S - For Signature
- X - Interim Reply

DISPOSITION CODES:

- A - Answered
- B - Non-Special Referral
- C - Completed
- S - Suspended

FOR OUTGOING CORRESPONDENCE:

- Type of Response = Initials of Signer
- Code = "A"
- Completion Date = Date of Outgoing

Comments: _____

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 Send all routing updates to Central Reference (Room 75, OEOB).
 Always return completed correspondence record to Central Files.
 Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

Re: [unclear]

SAMUEL W. PHILLIPS
CIRCUIT EXECUTIVE
UNITED STATES COURT OF APPEALS
FOURTH CIRCUIT

P.O. BOX 86
RICHMOND, VIRGINIA 23214-1850

804-771-2184
FTS-923-2184

January 25, 1983

Honorable Fred F. Fielding
Counsel to The President
White House
Washington, D. C. 20500

121869

Dear Mr. Fielding:

The Fourth Circuit will hold its annual Circuit Judicial Conference June 23-25, 1983 at The Homestead, Hot Springs, Virginia.

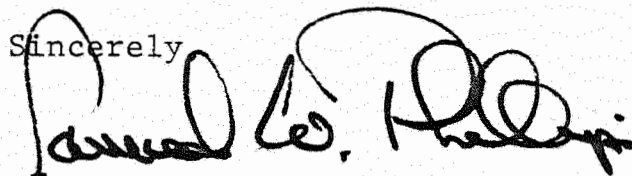
The Program Committee, which has been appointed by our Chief Circuit Judge, The Honorable Harrison L. Winter, has had its initial meeting and tentatively decided that the theme of the conference will be The High Costs of Litigation. The next meeting of the Committee is scheduled for Monday, February 7, 1983. As a member of the committee and as its secretary, I have been asked to gather information on the high costs of litigation. The committee realizes that it is a broad subject, and that it must be narrowed.

I have discussed the subject generally with Bill Weller, the Legislative Affairs Officer for the Administrative Office of the United States Courts, and he has suggested that I contact you.

~~It is my understanding that your office is working on a model Executive Order which will recommend a ceiling as to the money that can be spent under the Equal Access to Justice Act.~~ You may also have summaries of OMB or GAO studies on the high costs of litigation that you would be willing to share with our committee.

I know that our committee would be grateful for any assistance that you can give to it.

Sincerely



Samuel W. Phillips

cc: Mr. William J. Weller
Legislative Affairs Officer
Administrative Office, U. S. Courts
Washington, D. C. 20544