U.S. COURT OF APPEALS - FIFTH CIRCUIT

PROCEDURES FOR SELECTION, APPOINTMENT, AND REAPPOINTMENT OF FEDERAL PUBLIC DEFENDERS

Consistent with 18 U.S.C. § 3006A(g)(2)(A), this court adopts the following procedures for selection, appointment, and reappointment of Federal Public Defenders in this circuit.

Scope

These procedures shall be used when (1) a new defender office is authorized or a vacancy occurs, for any reason, in an established office; and (2) for the reappointment of incumbent defenders.

Public Notice

The circuit executive shall advertise each vacancy nationally, consistent with equal employment opportunity standards, and will give notice to all existing federal public defender offices. The public notice will set a firm deadline date for receipt of applications.

New or Vacant Office

To assist the Court of Appeals in its selection of a new or replacement federal public defender, the chief judge of the circuit shall appoint a Merit Selection Committee composed of persons knowledgeable about federal criminal defense matters, but shall not include probation, pretrial services, enforcement or prosecutorial personnel. The committee should include both lawyers and non-lawyers, drawn from the district to be served.

Merit Selection Committee

The circuit executive will provide staff support to the committee.

All information made available to the committee, including the identity of applicants, shall be confidential.

The committee shall review all applications, interviewing in its discretion, and shall prepare its report recommending three to five persons, preferrably ranked and assigning reasons, and filing same within 90 days of the deadline date. In addition to the recommendations of the majority, the committee report may contain the recommendations of any committee member or minority. For good cause shown the committee may recommend less than three.

The report shall be filed with the chief judge of the circuit with a copy to the circuit executive who, in turn, shall send a copy to the chief judge of the district to be served with a request that within 30 days the comments of all district and magistrate judges be furnished.

Promptly upon receipt of the comments from the chief district judge, the circuit executive will furnish a copy of same to the committee, inviting and setting a time for any response the committee might wish to make.

When the committee responds, or the time allowed therefor has expired, the circuit executive shall provide each active circuit judge with a copy of the committee report, the chief district judge's comments, and any committee response.

Court of Appeals

The Court of Appeals may determine to select the defender on the basis of the written submissions, after a conference call discussion, or at a meeting of the court during which, at the court's option, any applicant(s) may be interviewed. The name of the attorney selected will be submitted to the Administrative Office of the United States Courts which shall initiate F.B.I. and I.R.S. investigations.

The chief judge of the circuit shall review the F.B.I. and I.R.S. reports and, finding same satisfactory, complete the order of appointment, sending copies thereof to the AO and to the clerks of the court of appeals and district to be served.

Reappointment of Incumbent Defender

If an incumbent public defender seeks reappointment, the chief judge of the circuit shall appoint a special evaluation committee composed of one circuit judge and two attorneys in private practice having broad experience in criminal proceedings generally and in the subject district court.

The circuit executive shall, on behalf of the special committee, solicit from all judges in the affected district comments about the defender's quality of representation, level of commitment, service to clients, and administrative efficiency. Simultaneously the circuit executive shall ask the Defender Service Division of the AO for an evaluation of the defender's administrative performance, including budgeting, statistical reporting, and utilization of resources. Copies of all responses shall be furnished to the special committee.

The defender shall be given a fair and reasonable opportunity to respond in writing to any negative or adverse comment. Confidentiality requests shall be honored, but the defender will be given a general description of the source and nature of the comments. Copies of the defender's response shall be furnished to the special committee.

After due consideration of all comments and responses, and such other information that it may deem relevant, the committee shall decide whether to recommend reappointment of the defender, filing its report thereon with the chief judge of the circuit, with a copy to the circuit executive, within 60 days after receipt of the written comments and responses. The circuit executive shall furnish a copy of the report of the special committee to all active circuit judges. Copies of all or any part of the data before the special committee shall be furnished to any active circuit judge requesting same.

The court of appeals may determine to reappoint the public defender on the basis of the written submissions, after a conference call discussion, or at a meeting of the court during which, at the court's option, the defender may be personally interviewed. If the decision is to reappoint, the chief judge of the circuit shall execute and file the appropriate forms. If the decision is to decline to reappoint, the chief judge of the circuit shall appoint a Merit Selection Committee which shall promptly proceed as set forth above.

These procedures supersede and replace those adopted on March 2, 1992 and shall become effective immediately.

April 1, 1993

Henry A. Politz
CHIEF JUDGE