

REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES FOR THE SELECTION, APPOINTMENT, AND REAPPOINTMENT OF UNITED STATES BANKRUPTCY JUDGES

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Amended March 1985, September 1988, March 1996, March 1997,
September 2000, March 2001, March 2006, and September 2006**

United States bankruptcy judges exercise highly important judicial powers and responsibilities as officers of the United States district courts. It is therefore imperative that only highly qualified individuals be selected as bankruptcy judges. To that end, and in accordance with section 120(a) and (b) of the Bankruptcy Amendments and Federal Judgeship Act of 1984, as amended by section 303 of the Federal Courts Improvement Act of 1996, the following regulations for the selection, appointment, and reappointment of bankruptcy judges are promulgated by the Judicial Conference of the United States. These regulations set forth procedural guidelines that create no vested rights for any incumbent or prospective bankruptcy judge.

CHAPTER 1. QUALIFICATIONS OF UNITED STATES BANKRUPTCY JUDGES

Sec. 1.01. Minimum Qualifications.

To be qualified for appointment as United States bankruptcy judges, nominees must meet the following standards:

(a) They must be members in good standing of the bar of the highest court of at least one state, the District of Columbia, or the Commonwealth of Puerto Rico, and members in good standing of every other bar of which they are members.

(b) They must (1) possess, and have a reputation for, integrity and good character; (2) possess, and have demonstrated, a commitment to equal justice under the law; (3) possess, and have demonstrated, outstanding legal ability and competence; (4) indicate by their demeanor, character, and personality that they would exhibit judicial temperament if appointed or reappointed; and (5) be of sound physical and mental health sufficient to perform the essential duties of the office.

(c) They must not be related by blood or marriage to a judge of the appointing court of appeals or judicial council of that circuit, or to a judge of the district court to be served, within the degrees specified in 28 U.S.C. § 458, at the time of the initial appointment.

Sec. 1.02. Additional Qualifications.

(a) Unless the council determines that special conditions exist, they must have been engaged in the active practice of law for a period of at least five years. The judicial council may consider as substitute experience for the active practice of law the following, including any combination thereof:

(1) Judge of a state court of record or other state judicial officer.

(2) United States magistrate judge, referee in bankruptcy, bankruptcy judge, or other federal judicial officer.

(3) Attorney for federal or state agencies.

(4) Law clerk to any judge or judicial officer (limited to two years).

(5) Other legal experience which is suitable as a substitute in the opinion of the majority of the judicial council.

(b) A judicial council may establish additional qualification standards appropriate for a particular position, taking into account the specific responsibilities anticipated for that position.

CHAPTER 2. PUBLIC NOTICE OF BANKRUPTCY JUDGESHIP VACANCIES

Sec. 2.01. Publication.

Prior to the selection of nominees, public notice of the vacancy shall be published in sources that will reach a wide audience of qualified applicants. These sources may include, but are not limited to the following: a general local newspaper or similar publication; a bar journal, newsletter, or local legal periodical; bar association web sites; government web sites; and other resources relied upon by legal professionals.

Sec. 2.02. Contents of Notice.

The public notice shall describe the nature of the position and the procedures for submission of applications, including the name and address of the person to whom applications should be submitted. The notice should specify that applications are to be submitted only by the potential nominee personally, indicating the person's willingness to serve if selected.

Sec. 2.03. Filing of Notice.

The public notice shall be filed and posted in the offices of the clerk of the court of appeals, the clerk of the district court, and the bankruptcy clerk, and a copy of the notice shall be provided to the Director of the Administrative Office of the United States Courts at the time an appointment is made.

CHAPTER 3. MERIT SELECTION PANEL

Sec. 3.01. Establishment of Panel.

Before nominations are made, the council may appoint a merit selection panel which shall recommend for nomination individuals whose character, experience, ability, and commitment to equal justice under the law fully qualify them to serve as United States bankruptcy judges. The council may authorize the chief judge of the circuit to appoint panels under this section.

Sec. 3.02. Membership.

(a) The panel shall be composed of a chairman and other members appointed by majority vote of the judicial council. The panel shall have no fewer than three members, including the chairman.

(b) Members of the panel shall receive no compensation for their service, but may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law.

(c) Each member of the panel shall be a resident of the circuit within which the appointment is to be made.

(d) No person shall be considered as a nominee while serving as a member of the panel or for a period of one year after completion of such service.

Sec. 3.03. Duties.

(a) The chairman shall have such duties as the judicial council may assign.

(b) All information made available to the members of the panel in the performance of their duties, including the names of potential nominees and the identities of individuals recommended by the panel, shall be kept in strict confidence except as provided in section 3.04 of these regulations.

(c) Decisions of the panel shall be by majority vote of all the members.

(d) The panel shall examine the applications of all potential nominees and may, in its discretion, personally interview potential nominees. The panel shall make an affirmative effort to identify and give due consideration to all qualified candidates, without regard to race, color, age (over 40), gender, religion, national origin, or disability.

(e) The panel shall determine those individuals among the potential nominees who meet all of the standards set forth by these regulations for appointment as United States bankruptcy judges and shall designate those individuals whom the panel considers best qualified.

(f) The panel shall submit a report to the council as provided in the following section.

Sec. 3.04. Panel Report.

The panel shall within ninety days after its creation report to the judicial council the results of its activities, unless otherwise directed. The report of the panel shall specify five to ten persons the panel has determined as best qualified and shall have attached to it all written information received by or prepared by the panel concerning the recommended nominees. The council may accept a list containing fewer than five names for good cause shown by the panel in its report.

Sec. 3.05. Alternative to Panel.

If the council does not appoint a panel under section 3.01, the council or a subcommittee of the members of the council may perform the duties set forth in section 3.03.

CHAPTER 4. SELECTION OF NOMINEES AND APPOINTMENT OF UNITED STATES BANKRUPTCY JUDGES

Sec. 4.01. Selection of Nominees.

The judicial council shall submit a list of at least three nominees to the court of appeals unless otherwise directed by the court. The council shall select nominees from the list provided by the panel. However, a judicial council may, by majority vote, reject the first list submitted by the panel. The judicial council may require that the finalists selected complete a preliminary disclosure statement prior to the list being forwarded to the court of appeals. The disclosure statement shall be filed with the judicial council in such manner as it may direct and it shall be considered confidential. If such a list is rejected, the panel shall submit a second list from which the judicial council shall then select its nominees. If a panel is not appointed under section 3.01, the judicial council shall select its nominees from the applicants for the position.

Sec. 4.02. F.B.I. and I.R.S. Reports.

The name of the person selected by the court of appeals for appointment shall be submitted to the Director of the Administrative Office, who shall request background reports by the Federal Bureau of Investigation and the Internal Revenue Service. However, if the nominee has been the subject of such reports prior to appointment to the present position, the requirement for further background reports may be waived on request by the court of appeals.

Sec. 4.03. Filing of Preliminary Disclosure Statement by Nominee.

A nominee for a bankruptcy judgeship may be required by the court of appeals to complete a preliminary disclosure statement after being selected for appointment by the court of appeals and prior to preparation of the background reports by the Federal Bureau of Investigation and the Internal Revenue Service. The disclosure statement shall be filed with the court of appeals in such manner as it may direct and it shall be considered confidential.

Sec. 4.04. Order of Appointment.

An order of appointment may be issued by the court of appeals following receipt by the court of the information obtained from the Federal Bureau of Investigation and the Internal Revenue Service. If in the judgment of the court the Internal Revenue Service report has not been completed in a timely manner, it may waive the report provided that it has taken steps to insure itself that the nominee has filed returns as required.

Sec. 4.05. Oath of Office.

The appointee shall, prior to entering on duty, take the oath or affirmation prescribed by 28

U.S.C. § 453, as well as the constitutional oath of office prescribed by 5 U.S.C. § 3331.

Sec. 4.06. Record of Appointment.

The appointment of the bankruptcy judge shall be entered of record in the court of appeals and the pertinent district court or courts, and notice of such appointment shall be given at once by the clerk of the court of appeals to the Director of the Administrative Office of the United States Courts.

CHAPTER 5. REAPPOINTMENT OF UNITED STATES BANKRUPTCY JUDGES

Sec. 5.01. Methods.

(a) Pursuant to the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, not earlier than nine months and not later than six months before the date on which the term of a bankruptcy judge expires, a bankruptcy judge who is willing to accept reappointment shall provide written notification of willingness in official forms to the chief judge of the circuit. This does not preclude the court of appeals from requiring a bankruptcy judge to provide as much as twelve months written notification to the chief judge of the circuit of such bankruptcy judge's willingness to accept reappointment to the position.

(b) The court of appeals shall decide whether or not to reappoint the incumbent judge before considering other potentially qualified candidates. In making this decision, the court of appeals shall take into consideration the professional and career status of the incumbent, and whether the incumbent has performed the duties of a bankruptcy judge according to the high standards of performance regularly met by United States bankruptcy judges and demonstrated those characteristics and qualifications specified in Sec. 1.01 and Sec. 1.02(b) of these regulations.

Sec. 5.02. Procedures for Soliciting Public Comment.

(a) Public Notice. Within 60 days of receipt of the written notification that the incumbent is willing to accept reappointment, the circuit executive is required to publish a public notice in sources that will reach a wide audience of persons qualified to comment. These sources may include, but are not limited to the following: a general local newspaper or similar publication; a bar journal, newsletter, or local legal periodical; bar association web sites; government web sites; and other resources relied upon by legal professionals. The notice shall state that the court of appeals is considering the reappointment of the incumbent bankruptcy judge to a new term of office. The notice shall describe the duties of the position, state the date of expiration of the incumbent's current term of office, and invite comments from members of the bar and public. The comment period shall not exceed 45 days. The notice shall include the name and address of the circuit executive to whom comments shall be submitted. A copy of the notice shall be filed and posted in the office of the clerk of the bankruptcy court and a copy shall be provided to the Director of the Administrative Office of the United States Courts.

(b) Public Comments. No later than 10 days after the deadline for submission of comments

from members of the bar and public, the circuit executive shall submit such comments to the court of appeals.

Sec. 5.03. Decision of the Court of Appeals.

(a) Not later than 60 days after the court of appeals receives from the circuit executive the comments of the members of the bar and public, and after due consideration of those comments, the active judges of the court of appeals shall vote whether to reappoint the incumbent.

(b) If a majority of the active judges of the court of appeals votes to reappoint the incumbent, the incumbent shall be reappointed.

(c) If a majority of the active judges of the court of appeals votes not to reappoint the incumbent, the incumbent shall not be reappointed. The court shall so notify the incumbent and proceed with the selection procedures prescribed in chapters 1, 2, 3, and 4 of these regulations. The incumbent shall not be considered for appointment under the selection procedures set forth in chapters 1, 2, 3, and 4 of these regulations.

(d) Whenever a majority of the active judges of the court of appeals cannot agree upon the reappointment of an incumbent bankruptcy judge pursuant to section 5.03(b) or (c), the chief judge of such court shall make that decision. If, in the exercise of such authority, the chief judge should decide not to reappoint the incumbent, the court shall follow the applicable procedures set forth in section 5.03(c) of these regulations.

Sec. 5.04. Extension of Time Periods.

In appropriate cases the chief judge of the court of appeals may determine to extend any of the time periods stipulated in this chapter by not more than 45 days. If the chief judge extends any time periods, the judge whose reappointment is affected by such extension shall be notified. The extension of time periods does not preclude the court from using the provision of 28 U.S.C. § 152 (a)(1), which permits a bankruptcy judge, with the approval of the circuit judicial council, to continue to perform the duties of the office until the earlier of the date that is 180 days after the expiration of the term or the date of the appointment of a successor.

Sec. 5.05. Order of Appointment.

Upon the reappointment of an incumbent bankruptcy judge, an order of appointment shall be issued by the court of appeals.

Sec. 5.06. Oath of Office.

Upon the reappointment of an incumbent bankruptcy judge, the reappointee shall take the judicial oath or affirmation prescribed by 28 U.S.C. § 453, as well as the constitutional oath of office prescribed by 5 U.S.C. § 3331.

Sec. 5.07. Record of Appointment.

Upon the reappointment of an incumbent bankruptcy judge, the reappointment shall be entered of record in the court of appeals and the pertinent district court or courts, and notice of such reappointment shall be given at once by the clerk of the court of appeals to the Director of the Administrative Office of the United States Courts.