

ADDENDUM SIX

RULES AND REGULATIONS OF THE JUDICIAL COUNCIL AND THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT FOR THE SELECTION OF NOMINEES, THE APPOINTMENT OF BANKRUPTCY JUDGES, AND THE REAPPOINTMENT OF BANKRUPTCY JUDGES

PURPOSE

United States bankruptcy judges exercise 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. These regulations are adopted in accordance with the Regulations of the Judicial Conference of the United States for the Selection, Appointment and Reappointment of United States Bankruptcy Judges and governing statutes. These regulations set forth procedural guidelines that create no vested rights for any prospective or incumbent bankruptcy judge.

Bankruptcy judges will be appointed without regard to race, color, sex, religion, or national origin.

PART A

Selection and Appointment of Bankruptcy Judges

1. ESTABLISHMENT OF COMMITTEE

Upon notification of a bankruptcy judge vacancy, the procedures of Chapter 3 of the Rules and Regulations of the Judicial Conference of the United States for the Selection, Appointment and Reappointment of United States Bankruptcy Judges shall be initiated and conducted by a committee consisting of the resident members of the Council in the state in which the vacancy exists.

2. PUBLIC NOTICE OF POSITION VACANCY

The circuit executive will be responsible for advertising each vacancy in accordance with the regulations established by the Judicial Conference of the United States for the selection of United States Bankruptcy Judge nominees. After the deadline for applications, the circuit executive will forward all applications received to the committee.

3. COMMITTEE DUTIES

a. General

The committee shall determine for the Judicial Council that:

1. public notice of such vacancy has been given and an effort has been made, in the case of each such vacancy to identify qualified candidates, without regard to race, color, sex, religion, or national origin;
2. such persons are members in good standing of at least one State bar, or the District of Columbia bar, and members in good standing of every bar of which they are members;
3. such persons possess, and have a reputation for, integrity and good character;
4. such persons are of sound physical and mental health;
5. such persons possess and have demonstrated commitment to equal justice under law;
6. such persons possess and have demonstrated outstanding legal ability and competence, as evidenced by substantial legal experience, ability to deal with complex legal problems, aptitude for legal scholarship and writing, and familiarity with courts and court processes; and
7. such person's demeanor, character, and personality indicate they would exhibit judicial temperament if appointed to the position of United States bankruptcy judge.

b. Procedures

1. The committee shall interview such a number of qualified applicants as it deems appropriate. As a general rule, the committee will have interviewed those applicants whom it recommends as "best qualified."

2. The committee shall: (a) give the names of all applicants with brief resumes to the Council, (b) report with supporting information all nominees who are considered “best qualified,” (c) designate the nominee(s) it recommends be submitted by the Council to the Court, and (d) recommend the nominee(s) whom it thinks should be interviewed by the Court.
3. The committee report will provide deadlines for objection by Council members and recommend deadlines for objection to the Council report by Court members. Such deadlines shall reasonably meet the time required for a study of the report. Procedures for modification of the reports of either the committee or the Council may be conducted by telephone in order to meet the time set for Court interviews.
- c. The application of a sitting bankruptcy judge should not be considered for any position within that judge’s district other than the one the judge occupies.

4. DUTIES OF THE JUDICIAL COUNCIL

Except for other duties as provided in the Act or in the Judicial Conference regulations, the committee report shall be the Council report unless a Council member objects and the report is modified on motion passed by a majority vote of the Council.

5. DUTIES OF THE COURT OF APPEALS

- a. Following receipt of the names of the nominees, the Court shall interview the nominee(s) recommended in the Council report, unless a Court member objects and the recommendation is modified by motion of any Court member passed by majority vote. In no event will any appointment be made without the appointee having been personally interviewed by the Court.
- b. One person shall be selected by the Court of Appeals for appointment and that person’s name shall be submitted to the Director of the Administrative Office, who shall request investigations by the Federal Bureau of Investigation and the Internal Revenue Service. It is contemplated that the investigation by the FBI shall be a full-field investigation.

- c. Information received from the FBI and IRS shall be reviewed by the Chief Judge of the circuit. If the Chief Judge of the circuit determines that information in the FBI and IRS reports warrants review, the Chief Judge shall send the reports to the Court of Appeals judges who served on the Judicial Council's screening committee or the full Court. If the Chief Judge of the circuit determines that the FBI and IRS reports contain no negative information, the Chief Judge may issue an order of appointment on behalf of the Court. If the IRS report is not received in a timely manner, the Chief Judge may waive the report, provided that the Chief Judge is satisfied and so reports to the other members of the Court that tax returns have been filed by the selectee as required.
- d. 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. The clerk will, at that time, provide the Director a copy of the public notice.

6. CONFIDENTIALITY OF PUBLIC COMMENTS

- a. If a member of the public makes a comment concerning the qualifications of a bankruptcy judge candidate, the person making the comment may request that their identity be kept confidential. The applicant will, however, be provided with a general description of the source and nature of any comments.
- b. The selection committee or the Court of Appeals may determine, at its sole discretion, that the identity of a person making a comment should be disclosed to the candidate in order to afford the applicant a fair opportunity to respond to the comment. In that event, the person making the comment will be given an opportunity to withdraw the comment before the commenter's identity is disclosed to the candidate. If the comment is withdrawn, it will not be considered by the selection committee or the Court of Appeals, and the identity of the person making the comment will remain confidential. If the person making the comment waives confidentiality, the commenter's name will be revealed to the candidate, along with the substance of the comment.

PART B
Reappointment of Bankruptcy Judges

1. INCUMBENT'S WRITTEN NOTICE

The Court requires incumbents seeking reappointment to submit a written notification of willingness to accept reappointment twelve months before the bankruptcy judge's term expires. Receipt of the notification by the Court will commence the reappointment process. The circuit executive, on behalf of the Chief Judge, will forward the Questionnaire for Reappointment as United States Bankruptcy Judge to the incumbent for completion and return to the circuit executive. The incumbent judge, however, must also submit Official Form Per-74 not earlier than nine months and not later than six months before expiration of the judge's term as required by the Guide to Judiciary Policy in order to protect retirement benefits pursuant to 28 U.S.C. § 377(b). The Court may reappoint an incumbent bankruptcy judge to a new 14-year term of office without considering other potentially qualified candidates.

2. ESTABLISHMENT OF COMMITTEE

Upon notification of an incumbent bankruptcy judge's willingness to accept reappointment to a new 14-year term of office, the procedures of Chapter 5 of the Regulations of the Judicial Conference of the United States for the Selection, Appointment and Reappointment of United States Bankruptcy Judges shall be initiated and conducted by a committee consisting of the resident members of the Council in the state in which the incumbent sits.

3. PUBLIC NOTICE SOLICITING COMMENTS

Within 60 days of receipt of the timely Official Form Per-74, the circuit executive shall cause to be published a public notice in accordance with the regulations established by the Judicial Conference of the United States for the reappointment of United States Bankruptcy Judges. The comment period shall not exceed 45 days. The circuit executive will submit the comments from the public to the reappointment committee within 10 days after the deadline for submission of comments.

4. COMMITTEE DUTIES

The committee will seek comments from members of the bar and the public regarding their assessment of the incumbent judge's: 1) judicial conduct; 2) effectiveness as a bankruptcy judge; 3) effectiveness as a supervisor of judicial employees; and 4) suitability for reappointment to another 14-year term as bankruptcy judge. The committee may interview the incumbent bankruptcy judge as it deems appropriate. The committee will report to the Council on the measures taken to obtain public comment, a summary of the comments received, and the committee's recommendation regarding the reappointment. The committee report will provide deadlines for objection by Council members and recommend deadlines for objection to the Council report by Court members.

5. DUTIES OF THE JUDICIAL COUNCIL

Except for other duties as provided in the Act or in the Judicial Conference Regulations, the committee report shall be the Council report unless a Council member objects and the report is modified on motion passed by majority vote of the Council.

6. DUTIES OF THE COURT OF APPEALS

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. Following receipt of the Council report, the Court also may interview the incumbent bankruptcy judge. The reappointment decision will be determined by a vote of the active judges of the Court of Appeals as set forth in Section 5.03 of the Judicial Conference of the United States Regulations. Upon reappointment, the Court will issue an order of appointment which 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.

7. CONFIDENTIALITY OF PUBLIC COMMENTS

- a.** If a member of the public makes a comment concerning the qualifications of the incumbent, the person making the comment may request that their identity be kept confidential. The incumbent will, however, be provided with a general description of the source and nature of any comments.
- b.** The selection committee or the Court of Appeals may determine, at its sole discretion, that the identity of a person making a comment should be disclosed to the incumbent in order to afford the incumbent a fair opportunity to respond to the comment. In that event, the person making the comment will be given an opportunity to withdraw the comment before the commenter's identity is disclosed to the incumbent. If the comment is withdrawn, it will not be considered by the selection committee or the Court of Appeals, and the identity of the person making the comment will remain confidential. If the person making the comment waives confidentiality, the commenter's name will be revealed to the incumbent, along with the substance of the comment.