

## **ADDENDUM SEVEN**

### **REGULATIONS OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT FOR THE SELECTION AND APPOINTMENT OR THE REAPPOINTMENT OF FEDERAL PUBLIC DEFENDERS**

#### **1. Purpose**

Federal public defenders exercise important powers and responsibilities as officers of the United States Courts. It is imperative that highly qualified individuals be selected and retained as public defenders. For the expeditious and orderly achievement of this end, as well as to ensure that federal public defenders provide competent, independent counsel and vigorous representation to indigent persons, the United States Court of Appeals for the Eleventh Circuit has adopted the regulations set forth herein. These regulations shall be administered through a Federal Public Defender Committee appointed by the Chief Judge of the Eleventh Circuit Court of Appeals pursuant to Section 3 of these regulations.

#### **2. Authority**

The Criminal Justice Act, 18 U.S.C. § 3006A(g), provides that “A Federal Public Defender Organization . . . shall be supervised by a Federal Public Defender appointed by the court of appeals of the circuit . . . after considering recommendations from the district court or courts to be served.”

#### **3. Federal Public Defender Committee**

##### **a. Appointment of Federal Public Defender Committee**

The Chief Judge of the U.S. Court of Appeals shall appoint a Federal Public Defender Committee [hereinafter “Committee”]. The Committee shall consist of a U.S. Circuit Judge, a U.S. District Judge from each district which has established a Federal Public Defender Organization pursuant to 18 U.S.C. § 3006A(g)(2)(A), and one or more lawyers from each such district who specialize in the practice of criminal law and are themselves qualified for appointment as a Federal Public Defender under Section 5 of these regulations.

##### **b. Terms of Committee Members**

The U.S. Circuit Judge and each district judge appointed to the Committee shall serve for a term of two years. One-third of the lawyers first appointed shall serve a term of one year, one-third for two years, and the remainder and all thereafter appointed for a term of three years. Each member shall serve until his or her

successor has been appointed. The Chief Judge of the U.S. Court of Appeals may vacate an appointment at any time.

c. Functions of Committee

- (1) The Committee shall determine which applicants meet the qualifications for appointment as a federal public defender as set forth in Section 5 of these regulations.
- (2) The Committee shall examine applications and evaluate all qualified candidates without regard to race, color, age, gender, religion, disability, or national origin.
- (3) If a federal public defender has applied for an additional four-year term, the Committee shall also consider public comments received and the results of the survey conducted pursuant to Section 6 of these regulations in its evaluation of the Federal Public Defender's application.
- (4) The Committee shall interview at least four of the applicants determined to be qualified. If the Committee determines that less than four qualified persons have applied for the position, it may either reopen the application process or report to the Chief Judge of the U.S. Court of Appeals why fewer than four qualified persons could reasonably be expected to apply for the position.

d. Committee Chair, Votes, and Quorum

- (1) The Chief Judge of the U.S. Court of Appeals shall designate one of the members of the Committee to serve as Chair.
- (2) Decisions of the Committee shall be made by a majority of those participating.
- (3) A majority of the Committee shall constitute a quorum.

**4. Term of Appointment of Federal Public Defenders**

The Criminal Justice Act provides that the U.S. Court of Appeals shall appoint a person to serve as Federal Public Defender for a four-year term. The expiration date of a four-year term is the day prior to the fourth anniversary of the date the oath of office was administered. The Administrative Office of the United States Courts determines the precise expiration date of a four-year term of office.

## **5. Qualifications for Appointment as Federal Public Defender**

To be qualified for appointment as Federal Public Defender, applicants must:

- a. be members in good standing of at least one state bar, or the District of Columbia, or Virgin Islands bar, and members in good standing of every other bar of which they are members;
- b. have been engaged in the active practice of criminal law for a period of at least five years, preferably with significant federal criminal trial and appellate experience;
- c. possess the ability to administer a federal public defender's office effectively;
- d. possess, and have a reputation for:
  - (1) integrity and good character;
  - (2) sound physical and mental health;
  - (3) commitment to equal justice under law and vigorous representation of his or her clients;
  - (4) outstanding legal ability and competence (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);
- e. have a commitment to the vigorous representation of those unable to afford counsel; and
- f. not be related by blood or marriage to a judge of the Eleventh Circuit Court of Appeals or to a judge of the district court to be served, within the degrees specified in Title 28, United States Code, Section 458 at the time of the initial appointment.

The Federal Public Defender Committee will resolve any questions regarding the qualifications of applicants.

## **6. Federal Public Defender Committee's Evaluation of the Performance of the Incumbent Federal Public Defender**

- a. Prior to the conclusion of the third year of each four-year term, the Federal Public Defender Committee shall conduct an evaluation of the administration of the Federal Public Defender's office. The purpose of this evaluation is to identify strengths and weaknesses in the administration of the office and to provide the Federal Public

Defender with an opportunity to initiate corrective measures if any administrative deficiencies are discovered. The performance of the Federal Public Defender will be evaluated in terms of the quality of representation, the level of commitment to vigorous representation and service to clients, and administrative efficiency of the office. This evaluation will be based on information received through a solicitation for public comment and a written survey designed and administered by the Committee.

- (1) A solicitation for public comment regarding the performance of the Federal Public Defender and his or her office will be placed by the Committee in the major metropolitan or legal newspapers within the district served by the Federal Public Defender.
- (2) The Committee shall also conduct a written survey of the administration of the office of the Federal Public Defender. That survey shall be distributed to district judges, magistrate judges, the Defender Services Division of the Administrative Office of the United States Courts, and to any other persons whose employment places them in a position to observe the performance of the Federal Public Defender, the quality of representation, the level of commitment to vigorous representation and service to clients, and administrative efficiency of the Federal Public Defender's office.
- (3) The Committee may make such additional inquiry as it considers appropriate concerning the quality of services provided by the Federal Public Defender office in the district. With the prior approval of the Chief Judge of the U.S. Court of Appeals, the Committee may appoint consultants to assist it in its evaluation of the administration of a federal public defender's office.
- (4) At the conclusion of the survey period the Committee shall prepare a statistical summary of the results of its survey and a narrative summary of the responses to the solicitation for public comment.
- (5) The Federal Public Defender shall be afforded an opportunity to review and respond to the statistical summary and narrative summary prepared by the Committee.
- (6) The Committee should meet with the Federal Public Defender to discuss the evaluation of his or her office, if such conference is warranted by the responses to the request for public comment or the survey.

## **7. Incumbent Federal Public Defenders**

### **a. Eligibility of Federal Public Defenders for Reappointment**

The Criminal Justice Act permits appointment of an incumbent Federal Public Defender to an additional four-year term. There is not, however, a legitimate expectation of a right to reappointment or a presumption that the Federal Public Defender is the best qualified applicant for a subsequent four-year term.

### **b. Application by Federal Public Defender for Additional Four-Year Term**

Approximately one year prior to expiration of the four-year term of office, the Administrative Office of the United States Courts advises the Chief Judge of the U.S. Court of Appeals of the expiration date of each four-year term. Upon receipt of this notice, the Chief Judge of the U.S. Court of Appeals shall write to the incumbent Federal Public Defender to inquire whether he or she intends to again apply for appointment at the expiration of his or her term of office. The Federal Public Defender shall notify the Chief Judge of the U.S. Court of Appeals whether he or she wishes to apply for an additional four-year term within 35 days of the receipt of the inquiry from the Chief Judge of the U.S. Court of Appeals.

### **c. Evaluation Statement to Accompany Application**

If the Federal Public Defender applies for appointment for an additional four-year term, such application shall be accompanied by a written statement prepared by the Federal Public Defender setting forth an evaluation of his or her administration of the office of Federal Public Defender. This statement shall assess the strengths and weaknesses of his or her administration of the office of Federal Public Defender and the steps that should be taken to eliminate any deficiencies and strengthen the administration of the office.

## **8. Public Recruitment of Qualified Candidates**

### **a. Public Notice**

At the end of each four-year term, or when a vacancy occurs due to the resignation, removal, or incapacity of the occupant of the office of Federal Public Defender, a public notice shall issue announcing that applications are being accepted for a four-year term for the position of Federal Public Defender for the particular district. The public notice shall advise all applicants that the U.S. Court of Appeals for the Eleventh Circuit is searching for the best qualified person currently available for this position and that the U.S. Court of Appeals for the Eleventh Circuit encourages applications from all qualified persons including women, members of minority

groups, and individuals with disabilities. If the Federal Public Defender has applied for an additional four-year term, the notice shall also state that the Federal Public Defender has applied for reappointment and that his or her application will be reviewed under the same standards applied to all other applicants.

b. Publication of Public Notice

The Committee shall seek qualified applicants who reflect the makeup in the relevant national labor market and will use adequate means to publicize the existence of a vacancy to all segments of the relevant national labor market.

- (1) The Committee shall publish a notice that applications are being accepted for a four-year term as Federal Public Defender in a national publication for the legal profession.
- (2) Whenever possible, the Committee shall also advertise in publications from each of the following categories: (1) state bar journal, newsletter, or similar publication; (2) general local newspaper or similar publication; (3) local bar journal, newsletter, or legal periodical.

c. Posting and Distribution of Notice

The public notice shall also be posted in the offices of the Clerk of the U.S. Court of Appeals and in each district court clerk's office within the Eleventh Circuit. A copy of the notice shall also be provided to each district judge and magistrate judge of the circuit, requesting that the judges recruit attorneys whom they feel may be qualified for the position, especially females, members of minority groups, and individuals with disabilities. The Defender Services Division of the Administrative Office of the United States Courts shall also be provided with a copy of the notice for nationwide distribution.

d. Availability of Applications

The Committee shall devise and provide federal public defender application forms to the Clerk of the U.S. Court of Appeals and to each district court clerk's office within the Eleventh Circuit when a vacancy occurs.

e. Timely Submission of Application

To be considered, applications must be received by the Committee by the posted deadline.

f. Review of Completed Applications

After the closing date for receipt of applications, the Committee shall review all timely applications.

**9. Report to U.S. Court of Appeals**

Upon completion of the duties set forth in Sections 6 and 8 of these regulations, the Federal Public Defender Committee shall submit a report to the Chief Judge of the U.S. Court of Appeals and to the active judges of the Court. The report shall constitute the recommendations of the Committee concerning the appointment of the federal public defender in that district, and shall include the following:

- a. a description of actions taken pursuant to Section 8 of these regulations regarding giving notice of the position;
- b. the names of all persons who submitted applications and the names of those deemed by the Committee to be qualified for appointment pursuant to Section 5 of these regulations;
- c. the results of the Committee's investigation into the background of the qualified candidates;
- d. the names of the qualified candidates who were interviewed by the Committee; and
- e. a preferential ranking of not less than three nor more than five best qualified persons from among those the Committee considered qualified for appointment under Section 5 of these regulations. The Committee shall set forth the basis for its ranking of each of the persons it found to be the best qualified applicants.

**10. District Court Recommendations**

a. Solicitation of Recommendations

Following receipt of all applications, the Chair of the Federal Public Defender Committee shall send a list of the names of all applicants determined by the Committee to be qualified, its preferential ranking of the not less than three nor more than five applicants considered to be best qualified and if the Federal Public Defender has applied for an additional four-year term a copy of the summary of the results of the survey concerning his or her last four-year term and of the summary of the responses to the solicitation for public comment to the Chief Judge of the district in which the Federal Public Defender is to be appointed, soliciting the recommendations of that district. The district court shall submit to the Chair of the Committee and to

the Chief Judge of the U.S. Court of Appeals its written recommendation, if any, within 35 days after receipt of the Committee's letter. Extensions of time to respond may be granted by the Chair of the Committee upon application by a chief judge of the district court.

b. Suggested Procedures for the District Court

- (1) The Chief Judge of the district court may circulate to the members of his or her court the names of all applicants and the summary of the results of the survey if the Federal Public Defender has applied for an additional four-year term.
- (2) The district court may wish to consider the summaries of the results of the survey and responses to the solicitation for public comment, if conducted, in arriving at its recommendation. The district court may, in its discretion, conduct its own inquiry concerning any qualified applicant. Within 35 days of receipt of the Committee's report, the district court may either:
  - (a) submit its written recommendation(s) to the Chair of the Committee;  
or
  - (b) notify the Chief Judge of the U.S. Court of Appeals and the Committee that the district court declines to make a recommendation.
- (3) If the district court decides to submit a recommendation, its report should include:
  - (a) a preferential ranking of the applicants whom the district court found to be the best qualified for appointment if different from the ranking recommended by the Committee. The district court may set forth the reasons for its ranking. The district court should consider only those applicants determined by the Committee to have been qualified; and
  - (b) a summary of the district court's inquiry, if any, concerning the qualified applicants.

**11. Vote by U.S. Court of Appeals and Background Investigation on Nominee**

- a. If the Federal Public Defender Committee's recommendation is in accord with that submitted by the district court and if time constraints or exceptional circumstances warrant it, a vote of the judges of the U.S. Court of Appeals may be conducted by mail or by telephone. Otherwise the Committee's recommendations on the nomination to a vacancy, together with the recommendations of the district court,

shall be presented at a regularly scheduled U.S. Court of Appeals Administrative Meeting.

- b. After voting to nominate a candidate to fill a vacancy,
  - (1) the name of the nominee shall be submitted by the Chief Judge of the U.S. Court of Appeals to the Director of the Administrative Office of the United States Courts for background investigations by the Federal Bureau of Investigation and the Internal Revenue Service;
  - (2) The Administrative Office of United States Courts will send the FBI and IRS reports to the Chief Judge of the U.S. Court of Appeals, who shall refer the reports to the Committee;
  - (3) The candidate will complete the required financial disclosure forms and will send them to the Chief Judge of the U.S. Court of Appeals and to the Administrative Office of United States Courts;
  - (4) After reviewing the FBI and IRS reports, the Committee shall submit its recommendation to the U.S. Court of Appeals on whether the nomination should be confirmed;
- c. Upon receipt of the Committee's recommendation on confirmation, the U.S. Court of Appeals shall vote on whether to confirm the nomination. The confirmation vote of the U.S. Court of Appeals may be conducted either by mail or at a regularly scheduled court administrative meeting.

## **12. Confidentiality**

If a member of the public makes a comment concerning the qualifications of the incumbent Federal Public Defender or the administration of his or her office, or about an applicant for that position, in a survey or otherwise, the person making the comment may request that their identity be kept confidential. The incumbent or applicant will, however, be provided with a general description of the source and nature of any comments.

The Federal Public Defender 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 or applicant in order to afford that person 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 or applicant. If the comment is withdrawn, it will not be considered by the 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 or the applicant, along with the substance of the comment.

All information made available to the members of the Federal Public Defender Committee in the performance of their duties, including the Committee's report and the names recommended therein, shall be kept in strict confidence by the persons authorized by these procedures to receive this information, unless other provisions of these procedures or the U.S. Court of Appeals specifically authorize a disclosure.

If the Committee, with the consent of the Chief Judge of the U.S. Court of Appeals, decides to appoint consultants pursuant to Section 6(a)(3) of these regulations to assist it in considering the appointment of a federal public defender, it may provide any confidential information to the consultants as it considers necessary or appropriate.

### **13. Interim Appointment**

A federal public defender whose four-year term of office has expired may continue to perform the duties of his or her office until a successor is chosen or until one year passes, whichever is earlier, upon approval of such an extension by a majority of the judges of the U.S. Court of Appeals.