

JUDICIAL COUNCIL OF THE NINTH CIRCUIT

REGULATIONS GOVERNING THE APPOINTMENT OF U.S. BANKRUPTCY JUDGES¹

CHAPTER 1. QUALIFICATIONS OF UNITED STATES BANKRUPTCY JUDGES

To be qualified for appointment as a United States Bankruptcy Judge, applicants must:

- (a) be members in good standing of at least one state bar of the District of Columbia or Virgin Islands bar, and members in good standing of every other bar of which they are members,
- (b) possess, and have a reputation for--
 - 1) integrity and good character;
 - 2) sound physical and mental health;
 - 3) commitment to equal justice under law;
 - 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);
- (c) not be related by blood or marriage to a judge of the Ninth Circuit Court of Appeals or to a member of the judicial council of the Ninth Circuit, or to a judge of the district court to be served, within the degrees specified in section 458 of title 28, United States Code, at the time of the initial appointment.
- (d) have been engaged in the active practice of laws for a period of at least five years. As substitute experience for this active practice of law the following, including any combination thereof may be considered:
 - 1) Judge of a state court of record or other state judicial officer.
 - 2) United States magistrate, 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.

¹Full regulations approved by the Judicial Council of the Ninth Circuit February 24, 2005. In January 2007, the Court-Council Committee on Bankruptcy Appointments approved revisions in Section 2.01 of these regulations regarding publicizing recruitment announcements in accordance with changes approved by the United States Judicial Conference in 2006.

CHAPTER 2. PUBLIC NOTICE

Section 2.01 Publication

Prior to the selection of a bankruptcy judge, a 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 publications; a bar journal, newsletter, or local legal periodical; bar association web sites; government web sites; and other resources relied upon by legal professionals.

Section 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.

Section 2.03 Posting and Filing of Notice.

The public notice shall be posted in the office of the clerk of the U.S. Court of Appeals for the Ninth Circuit and the clerk of each district and bankruptcy court in the Ninth Circuit. A copy shall be provided to the Director of the Administrative Office.

CHAPTER 3. MERIT SCREENING PROCESS

Section 3.01 Merit Screening Committee (MSC)

The Judicial Council shall establish an ad hoc Merit Screening Committee (MSC) in the district of the vacancy. The MSC shall recommend to the Court-Council Committee on Bankruptcy Appointments the names of individuals best qualified under the law and these regulations to serve as United States Bankruptcy Judge.

Section 3.02 Membership of Merit Screening Committee

(a) Merit screening committees should include:

- a. the chief judge or the designee of the chief judge of the district in which the bankruptcy judge is to be appointed,
- b. the president or the designee of the president of the state bar association,
- c. the president or the designee of the president of one or more local bar associations within the district,
- d. the dean or designee of the dean of a law school located within the district,
and

- e. the administrative circuit judge or the designee of the administrative circuit judge of the circuit geographical unit in which the bankruptcy judge is to be appointed,
 - f. the chief bankruptcy judge of the district in which the bankruptcy judge is to be appointed.
- (b) All members appointed to MSC should be individuals interested in the operation of the bankruptcy courts.
 - (c) Any choices that must be made regarding membership on a MSC shall be made by the Chief District Judge of the district in which the bankruptcy judge is to be appointed.
 - (d) The members of the MSC will select their own chairperson.
 - (e) The Circuit Executive or designee of the Circuit Executive may serve as secretary to the MSC and may attend all meetings of the committee.
 - (f) No person shall be an applicant for a bankruptcy judge position while serving as a member of the MSC or for a period of one year after completion of such service, except that a resident incumbent chief bankruptcy judge may apply for appointment to an additional term notwithstanding the fact that he or she has served as a member of the screening committee within the previous year.
 - (g) Members of the MSC shall receive no compensation for their service, but may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law.

Section 3.03 Duties of the Merit Screening Committees.

- (a) The MSC should examine all applications, identifying all qualified candidates, without regard to race, color, age, gender, religion, or national origin.
- (b) The MSC shall consult with the chief bankruptcy judge concerning the district bankruptcy judges' views on the qualifications of all applicants.
- (c) The MSC should determine those applicants who meet all of the standards set forth in these regulations for appointment as a United States Bankruptcy Judge. The MSC should interview those deemed well qualified.
 - 1) When one bankruptcy judge is to be appointed in any district, the MSC should designate from the group of well qualified applicants not more than

five applicants as best qualified to serve as a United States Bankruptcy Judge. The MSC may refer fewer than five names for good cause.

- 2) When more than one bankruptcy judge is to be appointed in any district, the MSC should designate, at a minimum, a number which equals the number of judgeships to be filled plus three, and at a maximum, a number which equals the number of judgeships to be filled plus five.
- (d) The MSC should submit a report to the Court-Council Committee on Bankruptcy Appointments within 60 days after the application period has closed, unless for good cause, it is unable to do so.

This report should include:

- 1) an evaluation and ranking of the candidates as best qualified under paragraph 3.04(c),
 - 2) a description of the MSC's consideration of the applicants, and
 - 3) relevant information received or prepared by the MSC on the applicants.
- (e) Decisions of the MSC shall be by vote of a majority of all members of the committee. The chair of the committee shall decide matters on which a majority of the members are unable to agree.
- (f) All information made available to the members of MSC in the performance of their duties, including the names of potential nominees and the panel's report, shall be kept in strict confidence unless other provisions of these regulations or the Judicial Council specifically authorizes disclosure.

Section 3.04 Duties of the Court-Council Committee on Bankruptcy Appointments

In order to administer the responsibilities for the selection and appointment of bankruptcy judges in accordance with the provisions of 28 U.S.C. § 152 (a)(1), the United States Court of Appeals for the Ninth Circuit and the Judicial Council of the Ninth Circuit have established a joint Court-Council Committee on Bankruptcy Appointments.

- (a) The purpose of this committee is to recommend candidates to the Court of Appeals for the office of bankruptcy judge, following the regulations adopted by the Judicial Conference of the United States and the Judicial Council of the Ninth Circuit.
- (b) The committee may consist of not more than five members. Three circuit judges shall serve as voting members and shall serve staggered; three-year, terms. A judge serving on the Judicial Conference of the United States Committee on the Administration of the Bankruptcy System is concurrently a member of this

committee, and shall serve as an ex officio, non-voting member during the term of membership on the Judicial Conference of the United States committee.² The chief bankruptcy judge who serves as the observer-member of the Judicial Council of the Ninth Circuit shall serve as an ex officio, non-voting member during the concurrent term of membership on the council.

- (c) The committee is assigned these specific tasks:
- 1) Design and propose the selection and appointment regulations for bankruptcy judges for approval by the Judicial Council of the Ninth Circuit; review the regulations periodically for necessary changes and improvements. These regulations shall be published and followed consistently.
 - 2) Supervise the activities of the MSCs and the staff with respect to their administration of applicable statutes and regulations.
 - 3) Receive and review the reports of the MSCs, and evaluate the nominated candidates for bankruptcy judges; schedule and conduct interviews; conduct any additional reference investigations as may be required.
 - 4) Certify to the Judicial Council of the Ninth Circuit that the procedures used to recommend a candidate for the office of bankruptcy judge are in compliance with the applicable statutes and the policies of the council regarding proper notice and equal opportunity. The committee will certify that the candidates possess integrity and good moral character, physical and mental health, a commitment to equal justice, good bar standing, outstanding legal ability, and judicial temperament.
 - 5) Recommend to the Court of Appeals for appointment one candidate per vacancy.
 - 6) Verify that a candidate has successfully completed the background investigations conducted by the Federal Bureau of Investigation, the Internal Revenue Service, and other agencies.

Section 3.05 Role of the Judicial Council

- (a) The MSC's report and the report of the Court-Council Committee on Bankruptcy Appointments will be circulated to members of the Judicial Council. The Judicial Council will review the report and by majority vote, will accept/not accept the

²Some years, there may be no Ninth Circuit member on the Judicial Conference of the United States Committee on the Administration of the Bankruptcy System.

Court-Council Committee's certification that recruitment procedures were properly carried out under statutory authority and under these regulations.

- (b) The report forwarded by the Judicial Council to the Court of Appeals should remain confidential.

CHAPTER 4. APPOINTMENT OF BANKRUPTCY JUDGES BY THE COURT OF APPEALS

Section 4.01 Selection

- (a) Whenever a majority of the judges of the court of appeals cannot agree upon the appointment of a bankruptcy judge, the chief judge of the court of appeals shall make such appointment.

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

The name of the person to be appointed 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. The Court-Council Committee on Bankruptcy Appointments will assess the background reports and will verify to the court of appeals that the candidate has successfully completed the background investigation.

Section 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.

Section 4.05 Oath of Office

The appointee shall, prior to entering on duty as bankruptcy judge, take the oath or affirmation prescribed by section 453 of title 28, United States Code.

Section 4.06 Record of Appointment

The appointment of the bankruptcy judge shall be entered of record in the court of appeals and the district court, and notice of such appointment shall be given at to the Director.

CHAPTER 5. REAPPOINTMENT OF INCUMBENT JUDGES

(See Circuit Bankruptcy Judge Reappointment Regulations, last amended January 2007, which replaces this section)

revised January 2007