# JUDICIAL COUNCIL OF THE SECOND CIRCUIT

## MANDATORY CONFLICTS SCREENING PLAN

**Preface:** The Judicial Conference of the United States has a adopted a mandatory conflicts screening policy requiring courts and judges to implement automated screening. The Judicial Conference policy is to be administered and directed by the circuit judicial councils.

**Authority:** The Judicial Council of the Second Circuit [hereinafter "Judicial Council"] adopts this Mandatory Conflicts Screening Plan [hereinafter the "Plan"] under the authority set forth in 28 U.S.C. § 332(d)(1) and in accordance with the mandatory financial conflict screening policy adopted on September 19, 2006 by the Judicial Conference of the United States.

§ 1.　　**Scope:** This Plan applies to the Court of Appeals, the six district courts and the six bankruptcy courts within the Second Circuit and to each judge of those courts in regular active service, retired under 28 U.S.C. §§ 371(b) or 372 (a) and performing duties pursuant to a designation under 28 U.S.C. §§ 291 to 294, serving as a visiting judge or recalled to judicial service as a bankruptcy or magistrate judge. This Plan does not apply to judges retired under 28 U.S.C. §§ 371(b) or 372 (a), but not performing duties or to retired judges eligible for recall, but not serving on recall.

§ 2.　　**Court Obligations:** Each court within the Second Circuit shall implement automated screening to identify possible financial conflicts of interest for each judge appointed, designated and assigned, transferred, temporarily assigned or recalled to serve the court. Courts may use either the automated screening component of the Case Management/ Electronic Filing Case Files ("CM/ECF") system or another automated screening system approved by the Judicial Council under this Plan. *See* § 5, *infra.* In implementing this automated screening, each court's clerk's office must:

　　　　a.　　ensure that the following information is entered into the database used for automated screening, including the parties, attorneys, law firms and corporate parents disclosed by the parties;

　　　　b.　　at the request of a judge, enter the judge's conflicts list into the database used for automated conflicts screening;

　　　　c.　　take reasonable steps to ensure that attorneys (or parties who are not represented by counsel) provide information needed for automated conflicts screening, including corporate parent statements as required by Fed. R. App. P. 26.1, Fed. R. Bankr. P. 1007(a)(1) and 7007.1 Fed. R. Civ. 7.1 and Fed. R. Crim. P. 12.4;

d.	screen cases for conflicts on a regular schedule using automated screening, including new matters when they are assigned (or to be assigned) to a judge or panel and all pending matters periodically or after each new entry of relevant information;

e.	notify the judge (or judge's designee) when a possible conflict is identified and reassign the case if an inquiry reveals a conflict that cannot otherwise be avoided;

f.	remind judges on a regular basis to review and update their conflicts lists and to update the designee who will receive notice of a possible conflict and notify newly-appointed judges and visiting judges of their obligations under this Plan; and

g.	provide information, training and assistance to judges, judicial assistants and court staff to facilitate their participation in automated conflicts screening.

§ 3.	**Obligations of Judges:** Each judge has the ultimate responsibility for identifying and avoiding conflicts of interest and should ensure that assigned matters are reviewed for conflicts before action is taken in the matter. Judges, as identified in Section 1, supra, shall use a court-implemented automated conflicts checking system to identify financial and other conflicts of interest. Judges shall:

a.	be continually aware of their personal and fiduciary financial interests and make a reasonable effort to know about the financial interests of a spouse and minor children residing in the household, as required by Canon 3C (2) of the Code of Conduct for United States Judges; *see also* 28 U.S.C. § 455 (c);

b.	develop a "conflicts list" identifying financial conflicts (where the clerk of court had developed a form for this purpose, judges are encouraged to use this form);

c.	update and review the conflicts list at regular intervals and as financial interests change; and

d.	determine promptly whether a conflict exists when notice is provided of a possible conflict and arrange for appropriate action to resolve the conflict, *i.e.*, non-assignment, recusal or divestiture of the interest.

§ 4.  **Exceptions:**

    a.    Upon written application, the Judicial Council may except a court from § 2 of this Plan, and should except the judges of that court from § 3 of this Plan, where automated conflicts screening through CM/F or another automated screening system is not available.

    b.    Upon written application, the Judicial Council may except a judge from § 3 of this Plan where the circumstances indicate that the judge's participation is unnecessary or otherwise is not feasible, including in the following circumstances:

        1.    the judge has no case currently assigned and is not receiving new assignments ( *e.g.*, due to illness); and

        2.    the judge files a written certification stating that he or she knows of no financial interest attributable to the judge requiring disqualification as a financial conflict of interest and does not expect to acquire such an interest in the foreseeable future.

    c.    In granting an exception, the Judicial Council must specify its duration; an exception under § 5 (b)(2) shall not exceed one year, but may be renewed for good cause.

§ 5.  **Adoption of Alternate Screening:**  A court may notify the Judicial Council in writing that it has adopted an alternative automated conflicts screening other than CM/ECF, but should acknowledge that the alternative system may not receive automation support from the Administrative Office.  The request shall contain a detailed description of the system. Any alternative system must have the ability to:

    a.    create and store electronically a judge's conflicts list;

    b.    compare entries on a judge's conflicts list to parties, attorneys, law firms and corporate parents in the court's docket;

    c.    allow for screening on a regularly scheduled basis and on a ad hoc basis; and

    d.    provide notice to a judge (or designee) when a possible conflict is identified.

§ 6.    **Reporting Obligations:**

    a.       Each judge shall make such reports as requested by the Judicial Council.

    b.       The Circuit Executive is directed to submit this Plan to the Judicial Conference of the United States forthwith.  The Circuit Executive further is directed to submit such additional reports as are requested by the Judicial Conference and approved by the Judicial Council.

§ 7.    **Confidentiality of Conflicts Lists:**  Nothing in this Plan shall be construed as requiring a court or judge to disclose the interests listed on a conflicts list to anyone except to the limited extent necessary in the court's implementation of its automated conflicts screening system.

§ 8.    **Enforcement:**  Courts and judges subject to this Plan must comply with its requirements. A judge who violates this Plan may be subject to procedures as set forth in 28 U.S.C. § 332 (d).

§ 9.    **Effective Date**: This Plan takes effect on June 7 2007.

    Adopted by the Second Circuit Judicial Council on June 7, 2007.

    Revised by the Second Circuit Judicial Council on December 12, 2007.