JUDICIAL COUNCIL OF THE SECOND CIRCUIT

MANDATORY CONFLICT SCREENING IMPLEMENTATION PLAN

Authority: The Judicial Council of the Second Circuit ("circuit council") adopts this plan under the authority provided in 28 U.S.C. § 332(d)(1) and consistent with the mandatory financial conflict screening policy adopted by the Judicial Conference on Sept. 19, 2006 (Report of the Proceedings, p. 11), and amended on March 15, 2022 (Report of the Proceedings, p. 10).

§ 1 Scope. This plan applies to the court of appeals, district courts, and bankruptcy courts within the Second Circuit, and to each active, senior and recalled judge of those courts, and to visiting judges to those courts to the extent practical. This plan does not apply to judges retired under 28 U.S.C. §§ 371(b) or 372(a) and not performing duties. While the Judicial Conference policy requires automated screening only for financial conflicts, circuit councils are strongly encouraged to consider extending the mandatory use of automated conflict screening to include other types of conflicts under Canon 3C(1) of the Code of Conduct for United States Judges.

§ 2 Definitions. For purposes of this plan:

(a)   "Conflict of interest" or "conflict" refers to an interest that disqualifies a judge as provided in Canon 3C(1) of the Code of Conduct for United States Judges. *See* also 28 U.S.C. § 455(a), (b).

(b)   "Financial conflict" or "financial conflict of interest" refers to a financial interest that disqualifies a judge as provided in Canon 3C(1)(c) of the Code of Conduct for United States Judges. *See also* 28 U.S.C. § 455(b)(4).

(c)   "Financial interest" has the meaning set forth in Canon 3C(3)(c) of the Code of Conduct for United States Judges. *See also* 28 U.S.C. § 455(d)(4).

(d)   "Judge" refers to circuit, district, bankruptcy, and magistrate judges.

§ 3 Obligations of Courts. Each court is required to implement automated screening to identify possible conflicts of interest for each judge appointed, designated and assigned, transferred, temporarily assigned, or recalled to serve on the court. Each court must use the screening component of the Case Management/Electronic Case Files (CM/ECF) system or other automated screening approved by the circuit council under § 6 of this plan or the Judicial Conference. In implementing the screening, each court must:

(a)   ensure that relevant information is added to the conflict screening system on a timely basis for each matter (including the parties, attorneys, law firms, and corporate parents disclosed by the parties);

(b)   either enter the judge's recusal list into the database used for automated screening or assist the judge or chambers staff to do so;

(c)   take reasonable steps to ensure that parties and/or attorneys provide information needed for conflict 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. P. 7.1, and Fed. R. Crim. P. 12.4;

(d) conduct automated screening of all new matters as they are assigned or about to be assigned to a judge or panel, and screen existing matters each time a judge updates his or her recusal list, or whenever a new party is added to a case, and no less frequently than on a weekly basis;

(e) notify the judge (or designee) when a possible conflict is identified, or for the court of appeals, allow the judges to authorize the clerk of court to assign a matter to another judge when a conflict is identified before an initial assignment is made;

(f) provide periodic notices to judges reminding them to review and update their recusal lists and to review and update the designee (if any) who will receive notice when a possible conflict is identified; and

(g) provide information, training, and assistance to judges and staff to facilitate their participation in automated screening.

§ 4 Obligations of Judges. Each judge has the ultimate responsibility for identifying and avoiding conflicts of interest and must ensure that assigned matters are reviewed for conflicts before action is taken in the matter. To assist in discharging this obligation, each judge is required to use automated screening to identify financial conflicts of interest by using the screening system implemented by each court to which the judge is appointed, designated and assigned, transferred, temporarily assigned, or recalled to serve. Each judge must also use the court's automated screening to identify conflicts of interest other than financial conflicts. Form AO 300 (Checklist for Financial Conflicts) and Form AO 301 (Checklist for Other Conflicts) may be helpful to judges in developing a recusal list. (Financial disclosure reports prepared under 5 U.S.C. app. §§ 101-111 may also be used for this purpose, although the disclosures on these reports are not co-extensive with disqualification requirements).

Each judge must:

(a) Keep informed about personal and fiduciary financial interests, and make a reasonable effort to keep informed about the personal financial interests of the 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 "recusal list," identifying financial and other conflicts, for use in automated screening.

(c) Review the recusal list regularly and update the recusal list whenever there is a change in the judicial officer's financial interests (or the financial interests of a spouse or minor child) that would require recusal.

(d) Complete a "Conflict Review Certification Statement" and submit it to the chief judge of the court semiannually by June 10 and December 10, unless an extension is granted by the chief judge or designee.

(e) Use the recusal list in the court's automated screening process by entering the financial interests and other conflicts listed into the database used for automated

screening, either personally or with the assistance of chambers staff or court staff.

(f)　Personally review each case for conflicts at or before the time of case assignment, if practicable, or no later than before taking any action in a case.

(g)　When notice is provided to the judge (or designee) that a possible conflict has been identified, determine whether a conflict exists and then arrange for appropriate action to resolve the conflict (i.e., recusal or divestiture of the interest).

§ 5. Exceptions. Upon application, the circuit council may except a judge from § 4 of this plan if the circumstances indicate that the judge's participation in automated screening is unnecessary to identify conflicts of interest or is otherwise infeasible, such as when the judge has no case currently assigned and is not receiving new case assignments (e.g., due to serious illness).

§ 6. Approval of Alternative Screening. A court may request that the circuit council approve an alternative automated screening system other than CM/ECF or any future system approved by the Judicial Conference. The circuit council must approve an alternative system only if its functionality is comparable to the automated screening in CM/ECF in all major respects, including the ability to:

(a)　create and store electronically a judge's recusal list;

(b)　compare entries on a judge's 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 an ad hoc basis; and

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

§ 7. Reporting Obligations.

(a)　Each chief judge must make such reports as are requested by the circuit council. The first report must be filed by January 1, 2023, and further reports should be filed annually.

(b)　Each chief judge's annual report must contain the following information:

(1)　the availability of automated screening at the court;

(2)　a description of how the system is used including:

- who enters information from recusal lists (chambers or clerk's office),
- how frequently lists are updated,
- how frequently the screening program is run,
- whether the program is run automatically or only on request, and
- the means used to notify judges of possible conflicts;

(3)　the identity of judges not using automated screening;

(4)   the reasons given for not using automated screening;

(5)   how conflict screening works for visiting judges;

(6)   difficulties with or complaints about automated screening, including any observed failure to identify a conflict;

(7)   confidentiality concerns;

(8)   difficulty entering information into the database or running the screening;

(9)   suggestions for improving the conflict screening process; and

(10)   such other information as requested.

§ 8. Confidentiality of Recusal Lists. Nothing in this plan requires a court or judge to disclose the contents of a recusal list to anyone except to the limited extent necessary in the court's implementation of its automated screening. The Judicial Conference previously rejected a suggestion that it encourage courts to maintain a recusal list for each judge that would be available to litigants upon written request (JCUS-MAR 1999, pp. 11-12, 17-18).

§ 9. Enforcement. Under the authority of 28 U.S.C. § 332(d)(1), courts and judges subject to this plan must comply with its requirements. A judge who violates this plan may be subject to discipline under 28 U.S.C. §§ 332(d)(2) and 351-364. A judge appointed by a court who violates this plan may be subject to discipline by the appointing court in accordance with existing customary practices.

§ 10. Effective Date. This plan takes effect on June 30, 2022.

Adopted by the Judicial Council of the Second Circuit on April 26, 2022.

Judge's Semiannual Conflict Review Certification Statement

As required by the Judicial Conference Mandatory Conflict Screening Policy and the Second Circuit Conflict Screening Implementation Plan, I certify that:

(1)   I have read and understand the Judicial Conference Mandatory Conflict Screening Policy (*Guide to Judiciary Policy*, Vol. 2, Pt. C, Ch. 4), and the Code of Conduct for U.S. Judges.

(2)   Consistent with my obligations under Canon 3C(1)(c) and 3C(2) of the Code of Conduct, I have reviewed my financial holdings and those of my spouse and any minor child residing in my household. (In addition, the Commentary to Canon 3C provides: "Recusal considerations applicable to a judge's spouse should also be considered with respect to a person other than a spouse with whom the judge maintains both a household and an intimate relationship.")

(3)   I have prepared or updated my financial recusal list to include all financial conflicts known to me or I do not have any financial interests (including those of my spouse and any minor child) that would create a financial conflict under Canon 3C(1)(c). See *Ethics Deskbook for United States Judges*, § 4.03. See also Form AO 300 (Checklist for Financial Conflicts).

(4)   I have implemented appropriate procedures to screen for all other types of conflicts under Canon 3C(1) of the Code of Conduct for United States Judges. See *Ethics Deskbook for United States Judges*, § 4.01. See also Form AO 301 (Checklist for Other Conflicts).

Date: _____   _____
                                                                Judge