

**PROCEDURES OF THE SECOND CIRCUIT JUDICIAL COUNCIL  
AND THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT  
FOR APPOINTMENT AND REAPPOINTMENT OF BANKRUPTCY JUDGES**

ADOPTED: December 29, 2014

December 8, 2014: U.S. Court of Appeals, Second Circuit  
December 29, 2014: Second Circuit Judicial Council

These procedures 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. They create no vested rights for any applicant for the position of United States Bankruptcy Judge or incumbent. They shall be followed without regard to race, color, religion, sex, national origin, age (at least 40 years of age or older), sexual orientation or disability.

I. APPOINTMENT

A. Vacancy

1. If practical, an incumbent United States Bankruptcy Judge who decides to retire should give at least one year's notice to the Chief Circuit Judge and the Circuit Executive.
2. Upon such notification or when a vacancy arises for any other reason, the Chief Circuit Judge shall appoint a Merit Selection Committee. The Merit Selection Committee shall follow the procedures set forth in Chapter 3 of the Rules and Regulations of the Judicial Conference of the United States ("JCUS") for the Selection, Appointment and Reappointment of Bankruptcy Judges.

B. Public Notice and Application Period

1. The Circuit Executive will advertise each vacancy in accordance with JCUS regulations and shall set forth the dates of the application period, which shall normally be for a period of six to twelve weeks.
2. If the pool of candidates appears insufficient at the close of the application period, the application period may be extended by the Chief Circuit Judge.

C. The Merit Selection Committee

1. The Chief Circuit Judge will form a Merit Selection Committee consisting of three to five circuit and district judges, at least one of whom is a member of the Judicial Council. The Chief Circuit Judge shall appoint a circuit judge as Chair. The Chief Circuit Judge should consider appointing to the Committee a circuit judge or a district judge who is already serving as the Second Circuit representative to the JCUS Committee on the Administration of the Bankruptcy System.
2. At least one district judge member should be selected from the district in which the vacancy has arisen.
3. The Circuit Executive will forward the applications to the members of the Merit Selection Committee, and will serve as Secretary and administer its affairs.

D. Duties of the Committee

1. The duties of the Merit Selection Committee will be as follows:

- a. Confirm that public notice has been given and due efforts made to identify candidates without regard to race, color, religion, sex, national origin, age (at least 40 years of age or older), sexual orientation or disability.
- b. Confirm that applications to be considered were timely received and comply with the public notice (non-compliant and late applications will be returned to the applicant);
- c. Ascertain that applicants are members in good standing of at least one state bar or the District of Columbia bar and were never other than in good standing of every bar of which they have been members; and
- d. Review applicants using the following criteria: legal competence evidenced by experience with complex legal issues; an aptitude for legal scholarship and writing; and familiarity with the courts and court processes; commitment to equal justice under the law; characteristics indicative of a sound judicial temperament; a reputation for integrity, good character and ethical behavior; and physical and mental health sufficient to meet the demands and tenure of the position.

E. Procedures of the Committee

1. The Merit Selection Committee will review the applications in a manner determined by the Chair of the Committee in consultation with the Circuit Executive.
2. After the initial review of applications, the Chair shall convene a meeting of the members

of the Merit Selection Committee to identify ordinarily no fewer than five candidates to be interviewed, and shall interview the candidates.

3. After the last interview, the Merit Selection Committee shall identify those candidates interviewed for whom due diligence inquiries will be conducted, and shall assign a non-conflicted Committee member to perform due diligence with such assistance by the Circuit Executive as may be required. Due diligence inquiries may include contact with: the individuals listed as the references on the candidate's application; adversaries and co-counsel in cases listed on the application; members of the bankruptcy or litigation bar not listed on the application; academics at law schools within the district or circuit; and judges who may know the candidate.
4. The Merit Selection Committee shall prepare a written report to the Judicial Council setting out the measures taken and recommending, ordinarily, at least three but no more than five nominees, in ranked order, whom the Committee proposes be submitted to the Judicial Council for consideration and vote, and then by the Judicial Council to the Active Judges of the Court of Appeals.

F. Duties of the Circuit Judicial Council

1. The Circuit Executive shall forward the Report of the Merit Selection Committee to the Chief Circuit Judge with the Committee's request that the Report be forwarded to the Judicial Council.
2. At the direction of the Chief Circuit Judge, the Circuit Executive will send the Report of the Merit Selection Committee to the Council with a voting ballot, soliciting votes on

whether to recommend the Committee's Report to the Active Judges of the Court of Appeals.

3. By a majority vote, the Judicial Council may accept, reject or modify the recommendations in the Merit Selection Committee's Report, including by revising the preferred order of candidates.
4. Upon a majority vote of the Judicial Council, the Council will forward the Merit Selection Committee's Report with any recommendations or comments to the Active Judges of the Court of Appeals.

G. Duties of the Active Judges of the Court of Appeals

1. Upon receipt of the Committee's Report and the Judicial Council's recommendations and comments, the Active Judges of the Court of Appeals shall proceed to a vote on a candidate to fill the vacancy. If a majority of the Active Judges of the Court of Appeals wishes to interview one or more of the candidates, the Chief Circuit Judge shall designate three circuit judges to serve on an Interview Committee (which may include members of the Merit Selection Committee) and shall designate one judge as chair. The Circuit Executive will coordinate the interview or interviews. The Interview Committee will furnish a written Report to the Active Judges of the Court of Appeals with the Interview Committee's recommendations.
2. Upon receipt of the Interview Committee's Report, the Active Judges of the Court of Appeals shall, by majority vote, decide whether to accept or reject the Committee's recommendations and select the candidate to fill the vacancy.

3. The Chief Judge shall notify the successful candidate of his or her selection as nominee subject to required background investigations by the Federal Bureau of Investigation and Internal Revenue Service.
4. The Circuit Executive shall initiate the background investigation process by advising the Director of the Administrative Office of the United States Courts of the name and address of the nominee. The Director shall, in turn, request that the FBI and IRS conduct background investigations.
5. The FBI and IRS Report(s) shall be reviewed by the Chief Circuit Judge and the Circuit Executive. If the Chief Circuit Judge confirms that the background investigations revealed no material adverse information and the nominee warrants appointment, the Circuit Executive shall so notify the Active Judges of the Court of Appeals. The Active Judges of the Court of Appeals shall then proceed to a vote on whether to appoint the candidate as a United States Bankruptcy Judge. If, in his or her estimation, the FBI or IRS Report contains material adverse information, the Chief Judge of the Circuit will direct such further action as necessary.
6. The appointment is final when the appointee takes the oath of office. It shall be entered of record in the Court of Appeals with appropriate notice given to the affected district and bankruptcy courts and to the Director of the Administrative Office of the United States Courts.

## **II. REAPPOINTMENT**

### **A. General Procedures**

1. Not less than thirteen months prior to the expiration date of the current term of an incumbent United States Bankruptcy Judge, the Circuit Executive shall notify the incumbent judge in writing of the date of the expiration of the judge's term and request that the judge advise the Chief Circuit Judge whether the incumbent intends to seek reappointment. The letter shall transmit a copy of the Circuit's reappointment procedures and instructions for preparing a response.
2. Not less than twelve months before the expiration of the current term, an incumbent Judge seeking reappointment shall advise the Chief Circuit Judge in writing of his or her willingness to accept reappointment.
3. The receipt of the written notification by the Chief Circuit Judge will commence the reappointment process.
4. The Circuit Executive will coordinate the reappointment process for the Court of Appeals in accordance with applicable law and regulations, including submission of Form (Per 74), Notice of Willingness to Accept Reappointment.
5. The Court of Appeals may reappoint an incumbent bankruptcy judge to a new fourteen-year term without considering other potentially qualified candidates.

### **B. The Reappointment Committee**

1. Upon receipt of notice from the incumbent Bankruptcy Judge that he or she is willing to accept reappointment, the Chief Circuit Judge

shall form a committee of three circuit and district judges, of which one member shall be a district judge from the district in which the incumbent bankruptcy judge sits, to inquire into the reappointment request. The Chief Circuit Judge shall designate the Chair of the Committee. At least one member of the Committee shall be a member of the Second Circuit Judicial Council. The Chief Circuit Judge should endeavor to notify the incumbent no later than 45 days before the last date of the incumbent's term whether or not the reappointment request will be granted.

2. The Circuit Executive will serve as Secretary to the Reappointment Committee, and will administer its affairs.

C. Public Notice Soliciting Comments

1. Within sixty (60) days of the Chief Circuit Judge's receipt of the written reappointment request of the incumbent Bankruptcy Judge, the Circuit Executive shall cause to be published a public notice in accordance with the JCUS Regulations for the reappointment of United States Bankruptcy Judges.
2. The period for receipt of confidential comments solicited by the Circuit Executive shall be no less than thirty (30) days and shall not exceed forty-five (45) days.
3. The public notice shall direct that comments be provided in writing to the Circuit Executive.
4. The Circuit Executive shall submit the written comments received during the public comment period to the Chief Circuit Judge and the members of the Reappointment Committee within ten (10) calendar days after close of the public comment period.

D. Duties of the Reappointment Committee

1. In addition to seeking written comments from the bar, academia and the public concerning the incumbent bankruptcy judge, the Reappointment Committee, or its designee, shall also conduct such due diligence inquiries as seem useful. Such inquiries may be addressed to, among others, the Chief District Judge, the Chief Bankruptcy Judge, the Chair of the District Court Bankruptcy Committee, the Second Circuit Representative to the JCUS Bankruptcy Committee, the United States Trustee, current and former bankruptcy judges, and attorneys appearing regularly before the incumbent bankruptcy judge.
2. Due diligence inquiries may explore, among other relevant topics, judicial demeanor, caseload management, the quality of decision-making, the quality of written opinions, effectiveness in administrative roles, relations with the district court, failure to pay taxes, other violations of law, and conduct unbecoming a judge, even if not a crime, such as improper conduct with court staff.
3. The Reappointment Committee should ordinarily interview the incumbent bankruptcy judge.
4. The Circuit Executive, at the direction of the Reappointment Committee, shall send a questionnaire based on the criteria set forth in II, D (2) to the district judges of the district in which the incumbent bankruptcy judge sits, and solicit confidential responses.
5. After completing its inquiries, the Reappointment Committee shall advise the Active Judges of the Court of Appeals, in writing, as to the measures taken to obtain public comment, summarizing the comments

received as well as information derived from other sources (maintaining appropriate confidentiality), and shall recommend whether the incumbent bankruptcy judge should be reappointed.

6. If the Reappointment Committee plans to recommend that the incumbent bankruptcy judge should not be reappointed, it may provide the incumbent bankruptcy judge with a summary of its tentative reasons for recommending against reappointment and may permit the incumbent bankruptcy judge to address the issues in writing. If such a response is provided, the Reappointment Committee shall include it with its final recommendation to the Active Judges of the Court of Appeals.
7. The Circuit Executive shall submit the Reappointment Committee's Report to the Chief Circuit Judge with a request that the Report be forwarded to the Judicial Council for any comments the Council may wish to submit.

E. Confidentiality

1. Comments received by the Circuit Executive during the public comment period concerning the qualifications of an incumbent bankruptcy judge shall be kept confidential by the Court and distributed only to the Active Judges of the Court of Appeals. If comments are made on the condition that their source not be identified, the Circuit Executive shall summarize the comments without attribution.
2. At the direction of the Reappointment Committee, the Circuit Executive will provide a summary of the comments received during the public comment period to the incumbent bankruptcy judge without attribution.

3. The Chief Circuit Judge, the Reappointment Committee, or the Active Judges of the Court of Appeals may determine that the substance of certain comments be disclosed to the incumbent bankruptcy judge in order to afford a fair opportunity to respond. The commentor's name will not be revealed to the incumbent without the commentor's prior written authorization.

F. Duties of the Active Judges of the Court of Appeals

1. The Active Judges of the Court of Appeals shall review the Report and Recommendation of the Reappointment Committee. The Court of Appeals may elect to interview the incumbent bankruptcy judge prior to a vote.
2. Not later than thirty (30) calendar days after the Active Judges of the Court of Appeals receive the Report and Recommendation of the Reappointment Committee, the Active Judges of the Court of Appeals shall vote on whether to appoint the incumbent bankruptcy judge to a new fourteen-year term.
3. The decision to appoint the incumbent bankruptcy judge to a new fourteen-year term will be by a majority vote of the Active Judges of the Court of Appeals, as set forth in § 5.03 of the JCUS Regulations.
4. If a majority of the Active Judges of the Court of Appeals vote in favor of reappointment, the Court will issue an Order of Reappointment signed by the Chief Circuit Judge, which shall be entered of record in the Court of Appeals and the pertinent district court(s). Notice of such reappointment shall be given by the Circuit Executive to the Director of the Administrative Office.