

Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Appointment and Reappointment of United States Magistrate Judges

Qualifications of United States Magistrate Judges
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Promulgated March 1980; Last Amended March 2010

In accordance with 28 U.S.C. § 631(b)(5), the Judicial Conference of the United States hereby promulgates these regulations for the selection, appointment, and reappointment of United States Magistrate Judges.

References to district judges in sections 3.01, 3.02(a), 4.01, 6.02, and 6.03(c) of these regulations include all active district judges and, as determined by the court, either all senior judges or those senior judges who performed in the preceding calendar year an amount of work equal to or greater than the amount of work an average judge in active service on that court would perform in six months, and who elect to exercise such powers. [Ed. Note: There is a conflict in the law as it relates to senior judges voting on the appointment of magistrate judges. See 28 U.S.C. §§ 296 and 631(a), as amended January 7, 2008. The Executive Committee, on behalf of the Judicial Conference, is seeking the repeal of section 504 of the Court Security Improvement Act of 2007, which amended 28 U.S.C. § 631(a) to allow all senior judges to participate in the appointment of magistrate judges.]

CHAPTER 1 - QUALIFICATIONS OF UNITED STATES MAGISTRATE JUDGES

Sec. 1.01. Minimum Qualifications

To be qualified for appointment or reappointment as a United States magistrate judge, a person must:

- a. Be, and have been for at least five years, a member in good standing of the bar of the highest court of a State, the District of Columbia, the Commonwealth of Puerto Rico, the Territory of Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States.
- b. Have been engaged in the active practice of law for a period of at least five years. The court may consider as substitute experience for the active practice of law the following, including any combination thereof:
 1. Judge of a state court of record or other state judicial officer.
 2. United States magistrate judge, bankruptcy judge, or other federal judicial officer.
 3. Attorney for federal or state agencies.
 4. Up to two years as a law clerk to any judge or judicial officer, staff attorney, or pro se law clerk in a court.
 5. Other legal experience which is suitable as a substitute in the opinion of the majority of the court.
- c. Be competent to perform the duties of the office, of good moral character, emotionally stable and mature, committed to equal justice under the law, in good health, patient, courteous, and capable of deliberation and decisiveness when required to act on his or her own reason and judgment.
- d. Not be related by blood or marriage to a judge of the appointing court or courts, within the degrees specified in 28 U.S.C. § 458, at the time of the initial appointment.
- e. In the case of an initial appointment, not be seventy years of age or older. [Ed. note: See 28 U.S.C. § 631(d) regarding continuation and reappointment of magistrate judges upon attaining age seventy.]

Sec. 1.02. Additional Qualifications

A district court may establish additional qualification standards appropriate for a particular magistrate judge position, taking into account

the specific responsibilities anticipated for that position. In no event, however, may the additional qualification standards be inconsistent with the court's policy as an equal opportunity employer.

CHAPTER 2 - PUBLIC NOTICE

Sec. 2.01. Publication

Before the selection of a magistrate judge, whether a new appointment or a reappointment, a public notice 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; a widely circulated local legal periodical; bar association web sites; government web sites; and other resources relied upon by legal professionals.

To encourage applications from all qualified individuals, the court is encouraged to transmit the public notice to state and local bar associations and interest groups that focus on women and minorities. The court should also consider utilizing national publications and the Judiciary's J-Net Job Vacancies site.

Sec. 2.02. Contents of Notice

Except as provided in section 6.03, the public announcement shall describe the duties of the position, the pertinent qualification standards, 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 applicant personally, indicating the person's willingness to serve if selected.

Sec. 2.03. Filing of Notice

The public notice shall be filed and posted in the office of the clerk of court and a copy shall be provided to the Director of the Administrative Office of the United States Courts.

CHAPTER 3 - MERIT SELECTION PANEL

Sec. 3.01. Establishment of Panel

Before the appointment or reappointment of a United States magistrate judge, the court, by majority vote of the district judges, shall appoint a merit selection panel which shall recommend to the court for consideration individuals whose character, experience, ability, and commitment to equal justice under the law fully qualify them to serve as a United States magistrate judge.

Sec. 3.02. Membership

- a. The panel shall be composed of a chairperson and other members appointed by majority vote of the district judges of the court. The panel shall have no fewer than seven members, including the chairperson.
- b. Members of the panel shall receive no compensation for their service, but may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law.
- c. The panel shall consist of lawyers and other members of the community. At least two members of the panel shall be non-lawyers. Each member of the panel shall be a resident of the district within which the appointment is to be made, or, if a nonresident, have significant ties to the community of the district. No federal judge, including a senior, retired, or recalled judge, or other district court officer or district court employee shall be appointed as a member of the panel. This prohibition does not preclude United States attorneys and assistant United States attorneys, and federal defenders and assistant federal defenders from serving on the panel.
- d. No person shall be considered for selection by the court while serving as a member of the panel or for a period of one year after completion of such service. The Committee on the Administration of the Magistrate Judges System is authorized to grant waivers to this provision on an individual case basis.
- e. To further efforts to achieve diversity in all aspects of the magistrate judge selection process, the court is encouraged to appoint a diverse merit selection panel.

Sec. 3.03. Duties

- a. The chairperson shall have such duties as the court may assign.
- b. Except as provided in Section 3.04 of these regulations, all information made available to the members of the panel in the performance of their duties, including the names of applicants and the identities of individuals recommended by the panel, shall be kept in strict confidence by the panel and the court, provided, however, that applicants may, upon request, waive the confidentiality requirements to allow the court or the panel to publicize the applicants' names in order to solicit comments from the bar and the public.
- c. Decisions of the panel shall be by majority vote of all the members.
- d. The panel shall examine all applications and may, in its discretion, personally interview applicants. The panel shall make an affirmative effort to identify and give due consideration to all qualified applicants without regard to race, color, age (40 and over), gender, religion, national origin, or disability.
- e. The panel shall determine, from among the applicants, those individuals who meet all of the standards set forth by these regulations for appointment as a United States magistrate judge, and shall designate those individuals whom the panel considers best qualified.
- f. The panel shall submit a report to the court as provided in the following section.

Sec. 3.04. Panel Report

If an appointment is to be made to a vacant or newly created position, the panel shall report to the court the results of its activities within ninety days after its creation unless otherwise directed by the court. The report of the panel shall specify the five applicants the panel has determined as best qualified and have attached to it all written information received by or prepared by the panel concerning the recommended applicants. The court may accept a list containing fewer than five names for good cause shown by the panel in its report.

CHAPTER 4 - NEW APPOINTMENTS OF MAGISTRATE JUDGES

Sec. 4.01. Selection from List and Majority Decision of Judges

The district judges shall select from the list provided by the panel. However, if no applicant receives a majority vote of the district judges, the court shall request a second list of five names. The court is then free to select from either list. If, again, no applicant receives a majority vote, the chief judge shall make the selection for the court from either list.

Sec. 4.02. FBI and IRS Reports

The name of the person selected by the court for appointment to either a full-time or a part-time magistrate judge position shall be submitted to the Director of the Administrative Office of the United States Courts, who shall request full-field background reports, with a 15-year scope, by the Federal Bureau of Investigation and background reports by the Internal Revenue Service. A part-time magistrate judge, who was the subject of a full-field FBI investigation before appointment to the part-time position, is required to undergo a second full-field investigation before appointment to a full-time position. The Committee on the Administration of the Magistrate Judges System is authorized to grant waivers under this section, on an individual case basis, in circumstances involving high turnover and recruitment problems due to isolated locations of certain part-time magistrate judge positions.

Sec. 4.03. Order of Appointment

An order of appointment may be issued by the district court 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 applicant selected by the court for appointment has filed returns as required.

Sec. 4.04. Oath of Office

The appointee shall, prior to entering on duty as magistrate judge, take the oath or affirmation prescribed by 28 U.S.C. § 453, and the constitutional oath prescribed by 5 U.S.C. § 3331.

Sec. 4.05. Record of Appointment

The appointment of a magistrate judge shall be entered of record in the district court, and notice of such appointment shall be given at once by the clerk of that court to the Director.

CHAPTER 5 - SELECTION OF PART-TIME MAGISTRATE JUDGES

Sec. 5.01. Alternative Procedures

The provisions of Chapters 1 - 4 of these regulations shall apply to the selection and appointment of a part-time magistrate judge; except that, in the case of the appointment of a part-time magistrate judge whose authorized annual salary is less than one-third of the maximum salary authorized for a full-time magistrate judge:

- a. The court may, in lieu of the requirements of section 3.02 concerning the membership of merit selection panels, appoint a panel of less than seven members, but not less than three members. Federal judges, including circuit judges, senior, retired, and recalled judges, and other district court officers or district court employees may serve on the panel, although at least two members of the panel must be from outside the federal judiciary.
- b. The court may, in lieu of the requirement of section 3.04 that the panel submit to the court a list of five names, authorize the panel to determine the size of the list submitted to the court.
- c. The court may waive the bar membership requirements of section 1.01 if the appointing court and the conference have determined that no qualified individual who is a member of the bar is available to serve at a specific location as provided in 28 U.S.C. § 631(b)(1).

CHAPTER 6 - REAPPOINTMENT OF MAGISTRATE JUDGES

Sec. 6.01. Qualifications

The provisions of chapter 1 of these regulations apply to the reappointment of United States magistrate judges, except that the court may waive the bar membership requirement of section 1.01 for the reappointment of a part-time magistrate judge as provided in 28 U.S.C. § 631(b)(1).

Sec. 6.02. Alternative Selection Methods

Before the expiration of an incumbent magistrate judge's term of office the court shall determine, by majority vote of the district judges, whether it wishes to consider the reappointment of the incumbent. The court should give due consideration to the professional and career status of the position of United States magistrate judge.

- a. If the court determines not to reappoint the incumbent, it shall so notify the incumbent and shall follow the initial selection procedures set forth in chapters 2, 3, 4, and 5 of these regulations. Under these procedures, no comments may be sought on the incumbent magistrate judge's performance or reappointment, and the incumbent magistrate judge may not apply for the position.
- b. If the court desires to consider the reappointment of the incumbent, it shall follow the selection procedures set forth in section 6.03 of these regulations.

Sec. 6.03. Procedures

If the court desires to consider the reappointment of an incumbent magistrate judge, it shall follow the procedures in this section:

- a. Public Notice: The court shall cause to be published a public notice stating that it is required by law to establish a panel of citizens to consider the reappointment of the incumbent magistrate judge to a new term of office. The public notice shall be published in sources that will reach a wide audience of members of the public qualified to comment. These sources may include, but are not limited to, the following: a general local newspaper; a widely circulated local legal periodical; bar association web sites; government web sites; and other resources relied upon by legal

professionals. The notice shall describe the duties of the position, state the date of expiration of the incumbent's current term of office, and invite comments from members of the public. The notice shall include the name and address of the person to whom comments shall be submitted. A copy of the notice shall be filed and posted in the office of the clerk of court and a copy shall be provided to the Director of the Administrative Office.

- b. Merit Selection Panel: Before the reappointment of a magistrate judge, the court shall establish a panel as prescribed in section 3.02, or section 5.01(a), as the case may be, of these regulations. The panel shall review the incumbent's current service as magistrate judge and other experience, the comments from members of the bar and public, and other evidence of the incumbent's good character, ability, and commitment to equal justice under the law. The panel shall report to the court within ninety days after its creation, unless otherwise directed by the court, whether the incumbent is recommended for reappointment.
- c. Decision of the Court: After due consideration of the report of the panel, the court shall determine whether to reappoint the incumbent by majority vote of all district judges. If the court decides not to reappoint the incumbent, it shall so notify the incumbent and proceed anew with the selection procedures prescribed in chapters 2, 3, 4, and 5 of these regulations.

CHAPTER 7 - APPOINTMENTS TO COMBINATION POSITIONS

Sec. 7.01.

The court may consider the selection of an incumbent clerk or deputy clerk of court to fill a combination magistrate judge/clerk or deputy clerk of court position, in the same manner as prescribed in chapter 6 for reappointment.