

Guide to Judiciary Policy

Vol 3: Judges

Ch 4: Selection, Appointment, and Reappointment of Magistrate Judges

§ 410 Overview

§ 420 Judicial Conference Regulations

§ 420.10 Qualifications of United States Magistrate Judges

§ 420.20 Public Notice

§ 420.30 Merit Selection Panel

§ 420.40 New Appointments of Magistrate Judges

§ 420.50 Selection of Part-Time Magistrate Judges

§ 420.60 Reappointment of Magistrate Judges

§ 420.70 Appointments to Combination Positions

§ 410 Overview

- (a) The judges of each district court appoint magistrate judges in the number and at the locations determined by the Judicial Conference. **See:** [28 U.S.C. § 631\(a\)](#). Magistrate judges must be selected by the district courts under standards and procedures promulgated by the Judicial Conference. **See:** [28 U.S.C. § 631\(b\)\(5\)](#).
- (b) The Judicial Conference regulations establishing the standards and procedures for appointing and reappointing magistrate judges were first promulgated at the Conference's 1980 session ([JCUS-MAR 80](#), p. 32). The Conference later amended the regulations at its 1981 ([JCUS-MAR 81](#), p. 29), 1982 ([JCUS-SEP 82](#), pp. 93-94), 1986 ([JCUS-SEP 86](#), p. 77), 1992 ([JCUS-SEP 92](#), p. 75), 1996 ([JCUS-MAR 96](#), p. 30), 1997 ([JCUS-MAR 97](#), p. 29), 1998 ([JCUS-SEP 98](#), p. 82), 1999 ([JCUS-MAR 99](#), p. 29), 2000 ([JCUS-SEP 00](#), p. 60), 2001 ([JCUS-SEP/OCT 01](#), p. 65), 2004 ([JCUS-MAR 04](#), p. 23), 2006 ([JCUS-SEP 06](#), p. 29), 2007 ([JCUS-SEP 07](#), p. 29), 2008 ([JCUS-MAR 08](#), p. 23 and [JCUS-SEP 08](#), pp. 29-30), 2009 ([JCUS-SEP 09](#), p. 25), 2010 ([JCUS-MAR 10](#), pp. 21-22), 2011 ([JCUS-MAR 11](#), pp. 30-31), and 2013 ([JCUS-SEP 13](#), p. 29) sessions.
- (c) Full-time magistrate judges are appointed to 8-year terms of office by the judges of each respective United States district court. **See:** [28 U.S.C.](#)

[§ 631\(e\)](#). Part-time magistrate judges are appointed to 4-year terms of office by the judges of the court. **See:** [28 U.S.C. § 631\(e\)](#). The selection and reappointment regulations refer in several places to the actions of a majority vote of the district judges. The Federal Judiciary Administrative Improvements Act of 2010 amended Title 28, United States Code, section 631(a) by repealing section 504 of the Court Security Improvement Act of 2007. This solved a conflict regarding which senior judges can vote on magistrate judge appointments. Now, under [28 U.S.C. § 296](#), those senior judges with a 50 percent workload may participate in court governance activities generally, including magistrate judge appointments.

- (d) The Judicial Conference accordingly adopted the following introductory instruction to the selection and appointment regulations at its March 2011 session ([JCUS-MAR 11](#), p. 30):

References to district judges in [§ 420.30.10](#), [§ 420.30.20\(a\)](#), [§ 420.40.10](#), [§ 420.60.20](#), and [§ 420.60.30\(c\)](#) of these regulations include all active district judges and 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.

§ 420 Judicial Conference Regulations

§ 420.10 Qualifications of United States Magistrate Judges

§ 420.10.10 Minimum Qualifications

To be qualified for appointment or reappointment as a U.S. 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) U.S. magistrate judge, bankruptcy judge, or other federal judicial officer.
 - (3) Attorney for federal or state agencies.
 - (4) No more than two years as a law clerk to any judge or judicial officer or as a staff attorney or pro se law clerk in a court.
 - (5) Other types of substantial legal experience (subsequent to receipt of a law degree or license to practice law), not included in (1) through (4) above, 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.

[Note: For information on continuation and reappointment of magistrate judges upon attaining age 70, **see:** [28 U.S.C. § 631\(d\)](#).]

§ 420.10.20 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.

§ 420.20 Public Notice

§ 420.20.10 Publication

Before the selection of a magistrate judge, whether a new appointment or a reappointment, a public notice must 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 [JNet Job Vacancies](#) site.

§ 420.20.20 Contents of Notice

Except as provided in [§ 420.60.30](#), the public announcement must 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.

§ 420.20.30 Filing of Notice

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

§ 420.30 Merit Selection Panel

§ 420.30.10 Establishment of Panel

Before the appointment or reappointment of a U.S. magistrate judge, the court, by majority vote of the district judges, must appoint a merit selection panel which will 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 U.S. magistrate judge. The panel must be established by an order of the court specifying the names of the members, whether each is a lawyer or a nonlawyer, and the effective date of the panel's appointment. A copy of the court's order appointing the merit selection panel must be submitted to the Director of the Administrative Office at the time the order is entered and prior to any action by the panel. (For information on the participation of senior judges in the appointment of magistrate judges, **see**: [§ 410\(c\) and \(d\)](#).)

§ 420.30.20 Membership

- (a) The panel must be composed of a chairperson and other members appointed by majority vote of the district judges of the court. The panel must have no fewer than seven members, including the chairperson. (For information on the participation of senior judges in the appointment of magistrate judges, **see**: [§ 410\(c\) and \(d\)](#).)

- (b) Members of the panel may 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 must consist of lawyers and other members of the community. At least two members of the panel must be non-lawyers. Each member of the panel must 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 active, senior, or recalled federal judge, retired Article III judge, or other district court officer or district court employee may be appointed as a member of the panel. This prohibition does not preclude U.S. attorneys and assistant U.S. attorneys, and federal defenders and assistant federal defenders from serving on the panel.
- (d) One year must elapse between the earlier of when a former merit selection panel submitted its report to the court or when the member of that panel now seeking a position resigned, and the date by which applications for a subsequent vacancy are due to be submitted to the court, for that former panel member to be considered for the subsequent magistrate judge position. 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.

§ 420.30.30 Duties

- (a) The chairperson will have such duties as the court may assign.
- (b) Except as provided in [§ 420.30.40](#) 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, must 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 must be by majority vote of all the members.
- (d) The panel must examine all applications and may, in its discretion, personally interview applicants. The panel must 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 must determine, from among the applicants, those individuals who meet all of the standards set forth by these regulations for appointment as a U.S. magistrate judge, and must designate those individuals whom the panel considers best qualified.
- (f) The panel must submit a report to the court as provided in the following section.

§ 420.30.40 Panel Report

If an appointment is to be made to a vacant or newly created position, the panel must report to the court the results of its activities within 90 days after its creation unless otherwise directed by the court. The report of the panel must 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.

§ 420.40 New Appointments of Magistrate Judges

§ 420.40.10 Selection from List and Majority Decision of Judges

The district judges must select from the list provided by the panel. However, if no applicant receives a majority vote of the district judges, the court must 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 must make the selection for the court from either list. (For information on the participation of senior judges in the appointment of magistrate judges, **see**: [§ 410\(c\) and \(d\)](#).)

§ 420.40.20 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 must be submitted to the Director of the Administrative Office, who must request full-field background reports, with a 15-year scope, by the Federal Bureau of Investigation (FBI) and background reports by the Internal Revenue Service (IRS). 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.

§ 420.40.30 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 FBI and the IRS. If in the judgment of the court the IRS report has not been completed in a timely manner, it may waive the report provided that it has taken steps to ensure that the applicant selected by the court for appointment has filed returns as required.

§ 420.40.40 Oath of Office

The appointee must, 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](#).

§ 420.40.50 Record of Appointment

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

§ 420.50 Selection of Part-Time Magistrate Judges

§ 420.50.10 Alternative Procedures

The provisions of [§§ 420.10 through 420.40](#) of these regulations will 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 [§ 420.30.20](#) concerning the membership of merit selection panels, appoint a panel of less than seven members, but not less than three members. The panel must be established by an order of the court specifying the names of the members, whether each is a lawyer or a nonlawyer, and the effective date of the panel's appointment. A copy of the court's order appointing the merit selection panel must be submitted to the Director of the Administrative Office at the time the order is entered and prior to any action by the panel. 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 [§ 420.30.40](#) 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 [§ 420.10.10](#) if the appointing court and the Judicial 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\(b\)\(1\)](#).

§ 420.60 Reappointment of Magistrate Judges

§ 420.60.10 Qualifications

The provisions of [§ 420.10](#) of these regulations apply to the reappointment of U.S. magistrate judges, except that the court may waive the bar membership requirement of [§ 420.10.10](#) for the reappointment of a part-time magistrate judge as provided in [28 U.S.C. § 631\(b\)\(1\)](#).

§ 420.60.20 Alternative Selection Methods

Before the expiration of an incumbent magistrate judge's term of office, the court must determine, by majority vote of the district judges, whether it wishes to consider the reappointment of the incumbent. In the event that there is no concurrence of a majority of the judges of the court, the chief judge must make the determination, as provided in [28 U.S.C. § 631\(a\)](#). (For information on the participation of senior judges in the appointment of magistrate judges, **see**: [28 U.S.C. § 296](#); [Guide, Vol 3, § 410\(c\) and \(d\)](#).) The court should give due consideration to the professional and career status of the position of U.S. magistrate judge.

- (a) If the court determines not to reappoint the incumbent, it must so notify the incumbent and must follow the initial selection procedures set forth in [§§ 420.20 through 420.50](#) 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 must follow the selection procedures set forth in [§ 420.60.30](#) of these regulations.

§ 420.60.30 Procedures

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

(a) Public Notice

The court must 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 must 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 must 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 must include the name and address of the person to whom comments should be submitted. A copy of the notice must be filed and posted in the office of the clerk of court and a copy must be provided to the Director of the Administrative Office.

(b) Merit Selection Panel

Before the reappointment of a magistrate judge, the court must establish a panel as prescribed in [§ 420.30.20](#), or [§ 420.50.10\(a\)](#), as the case may be, of these regulations. The panel must 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 must 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 must determine whether to reappoint the incumbent by majority vote of all district judges. In the event that there is no concurrence of a majority of the judges of the court, the chief judge must make the determination, as provided in [28 U.S.C. § 631\(a\)](#). (For information on the participation of senior judges in the appointment of magistrate judges, **see**: [28 U.S.C. § 296](#); [Guide, Vol 3, § 410\(c\) and \(d\)](#).) If the court decides not to reappoint the incumbent, it must so notify the incumbent and proceed anew with the selection procedures prescribed in [§§ 420.20 through 420.50](#) of these regulations.

§ 420.70 Appointments to Combination Positions

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 [§ 420.60](#) for reappointment.