



THE
SELECTION,
APPOINTMENT,
AND
REAPPOINTMENT
OF UNITED
STATES
MAGISTRATE
JUDGES

Judges
Information
Series
Nº. 2



ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS
Leonidas Ralph Mecham, Director

THE SELECTION,
APPOINTMENT,
AND REAPPOINTMENT
OF UNITED STATES
MAGISTRATE JUDGES

APRIL 2002

Judges Information Series
Nº. 2

MAGISTRATE JUDGES DIVISION
OFFICE OF JUDGES PROGRAMS
ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

Thurgood Marshall Federal Judiciary Building
Washington, D.C. 20544
(202) 502-1830

I ntroduction

This pamphlet is designed to help the district courts and the members of merit selection panels in carrying out their responsibilities in the selection, appointment, and reappointment of United States magistrate judges, in accordance with the Federal Magistrate Act of 1979, as amended.¹ It has been approved by the Judicial Conference Committee on the Administration of the Magistrate Judges System. The purpose of the pamphlet is to familiarize panel members with the role of magistrate judges in the federal court system, to explain the statute and regulations governing the selection, appointment, and reappointment of magistrate judges, and to suggest procedures the panel might follow in performing its duties.

The duties assigned to magistrate judges by district judges vary considerably from court to court. In addition, the range and volume of duties of part-time magistrate judges are generally more limited than those of full-time magistrate judges. Accordingly, the selection process should be geared by the district court and by the selection panel to the specific magistrate judge position under consideration and should focus on the nature and volume of work to be performed by a magistrate judge. **Those requirements and suggestions pertaining solely to part-time magistrate judge positions have been bolded.**

The differences in procedures between the appointment of a new magistrate judge and the reappointment of an incumbent magistrate judge are described in this pamphlet. In the case of the appointment of a new magistrate judge, the function of

¹ The Federal Magistrate Act of 1979 (Pub. L. No. 96-82; 93 Stat. 643) established certain minimum standards and procedures for the selection and appointment of United States magistrate judges, which are codified at 28 U.S.C. § 631. In accordance with 28 U.S.C. § 631(b)(5), the Judicial Conference of the United States has promulgated the Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Appointment and Reappointment of United States Magistrate Judges (see Appendix H).

the panel is to identify five members of the bar who are the best qualified for appointment by the court as magistrate judge. In the case of a reappointment, the panel's role is to appraise the performance of the incumbent magistrate judge and to recommend to the court whether that individual should be reappointed to a new term of office.

Procedures for the reappointment of an incumbent magistrate judge are discussed generally in Chapter 13 of this pamphlet. A court or panel considering a reappointment should not restrict itself to review of that chapter alone, however, since much of the remaining text is also relevant to its deliberations.

The pertinent statute and Judicial Conference regulations have established a number of mandatory rules governing the selection, appointment, and reappointment of magistrate judges. A large degree of freedom and discretion has been extended, nonetheless, to each district court and the panels in defining appropriate procedures for carrying out their missions. While the pamphlet delineates the rules and procedures that must be followed, it also provides guidance in those areas where the courts and panels have been given discretion. Members of the panels should also heed any instructions and suggestions from the court.

Contents

i	<i>Introduction</i>
1	1 • THE OFFICE OF UNITED STATES MAGISTRATE JUDGE
4	2 • THE JURISDICTION OF MAGISTRATE JUDGES
7	3 • THE QUALIFICATIONS OF MAGISTRATE JUDGES
10	4 • PUBLIC NOTICE
12	5 • APPOINTMENT OF THE MERIT SELECTION PANEL
14	6 • SUPPORT SERVICES
15	7 • MEETINGS OF THE PANEL
17	8 • CONFIDENTIALITY REQUIREMENTS
19	9 • EVALUATING THE APPLICANTS
23	10 • REPORT AND RECOMMENDATIONS TO THE COURT
25	11 • SELECTION BY THE COURT
27	12 • DISPOSITION OF RECORDS
28	13 • REAPPOINTMENT OF AN INCUMBENT MAGISTRATE JUDGE TO A NEW TERM
33	<i>Appendix A • Sample Full Public Notice for Appointment of New Magistrate Judge</i>
35	<i>Appendix B • Sample Abbreviated Public Notice for Appointment of New Magistrate Judge</i>
36	<i>Appendix C • Sample Full Public Notice for Reappointment of Incumbent Magistrate Judge</i>
37	<i>Appendix D • Sample Abbreviated Public Notice for Reappointment of Incumbent Magistrate Judge</i>
38	<i>Appendix E • Sample Application Form: United States Magistrate Judge</i>
46	<i>Appendix F • Sample Waiver of Confidentiality</i>
47	<i>Appendix G • The Federal Magistrates Act</i>
60	<i>Appendix H • Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Appointment and Reappointment of United States Magistrate Judges</i>

I

THE OFFICE OF UNITED STATES MAGISTRATE JUDGE

A United States magistrate judge is a judicial officer of the district court, appointed by majority vote of the active district judges of the court.

The office of United States magistrate judge was established by the Federal Magistrates Act of 1968.² Its foundation is the United States commissioner system, established in 1793. Commissioners were previously used in federal courts to try petty offense cases committed on federal property, to issue search warrants and arrest warrants, to determine bail for federal defendants, and to conduct other initial proceedings in federal criminal cases. The Federal Magistrates Act of 1968, as amended, was enacted by the Congress to create a new federal judicial officer who would (1) assume all the former duties of the commissioners and (2) conduct a wide range of judicial proceedings to expedite the disposition of the civil and criminal caseloads of the United States district courts. These duties are discussed more fully in chapter 2, “The Jurisdiction of Magistrate Judges.” Congress set forth in the statute powers and responsibilities that could be delegated by district court judges to magistrate judges. To achieve maximum flexibility in meeting the needs of each court, however, it left the actual determination of which duties to assign to magistrate judges to the individual courts. The Act has been amended on several occasions to improve the administration of the magistrate judges system, to confer

² Pub. L. No. 90-578, 82 Stat. 1107 (1968) (codified as amended at 28 U.S.C. §§ 604, 631-639 and 18 U.S.C. §§ 3401-3402).

greater judicial authority on magistrate judges, and to change the title of the office from “United States magistrate” to “United States magistrate judge.”

The number of magistrate judge positions is determined by the Judicial Conference of the United States, based on recommendations of the respective district courts, the pertinent judicial councils of the circuits, and the Director of the Administrative Office of the United States Courts. A full-time magistrate judge is appointed for a term of eight years; a part-time magistrate judge serves for a term of four years. A magistrate judge may be removed from office during the term for which he or she is appointed only for incompetency, misconduct, neglect of duty, or physical or mental disability.

A vacancy in a full-time or part-time magistrate judge position may be filled without any change in salary, location, or arrangements upon the recommendation of the Director of the Administrative Office, the district court, and the judicial council of the circuit. Such recommendations are not needed, however, if the district has been reviewed by the Magistrate Judges Division and the Judicial Conference within the past two years. If a change in salary, location, or arrangements is recommended by the Director, the district court, or the judicial council of the circuit, the vacancy cannot be filled until the Conference takes action. If a magistrate judge dies or leaves office before the end of a term, a successor is appointed (pursuant to the regulations of the Judicial Conference set forth in Appendix H) for a term of eight years or four years as the case may be, not just the remainder of the prior magistrate judge’s term. The appointing court is permitted to hold over a magistrate judge in office either until a successor is appointed or for 180 days beyond the expiration of the term of office, whichever is earlier. This procedure, however, may only be invoked by a majority vote of the active district judges of the appointing court and with the approval of the judicial council of the circuit.

Full-time magistrate judges serve district courts on a full-time basis and may not practice law. They are generally provided with office space in the courthouse and with supporting staff.

Part-time magistrate judges may practice law, but they may not serve as counsel in any criminal action in any federal court. Nor may they serve as counsel in any civil action in the district court for which they are appointed if they are assigned certain civil case duties. They may engage in any other business or employment that does not conflict with the impartial and effective performance of their duties for the court. The Judicial Conference has adopted “Conflict-of-Interest Rules for Part-time Magistrate Judges” to specify permissible and prohibited conduct. Office space in the courthouse may be provided if it is available and if the part-

time magistrate judge’s caseload is sufficient to justify obtaining such space. Part-time magistrate judges generally are not provided with supporting staff, but they are reimbursed for secretarial and other expenses incurred in connection with their magistrate judge duties.

As judges of the district courts, the “Code of Conduct for United States Judges” applies generally to United States magistrate judges. Persons to whom the Code applies must arrange their affairs as soon as reasonably possible to comply with the Code and should do so in any event within one year of appointment. **A part-time magistrate judge is not required to comply with certain canons of the Code.**

Note: The “Code of Conduct for United States Judges” and the “Conflict-of-Interest Rules for Part-time Magistrate Judges,” adopted by the Judicial Conference, are published in chapters I and III respectively of volume II of the Guide to Judiciary Policies and Procedures. A copy of relevant portions of the Guide may be requested from the clerk of court or from the Magistrate Judges Division of the Administrative Office of the United States Courts.

2

THE JURISDICTION OF MAGISTRATE JUDGES

The authority that a magistrate judge exercises is the jurisdiction of the district court itself, delegated to the magistrate judge by the district judges of the court under governing statutory authority and local rules of court. The key provisions governing the authority of magistrate judges are contained in 28 U.S.C. § 636 and are included as Appendix G. Other statutory grants of authority to magistrate judges appear throughout the United States Code.

Generally, a magistrate judge's duties fall into the following categories.

INITIAL PROCEEDINGS IN CRIMINAL CASES

In criminal proceedings a magistrate judge may perform the following:

1. Accept criminal complaints.
2. Issue arrest warrants and summonses.
3. Issue search warrants.
4. Conduct initial appearance proceedings and detention hearings for criminal defendants, informing them of the charges against them and of their rights.
5. Set bail or other conditions of release or detention.
6. Appoint attorneys for defendants who are unable to afford or obtain counsel.
7. Hold preliminary examinations, or "probable cause" hearings.
8. Administer oaths and take bail, acknowledgments, affidavits and depositions.
9. Conduct extradition proceedings.

REFERENCES OF PRETRIAL MATTERS FROM DISTRICT JUDGES

District judges may delegate a wide variety of duties to magistrate judges that will assist the district judges in expediting the disposition of civil and criminal cases, including the following:

1. Hearing and determining any non-case-dispositive pretrial matter, such as procedural and discovery motions.
2. Hearing case-dispositive motions (such as motions for summary judgment or dismissal, or for suppression of evidence), and submitting findings and a recommended disposition of such motions to a district judge.
3. Reviewing and recommending disposition of social security appeals and prisoner litigation and conducting necessary evidentiary hearings in prisoner cases.
4. Conducting calendar calls, pretrial conferences and settlement conferences.
5. Serving as a special master in complex cases under rule 53 of the Federal Rules of Civil Procedure.

TRIALS OF MISDEMEANORS

In all petty offense cases, including cases involving juveniles, a magistrate judge may conduct the trial and impose the sentence without the consent of the defendant. In all other misdemeanor cases, a magistrate judge may conduct the trial, either with or without a jury, and impose the sentence only upon the consent and waiver of the defendant made in writing or orally on the record.

A misdemeanor is any offense punishable by imprisonment for a term of one year or less. A magistrate judge who is designated to try misdemeanors has the power to invoke the federal probation laws.

TRIALS OF CIVIL CASES

A full-time magistrate judge may conduct the trial, either with or without a jury, and dispose of any federal civil case with the consent of the litigants. In such cases, a magistrate judge sits in lieu of a district judge on stipulation of the parties and on reference from a district judge. In this capacity, a magistrate judge exercises case-dispositive authority and may order the entry of a final judgment. All district courts have designated their full-time magistrate judges to exercise civil consent authority.

28 U.S.C. § 636(c)(1) places restrictions on the ability of parties and courts to allow part-time magistrate judges to exercise consent authority in civil cases. Part-time magistrate judges may try civil cases only where (1) the parties specifically request in writing that a part-time magistrate judge exercise jurisdiction in the case, (2) the chief judge has determined that a full-time magistrate judge is not reasonably available, and (3) the judicial council of the circuit has implemented guidelines for the exercise of such jurisdiction.

OTHER DUTIES

A magistrate judge may also be assigned any “additional duties as are not inconsistent with the Constitution and laws of the United States.” A magistrate judge may also be called upon to assist the district court in administrative areas.

The specific duties to be assigned to a magistrate judge are often set forth in standing orders or in the local rules of the district court. A more detailed exposition of the authority of United States magistrate judges may be found in the *Inventory of United States Magistrate Judge Duties*, a publication of the Magistrate Judges Division of the Administrative Office of the United States Courts.

3

THE QUALIFICATIONS OF MAGISTRATE JUDGES

The qualifications required for appointment or reappointment as a United States magistrate judge are set forth in 28 U.S.C. § 631, and in the regulations of the Judicial Conference of the United States. See Appendix H to review the regulations.

BAR MEMBERSHIP

To be eligible for appointment as a magistrate judge, an applicant must 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. The term “member in good standing” is not defined in the Federal Magistrates Act or any other statutory provisions applicable to magistrate judges. In the absence of any federal statute regarding bar membership, the question of what constitutes “member in good standing” is governed by the requirements of state law. Several state bars have ruled that “inactive” status qualifies as membership “in good standing.”

The bar requirements may be waived for a part-time magistrate judge if the appointing court and the Judicial Conference of the United States determine that no qualified individual who is a member of the bar is available to serve at a specific location.

EXPERIENCE AS AN ATTORNEY

An applicant must have actively practiced law for at least five years. The court may consider the following substitute experience, including any combination thereof:

- Experience as a judge of a state court of record or other state judicial officer.
- Experience as a United States magistrate judge, bankruptcy judge or other federal judicial officer.
- Experience as an attorney for a federal or state agency.
- Experience as a law clerk to any judge or judicial officer (limited to two years).
- Other legal experience suitable as a substitute in the opinion of the majority of the active district judges of the court.

AGE

In the case of an initial appointment as magistrate judge, an applicant must not be 70 years of age or older at the time of appointment. A magistrate judge, however, may continue to serve and be reappointed after age 70 upon a majority vote of all active district judges of the court, which is taken when the magistrate judge reaches 70 and upon each anniversary thereafter. A magistrate judge already serving in a full-time or part-time position may be appointed to a different full-time or part-time position in the same district after age 70.

RELATIONSHIP TO DISTRICT JUDGES

At the time of the initial appointment, an appointee to a magistrate judge position may not be related by blood or marriage to a judge of the appointing district court within the degree of relationship specified in 28 U.S.C. § 458, i.e., “by affinity or consanguinity within the degree of first cousin.”

NATIONAL PARK RESIDENCY REQUIREMENT

In the case of an individual appointed to serve in a national park, he or she must reside within the exterior boundaries of that park, or at some place reasonably adjacent thereto.

PERSONAL ATTRIBUTES

An appointee to a magistrate judge position must 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;
- capable of deliberation and decisiveness when required to act on his or her own reason and judgment.

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.

4

PUBLIC NOTICE

A public notice of the impending appointment or reappointment of a magistrate judge is required to be published in a general local newspaper, in a widely-circulated local legal periodical, or in both. The notice should also be filed and posted in the office of the clerk of court, and a copy should be mailed to the Magistrate Judges Division of the Administrative Office as soon as it is available.

Since the regulations specify that the merit selection panel normally must submit its report containing the names of the best-qualified applicants to the court within 90 days of its creation, it is recommended that the court issue the required public notice either before or at the same time it appoints the panel.

The regulations do not prescribe the minimum amount of time such public notice should be published. It is recommended, however, that a full notice, such as Appendix A for appointment of a new magistrate judge or Appendix C for a reappointment, be given wide distribution. A full public notice of the position should appear in a general local newspaper, in a widely-circulated local legal periodical, or in both, for a single issue. The court should also consider posting the full public notice on the court's Internet web site. In order to more fully publicize the announcement, an abbreviated announcement that only notes the impending appointment or reappointment of a magistrate judge and refers specifically to the location where the full public notice is posted should be published thereafter in a general local newspaper and/or the local legal periodical(s) for a reasonable time in the discretion of the court. The abbreviated announcement also should indicate that interested persons may contact the clerk of court for the application form and additional information. Sample abbreviated public notices for new

appointments and reappointments are included as Appendices B and D, respectively.

To attract the greatest number of applicants, the public notice for a new appointment should be disseminated as widely as practicable so that all qualified members of the bar are aware of the opportunity to apply for the position. The court should encourage applications from all qualified persons including women, members of minority groups and individuals with disabilities who can perform the essential functions of the position. Consistent with the above, the court should consider transmitting the public notice to state and local bar associations and interest groups that focus on minorities.

The full notice should describe the duties of the position to be filled, and give the authorized salary, qualification standards, and application procedures, including the name and address of the person to whom applications should be submitted. Generally, applications should be sent to the clerk of court or his or her designee. It should specify that applications should be submitted only by the applicant, personally demonstrating that person's willingness to serve if selected by the court.

The court should use an application form that will elicit information on applicants relating to the qualifications prescribed for the office. Resumes may be considered as an alternative. A sample application form is included as Appendix E. Applicants should be requested to submit copies of their application or resume in sufficient number to provide one for each panel member.

Expenses for publication of public notices of magistrate judge positions should be paid from court funds. The budget object class for publication of notices/advertising (BOC 2544) is one of the aggregate BOCs and is funded as part of the aggregate formula. Requirements should be addressed through local reprogramming since there are no additional allotments to that BOC. Any questions should be referred to the Budget Division of the Administrative Office.

Since potential applicants may wish to obtain additional information about the magistrate judge position to be filled, including jurisdiction, support services, conflicts of interest, and the like, the court should consider designating the chairperson of the selection panel or the clerk of the court as a central source to respond to all inquiries from the bar and the press concerning the advertised position.

5

APPOINTMENT OF THE MERIT SELECTION PANEL

The merit selection panel is appointed by majority vote of the active district judges of the court. It must consist of lawyers and other members of the community as described below. Each member must be a resident of the district within which the magistrate judge is to serve. No federal judges, including senior or retired district judges or recalled magistrate judges or bankruptcy judges, or other district court officers or employees may be members of the merit selection panel. This prohibition, however, does not preclude a federal judge or other court officer or employee from advising the panel. This prohibition also does not preclude United States attorneys, assistant United States attorneys, and federal defenders (including community defenders) and their assistants from serving on panels. While some district courts exclude federal prosecutors and defenders from membership on the merit selection panel, the Committee on the Administration of the Magistrate Judges System has expressed the view that the matter is best left to local courts' determinations. **An exception, set forth below, exists with respect to panels dealing with the appointment of part-time magistrate judges whose salaries are less than one-third of a full-time magistrate judge's salary.**

The panel must consist of a chairperson and at least six other members. It is recommended that the panel be composed of an odd number of persons in order to avoid potential problems caused by tie votes. The membership of the panel must include lawyers and at least two nonlawyers. A lawyer is defined as one who is licensed to practice law. In the event one or more members of a panel withdraw leaving the panel with less than seven mem-

bers, the court may either replace the member(s) or proceed with a panel of less than seven members. The chairperson exercises duties the court assigns.

No person may be considered for selection by the court for a magistrate judge position while serving as a member of a panel, or for one year after such service is completed. But, the Committee on the Administration of the Magistrate Judges System may grant, on an individual case basis, waivers of the provision prohibiting a member of a merit selection panel from being considered for selection by the court for a magistrate judge position for a period of one year after serving on a panel.

Courts may use a panel to consider applicants for more than one position or for multiple reappointments. Standing panels may also be appointed to assist with filling vacant positions and with reappointments as they occur.

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 selection panel of fewer than seven members but no fewer than three members may be appointed by the court. It is recommended that the panel be composed of an odd number of persons to avoid potential problems caused by tie votes. Moreover, circuit judges and “judges of the district court” (including senior judges, active or retired district judges, and active, recalled, or retired magistrate judges or bankruptcy judges) may serve on this panel. Other district court officers or district court employees also may serve on the panel, but at least two members of the panel must be either lawyers or nonlawyers from outside the court.

The panel should be established by an order of the district court specifying the names of the members, whether each is a lawyer, and the effective date of the panel’s appointment. The panel must report to the district court within 90 days of its appointment unless otherwise directed by the court. A copy of the order should be sent to the Magistrate Judges Division of the Administrative Office of the United States Courts at the time it is issued.

The court’s order containing the names of the members of the merit selection panel is a public document and should be made available for inspection upon request. Beyond that, the names of the members of the panel may be disclosed or made public in the discretion of the court. For example, some district courts list the members of the merit selection panel by name in the public notice.

6

SUPPORT SERVICES

Members of the panel receive no compensation for their services. Members, however, are allowed, as authorized by law, reimbursement for travel expenses, including transportation (mileage, tolls, parking fees, etc.) and subsistence, incurred while transacting official business at the request of the court. The rates of reimbursement of such expenses are the same as those generally provided to federal employees. The clerk of court will pay travel-related expenses. The clerk of court may request a travel authorization from the Magistrate Judges Division to cover travel costs of panel members.

The statute and regulations do not provide for clerical help for the panel's use. It is expected, however, that the panel may use the facilities and personnel of the district court to a reasonable extent. If mailings are necessary, the panel may use postage-paid envelopes supplied by the court. The chairperson of the panel and the chief judge or clerk of court should agree on these administrative matters before the panel meets the first time.

Note: The pertinent rules relating to travel, the “Regulations Applicable to Officers and Employees of the Judiciary Except Justices and Judges,” are published in part C, chapter VI, volume I of the Guide to Judiciary Policies and Procedures.

7

MEETINGS OF THE PANEL

The merit selection panel may hold an organizational meeting before applications have been received or may wait until all applications have been received, enabling it to begin the process of reviewing the applications at the time of its first meeting.

At its initial meeting, the panel should discuss the nature of the particular magistrate judge position to be filled and the criteria to be applied in screening applicants, and establish the procedures and rules to be followed during its deliberations. A district judge or a magistrate judge might be invited to the meeting to acquaint the members of the panel with the work of the district court and the nature of the duties to be assigned to a magistrate judge.

Although the regulations of the Judicial Conference provide the panel with a large degree of discretion in the review of applications and the selection of individuals to recommend to the court, the panel members must nonetheless abide by specific rules. For example, the regulations provide that all decisions of the panel will be by majority vote of all members. Also, the Committee on the Administration of the Magistrate Judges System is of the view that each panel member must disclose to all other panel members any personal or professional relationships with any applicants for the position.

If the district court has not already established rules of procedure for the panel to follow, the panel should do so at its first meeting. The panel should address such matters as open voting vs. secret ballots, attendance requirements, absentee ballots, and quorum rules. The panel should also decide on the appropriate screening procedures it will follow. Depending on the actual or anticipated number of applications submitted, the panel may consider whether to delegate the task of screening applications to the chair-

person, to a committee, or to individual members of the panel. Delegation of this first step might be appropriate when a large number of applications has been submitted or is anticipated.

Following the initial screening of applications, the panel in its discretion may choose to conduct personal interviews of some or all applicants. Interviews may be necessary in those situations where members of the panel have no personal knowledge of the applicants or their legal abilities. Care should be taken, however, to assure fairness in the interviewing process. The panel members should determine beforehand the types of questions that should be asked, and the same general questions and areas of inquiry should normally be addressed to each interviewee.

8

CONFIDENTIALITY REQUIREMENTS

To encourage the greatest number of applicants and to protect their privacy, the regulations of the Judicial Conference impose a requirement of confidentiality on the panel and the court. Neither the names of the applicants nor the identities of those individuals recommended by the panel to the court may be disclosed other than as a necessary part of the panel's report to the court. Panel members should keep confidential all information, written and oral, obtained in the course of performing their duties. The court may wish to include in its public notice and/or application form a confidentiality statement that all applications will be kept confidential unless the applicant consents to disclosure. The confidentiality statement included at the end of the sample application form (see Appendix E) provides that individuals listed as references may be contacted by the panel, but that no other employers, colleagues, or other individuals will be contacted without prior approval of the applicant.

The Judicial Conference Regulations do not address whether the names of applicants, other than those recommended by the merit selection panel, may be made available to individual judges of the court. The Committee on the Administration of the Magistrate Judges System has adopted a resolution stating that it was the sense of the Committee that nothing in the Regulations prohibits disclosure of the names of the applicants to the judges of the court selecting the magistrate judge.

The panel's deliberations also should remain confidential. During its deliberations, it may be necessary to verify or augment the written information provided by the applicant on the application form. To avoid possible embarrassment to the applicant and the possible breach of the pledge of confidentiality, it is suggested that the panel seek the applicant's approval before

contacting present or past employers or colleagues, or seeking the views of other individuals who have material knowledge of the applicant's abilities. Ample opportunity should be provided to the applicants to disclose any conflict of interest that they may have with the position for which they are applying, and to withdraw from the selection process if necessary.

It is suggested that inquiries of employers and others be made only after the initial screening process is completed and be limited to those applicants being considered seriously for the appointment, such as those whom the panel has decided to interview. In limiting such inquiries until a later stage, the panel protects the privacy of the applicants. A sample waiver of confidentiality form is included in this pamphlet as Appendix F. The panel should not conduct full background investigations on applicants, since the person selected by the court for appointment must undergo the required FBI and IRS background investigations.

9

EVALUATING THE APPLICANTS

The regulations of the Judicial Conference do not prescribe how the panel should evaluate the applicants. The procedures are generally left to the discretion of the individual courts and panels. The following suggestions are offered as a guide.

IN GENERAL

Failure to meet any one of the statutory or regulatory requirements will result in automatic rejection of an applicant. A district court may establish additional qualification standards appropriate for a particular magistrate judge position, taking into account the specific responsibilities anticipated for the position. These additional qualification standards, however, must not be inconsistent with the court's policy as an equal opportunity employer.

The range of duties delegated to magistrate judges by district judges varies substantially from one district to another. The panel's objective is to recommend individuals most suited to the needs of the particular district court. Emphasis should be placed on those qualities and professional skills most often demanded for the specific duties to be assigned. Accordingly, the members of the panel should acquaint themselves with the specific duties that the successful applicant will be assigned by the judges. (Reference should be made both to the Federal Magistrates Act and to the local rules or standing orders of the district court for specific guidance in this regard.)

Since full-time magistrate judges generally have a broader range of duties than part-time magistrate judges, the panel may require greater pertinent experience from applicants for a full-time magistrate judge position than from applicants for a part-time magistrate judge position. The difference

is manifest in those situations where the part-time magistrate judge is located in a remote region and the range of duties is limited.

During their deliberations, the members should bear in mind the judicial nature of the office of United States magistrate judge. A considerable number of former United States magistrate judges have been appointed and are now serving as United States district and circuit judges. The position of magistrate judge is viewed by many as a proving ground that can provide invaluable practical experience for future Article III judges. Thus, the panel should recommend individuals who possess the same types of personal and professional qualities expected of district judges.

SCHOLARSHIP

Panel members should consider each applicant's academic record and related achievements in law school and college. Special attention might be given to class standing, quality of the schools attended, membership on the law review board, and membership in other associations.

ACTIVE PRACTICE OF LAW

The panel should consider how long the applicant has practiced law and the type of legal practice. The applicant should have demonstrated professional competence, including an ability to deal with complicated legal problems, an aptitude for legal scholarship, and effective writing. The applicant also should be well regarded professionally by other lawyers. The members of the panel should also consider whether the applicant has been recently involved in any pro bono or public service activity. The panel should not confine its considerations to persons with any one type of legal work. It should consider candidates from all segments of the bar, including government service, law school faculties, legal aid associations, public interest establishments, and state courts.

KNOWLEDGE OF THE COURT SYSTEM

Because the rules of procedure in the federal judicial system frequently differ from those practiced in the various state court systems, the panel might consider the applicant's familiarity with the federal court system. Recent litigation before the federal bench may indicate familiarity with the rules and procedures of federal court. Successful completion of legal courses

in the Federal Rules of Evidence and the Federal Rules of Civil and Criminal Procedure also shows familiarity.

PERSONAL ATTRIBUTES

The regulations of the Judicial Conference require that a magistrate judge 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 deliberateness and decisiveness. These characteristics, by their nature, are subjective and not readily quantifiable. Yet they may ultimately be the most important qualities necessary for the successful performance of judicial duties.

MEASUREMENT OF THE QUALIFICATIONS

It is not possible to formalize a comprehensive or mathematical evaluation procedure. Nonetheless, some degree of uniformity is essential in the selection process. The panel may consider the following list of relevant qualities as a checklist to be applied to all applicants. The panel might assign a weight to each factor, signifying the degree of importance attached to each.

The members should also bear in mind that the essential roles of a magistrate judge are to dispense justice and to assist the judges of the district courts in disposing of the court's caseload effectively and efficiently. Thus, great weight should be accorded to those personal qualities, pertinent experience, and practical knowledge desired by the judges in the person who is selected to fill the magistrate judge position.

Pertinent Criteria

Personal Characteristics

- Intelligence
- Honesty and morality
- Maturity and stability
- Demeanor and temperament
- Reasonableness and objectivity
- Ability to work with others
- Compassion
- Fairness and commitment to equal justice for all people
- Decisiveness and deliberateness

- Industriousness
- Immunity from undue influences
- Mental and physical health
- Activity in civic and community affairs

Legal Skills and Professional Background

- Professional reputation among bar members
- Reputation for fairness
- Reputation for propriety and integrity
- Reputation for being well prepared
- Experience with complex problems
- Previous service as attorney, judge, or public official
- Writing skills
- Courtroom experience
- Knowledge of legal procedures
- Familiarity with federal rules and procedures
- Participation in professional associations and activities
- Pro bono and public-service activities
- Publications

EQUAL EMPLOYMENT OPPORTUNITY

Congress has noted that, compared to the population as a whole, women, blacks, Hispanics, and other minorities are currently underrepresented in the federal judiciary. Members of the panel, in recommending persons to the district court, should consider all qualified individuals for appointment as a magistrate judge, especially those from underrepresented groups. The discussion above under “Public Notice” should be reviewed. Also, the panel should be aware of the district court’s equal employment opportunity plan. While the Americans with Disabilities Act (ADA) does not apply to the federal judiciary, virtually the same rights and protections of disabled persons may be found in each court’s EEO and EDR plans.

10

REPORT AND RECOMMENDATIONS TO THE COURT

After all written information has been obtained, all interviews have been completed, and all follow-up information has been gathered, members of the panel should determine collectively which individuals among the applicants meet all the standards and appear qualified for appointment as a United States magistrate judge. The members may now consider it appropriate to conduct a full and candid discussion of the qualifications of the various applicants. Each member should be free to contribute personal views as to the qualifications of each applicant.

Following these discussions, the panel should designate those five applicants that it finds most qualified to serve as a United States magistrate judge. If the panel believes, however, that either the number or the caliber of applicants is inadequate, the panel chairperson should promptly consult with the court and consider whether other steps should be taken to attract additional qualified candidates. A second notice might be published, for example, and assistance in obtaining additional applications might be solicited from bar association officials, law school faculties, and community leaders. Such measures should begin promptly, however, since the panel must file its report within the 90-day limitation imposed on the panel by regulation (unless the court directs a different duration).

The panel must submit its report to the court within 90 days of its creation, unless otherwise directed by the court. The report of the panel to the court should specify the total number of individuals who applied for the position and the names of the five persons it has determined to be most qualified. All written information received or prepared by the panel concerning the recommended applicants must accompany the panel's report to the court. Adequate measures should be taken to protect the confidentiality of these

records during their transmittal to the court. It is recommended that the chairperson of the panel submit the report directly to the chief judge of the court.

No individual should be included on the list of recommended applicants unless a majority of all the members of the panel deem that person fully qualified to serve as a United States magistrate judge. The panel may wish to note which characteristics or qualities it considered important in its deliberations. It may also wish to note how these characteristics or qualities were manifested in the recommended applicants, if not otherwise apparent in the written materials submitted by the applicants.

The panel should consider the order in which the names of the recommended applicants appear in the report. The regulations of the Judicial Conference are silent as to whether the individuals recommended should be ranked. The panel may choose to list the recommended individuals without preference, or to rank them, especially where the quality varies substantially among the individuals recommended. The panel chairperson may wish to explore this issue with the court before submitting the panel's report.

A list containing fewer than five names may be submitted to the court by the panel, but only for good cause shown by the panel in its report. The panel, for example, might specify that it simply has not found five individuals among those who applied who meet all the high standards required.

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, the court may give the panel discretion to submit a list of less than five names to the court.

In a situation where a merit selection panel is recommending applicants for more than one magistrate judge position, the court should direct the panel to recommend more than five individuals. For example, if the court is filling two vacancies the panel could be directed to submit a list of six names so that once one name is selected for one position, five names would remain from which to select for the other position. Alternatively, a court could require the panel to submit a list of ten names from which the court would select two.

11

SELECTION BY THE COURT

After receiving the report of the merit selection panel, the court should review the qualifications of the individuals recommended by the panel. At its discretion, the court may accept the findings contained in the panel report, or it may conduct an additional inquiry into the qualifications of the recommended individuals. The court may also wish to conduct its own interviews with the recommended applicants.

A selectee is determined by a majority vote of all active district judges of the court from the list provided by the panel. If the district court fails to select an individual from the five names on the list, the court must request a second list of five names from the panel. The district court must then choose its magistrate judge from either list. If, again, no applicant receives a majority vote, the chief judge is authorized by statute to make the selection for the court from either list.

Once the court has selected a new magistrate judge, it should notify and obtain the acceptance of the selected applicant. It should then inform panel members of its choice. The court may notify the other applicants that a selection has been made and thank them for their interest in applying. The court should respect the confidentiality of the names of the other applicants.

The name of the applicant selected must be submitted to the Magistrate Judges Division of the Administrative Office which will request the necessary background reports from the Federal Bureau of Investigation and the Internal Revenue Service. The applicant selected for appointment to either a full-time or part-time magistrate judge position must undergo an FBI full-field investigation, with a 15-year scope, and an IRS tax check. 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 to the requirement for full-field background investigations by the FBI, on an individual case basis, in circumstances involving high-turnover and recruitment problems due to isolated locations of certain part-time magistrate judge positions.

After the district court has received complete investigation reports from the Federal Bureau of Investigation and the Internal Revenue Service, the court may issue an order of appointment. If, in the judgment of the court, the Internal Revenue Service report has not been completed in a timely manner, the court may waive that report, provided it has taken steps to assure itself that the applicant selected has properly filed tax returns. The FBI report may not be waived. The timing and manner of a public announcement by the court should take into account the possible discovery of unfavorable information by the FBI or IRS investigations.

Before entering on duty as a magistrate judge, the appointee is required by 28 U.S.C. § 631(g) to take the judicial oath or affirmation prescribed by 28 U.S.C. § 453 and the constitutional oath prescribed by 5 U.S.C. § 3331.

It would be entirely appropriate for the court to arrange for a formal swearing-in ceremony for the new magistrate judge. Such a ceremony may be an effective way to acquaint the bar and the public with the new judge. Court funds may be used to pay for certain expenses, such as invitations and postage, relating to a swearing-in ceremony.

The appointment of the magistrate judge must be entered of record in the district court, and the various appointment forms should be completed and submitted by the clerk of the district court to the Magistrate Judges Division of the Administrative Office.

12

DISPOSITION OF RECORDS

To maintain the confidentiality of the identities of the applicants, the panel and the court should exercise care in handling and disposing of the application forms and all other written materials collected during their deliberations. It is suggested that all material other than that which pertains to the five individuals who are recommended to the court, which must be forwarded to the court along with the panel's report, be retained by the chairperson until the actual appointment of a magistrate judge. Retention of these materials is recommended because the court may not select from among the five names submitted by the panel, or it may subsequently revoke its selection after reviewing the background reports prepared by the FBI and the IRS on the applicant selected for appointment. In such events, the court may require a reconvening of the panel, and the information previously assembled on the remaining applicants would be needed.

Immediately after a magistrate judge is appointed, the chairperson of the panel should either return all materials to the respective applicants or dispose of the materials (i.e., by shredding) in keeping with the confidentiality requirement of the regulations of the Judicial Conference. The report of the panel and the materials relating to the applicants recommended by the panel should be retained by the clerk of court as confidential records.

13

REAPPOINTMENT OF AN INCUMBENT MAGISTRATE JUDGE TO A NEW TERM

Normally, an incumbent magistrate judge who has performed well in the position should be reappointed to another term of office. To serve the court, a magistrate judge relinquished a law practice or other career choice. Accordingly, the court should be sensitive to the needs and expectations of the professional and the career choice the incumbent made by accepting the position of United States magistrate judge.

PERFORMANCE REVIEWS OF AN INCUMBENT BY THE COURT

During the magistrate judge's term, the court should periodically assess the performance of the magistrate judge and meet with the incumbent to discuss the court's evaluation. If the court believes that the magistrate judge's performance is not satisfactory, or if there are problems with the magistrate judge's relationship with any of the district judges or with the bar, the court should discuss its concerns with the magistrate judge. The incumbent should be informed of these concerns well in advance of the expiration of the term of office. Such procedures would:

- help to identify deficiencies or problems with the job performance of the magistrate judge;
- give the magistrate judge an opportunity to discuss the court's concerns;
- let the incumbent know where he or she stands with regard to reappointment; and
- give the magistrate judge an opportunity to make other career plans well in advance of the expiration of the term of office if reappointment is in question.

In any event, not less than one year before the expiration of an incumbent magistrate judge's term of office, the court should determine whether it wishes to consider the reappointment of the incumbent. The court should then choose one of the selection methods set out below. Sections 6.02 and 6.03 of the governing regulations provide guidance to the court as to how it should proceed.

IF THE COURT DETERMINES NOT TO REAPPOINT THE INCUMBENT

If the court determines not to reappoint the incumbent, it must so notify the incumbent and follow the initial selection procedures set forth in chapters 2, 3, 4, and, if applicable, 5 of the 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.

Before the expiration of the incumbent's current term, the Administrative Office provides the incumbent with a form entitled *Notice of Willingness to Accept Reappointment* (Form Per 74). This form protects the magistrate judge's retirement and survivors' annuity benefits if the magistrate judge indicates his or her willingness to continue to serve but is not reappointed.

IF THE COURT DECIDES TO CONSIDER REAPPOINTING THE INCUMBENT

If the court desires to consider the reappointment of the incumbent, it must follow the selection procedures set forth in section 6.03 of the regulations (which provides for public notice of consideration of reappointment, comments from the bar and public, and review of the incumbent's performance by a merit selection panel).

PUBLIC NOTICE FOR REAPPOINTMENT OF AN INCUMBENT

Issuance of a public notice by the court is the first step in the reappointment process. A public notice should be published well before the expiration of the incumbent's term of office, preferably at least six months before such date. The regulations do not prescribe the minimum amount of time such public notice should be published. At a minimum, however, a full public notice, such as the one included as Appendix C, should appear in a general local newspaper, in a widely-circulated local legal periodical, or in both, for a single issue.

Although not required by the regulations, an abbreviated announcement that only notes the impending reappointment of a magistrate judge and refers specifically to the location where the full public notice is posted, should then be published in a general local newspaper and/or the legal periodical(s) for a reasonable time in the discretion of the court. The abbreviated announcement should also indicate that interested persons may contact the clerk of court for information and material. A sample abbreviated public notice is included as Appendix D.

SELECTION PANEL

The court must establish a merit selection panel to assist the district judges in their determination to reappoint the incumbent. The composition of the panel is the same as in the case of a panel appointed to assist in selecting a new magistrate judge.

When the court has determined that it desires to consider the reappointment of the incumbent and the public notice has been issued, the panel does not seek applications for the position. It merely reviews the incumbent's performance in office as a magistrate judge, and considers comments received from members of the bar and the public, and any other pertinent evidence as to the incumbent's good character, judgment, legal ability, temperament, and commitment to equal justice under the law.

The panel and the court itself should determine how the panel should appraise the incumbent's performance. All written comments should be considered carefully. An interview with the incumbent would generally be useful. Also the panel might want to interview selected individuals who have actual and reliable knowledge of the incumbent's performance. To encourage candor, the panel should assure individuals who comment on the incumbent's performance that their names will not be disclosed. As a matter of fairness,

however, the magistrate judge should be given an opportunity to appear personally before the panel to respond to any negative comments that have been received and to answer any questions regarding his or her performance.

After considering this information, the panel, within 90 days unless otherwise directed by the court, must report to the court whether it recommends the incumbent for reappointment to an additional term of office. The report may contain written reasons for substantiating the panel's decision. Furthermore, all information received by the panel as a result of this process should be included as part of the record submitted to the court.

DETERMINATION BY THE COURT

After considering the panel's report, the court must determine by majority vote of all active district judges whether to reappoint the incumbent. New FBI and IRS investigations are not required for the reappointment of an incumbent magistrate judge. If the court decides to reappoint the incumbent to a new term, the magistrate judge should take the required oath, and the clerk of court should prepare the necessary appointment documents and forward them to the Magistrate Judges Division of the Administrative Office.

If after following the selection procedures set forth in section 6.03 of the regulations, the court decides not to reappoint the incumbent magistrate judge, it must notify the incumbent and initiate the procedures for selecting a new magistrate judge, as in the case of a vacancy or a newly-created position. The same panel may be reconvened, or a new panel established, to consider applicants for the vacancy.

Appendix A

SAMPLE FULL PUBLIC NOTICE FOR APPOINTMENT OF NEW MAGISTRATE JUDGE

The Judicial Conference of the United States has authorized the appointment of a full-time [part-time] United States magistrate judge for the _____ District of _____ at _____.

The duties of the position are demanding and wide-ranging: (Give brief description such as: (1) conduct of most preliminary proceedings in criminal cases; (2) trial and disposition of misdemeanor cases; (3) conduct of various pretrial matters and evidentiary proceedings on delegation from a district judge; and (4) trial and disposition of civil cases upon consent of the litigants.) The basic authority of a United States magistrate judge is specified in 28 U.S.C. § 636.

To be qualified for appointment an applicant must

- (1) 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, and have been engaged in the active practice of law for a period of at least 5 years (with some substitutes authorized);
- (2) Be competent to perform all the duties of the office; be of good moral character; be emotionally stable and mature; be committed to equal justice under the law; be in good health; be patient and courteous; and be capable of deliberation and decisiveness;
- (3) Be less than seventy years old; and
- (4) Not be related to a judge of the district court.

A merit selection panel composed of attorneys and other members of the community will review all applicants and recommend to the district judges in confidence the five persons it considers best qualified. The court will make the appointment following an FBI full-field investigation and an IRS tax check of the applicant

selected by the court for appointment. An affirmative effort will be made to give due consideration to all qualified applicants, including women and members of minority groups. The current annual salary of the position is _____. The term of office is _____ years.

Application forms and more information on the magistrate judge position in this court may be obtained from the clerk of the district court or the chairperson of the selection panel. (Give name and address.) The form is also available on the court's Internet website at (give Internet address if form is available there). Applications must be submitted only by applicants personally and **must be received by** _____.

All applications will be kept confidential, unless the applicant consents to disclosure, and all applications will be examined only by members of the merit selection panel and the judges of the district court. The panel's deliberations will remain confidential.

Appendix B

SAMPLE ABBREVIATED PUBLIC NOTICE FOR APPOINTMENT OF NEW MAGISTRATE JUDGE

The Judicial Conference of the United States has authorized the appointment of a full-time [part-time] United States magistrate judge for the _____ District of _____ at _____.

The current annual salary of the position is _____. The term of office is _____ years.

A full public notice for the magistrate judge position is posted in the office of the clerk of the district court at (give exact location). The notice is also available on the court's Internet website at (give Internet address if notice is available there).

Interested persons may contact the clerk of the district court for additional information and application forms. The application form is also available on the court's website (if available there).

Applications must be submitted only by applicants personally and **must be received by** _____.

Appendix C

SAMPLE FULL PUBLIC NOTICE FOR REAPPOINTMENT OF INCUMBENT MAGISTRATE JUDGE

The current term of office of United States Magistrate Judge _____ at _____ is due to expire on _____. The United States District Court is required by law to establish a panel of citizens to consider the reappointment of the magistrate judge to a new _____-year term.

The duties of a magistrate judge in this court include the following: (Give a brief description, such as (1) conduct of most preliminary proceedings in criminal cases; (2) trial and disposition of misdemeanor cases; (3) conduct of various pre-trial matters and evidentiary proceedings on delegation from a district judge; and (4) trial and disposition of civil cases upon consent of the litigants.)

Comments from members of the bar and the public are invited as to whether the incumbent magistrate judge should be recommended by the panel for reappointment by the court and should be directed to (give name and address).

Comments **must be received by** _____ .

Appendix D

SAMPLE ABBREVIATED PUBLIC NOTICE FOR REAPPOINTMENT OF INCUMBENT MAGISTRATE JUDGE

The current term of office of United States Magistrate Judge _____ is due to expire on _____. The United States District Court is required by law to establish a panel of citizens to consider the reappointment of the magistrate judge to a new _____ - year term.

A full public notice for the magistrate judge position is posted in the office of the clerk of the district court at (give exact location). The notice is also available on the court's Internet website at (give Internet address if notice is available there).

Comments from members of the bar and the public are invited as to whether the incumbent magistrate judge should be recommended by the panel for reappointment by the court and should be directed to (give name and address).

Comments **must be received by** _____ .

Appendix E

SAMPLE APPLICATION FORM UNITED STATES MAGISTRATE JUDGE*

Type or legibly print your answers. If a question is not applicable, indicate this by marking "N/A." Return completed form to Clerk of Court.

GENERAL

1. Full name: _____
2. All other names by which you have been known: _____

3. Office address: _____
City _____ State _____ Zip _____
Telephone _____
4. Residential address: _____
City _____ State _____ Zip _____
Telephone _____
5. Place of birth: _____
Date of birth: _____
6. Length of residence in state: _____
7. If you are a naturalized citizen, state the date and place of naturalization.

8. Military service:
Branch _____ Dates _____
Rank or Rate at Discharge _____ Type of Discharge _____
If still a reserve or national guard member, give service, branch, unit, and
present rank _____

* This is a comprehensive list of questions that may be asked of applicants. The court should select those questions that it believes are appropriate for inclusion in its application form.

9. Are you related by blood or marriage to any judges of this court?
Yes _____ No _____
If yes, give name(s) and relationship _____

HEALTH

10. What is the present state of your health? _____

11. Do you have any disability, serious illness or condition that would prevent you from performing the essential functions of the position of magistrate judge?

OR if courts believe that additional information is needed at this stage of the screening process, questions 11a) and 11b) could be substituted for question 11.

11. a) Have you in the last 10 years (i) been hospitalized due to injury or serious mental or physical illness or drug or alcohol addiction, or (ii) been prevented from working or otherwise incapacitated for a period in excess of ten days due to injury or illness, drug or alcohol addiction? If so, give the particulars, including the causes, the dates, the places of confinement, and the present status of the conditions which caused the confinement or incapacitation.

11. b) Do you have any visual or hearing impairment or other mental or physical impairment that would affect your ability to perform the duties of a magistrate judge? If so, please describe the impairment and how your impairment could be accommodated to allow you to perform the duties of a magistrate judge.

EDUCATION

12. Colleges and universities attended, dates, and degrees:

13. Continuing legal education courses completed within the last 10 years:

HONORS

14. Were you a member of law review? Yes _____ No _____.
If yes, describe role: _____

15. If you have published any legal books or articles, list them, giving citations and dates. _____

16. List any honors, prizes, or awards you have received. _____

PROFESSIONAL ADMISSIONS

17. List all courts (including state bar admissions) and administrative bodies having special admission requirements in which you are presently admitted to practice, giving the dates of admission in each case:
- | Court or Administrative Body | Date of Admission |
|------------------------------|-------------------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

LAW PRACTICE

18. State the names, addresses, and dates of employment for all law firms with which you have been associated in practice, all government agencies, and all private business organizations in which you have been employed. Also provide all dates during which you have practiced as a sole practitioner.
- | Organization | Address | Position | Dates |
|--------------|---------|----------|-------|
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
19. Describe the general nature of your current practice including any legal specialties and character of your typical clients; also, if your practice is substantially different now than previously, give details of prior practice.
- _____

20. a) Do you appear regularly in court? Yes _____ No _____.
- b) What percentage of your appearances in the last five years were in:
1. Federal courts _____%
 2. State or local courts of record _____%
 3. Administrative bodies _____%
 4. Other: _____%
 - _____ %
 - _____ %
 - _____ %
 - _____ %
21. During the past five years, what percentage of your practice has been trial practice? _____%
22. How frequently have you appeared in court?
_____ times per month.
23. How frequently have you appeared at administrative hearings?
_____ times per month.
24. What percentage of your practice involving litigation has been:
- Civil _____%
- Criminal _____%
- Other: _____%
- _____ %
- _____ %
- _____ %
- _____ %
25. State the number of cases you have tried to conclusion in courts of record during the past five years, indicating whether you were sole, associate, or chief counsel. Give citations of any reported cases. _____
- _____
- _____
- _____
26. Summarize your courtroom experience for the past five years. _____
- _____
- _____
- _____
27. State the names and addresses of adversary counsel against whom you have litigated your primary cases over the past five years. _____
- _____
- _____
- _____

PUBLIC OFFICE

28. Have you ever run for, or held, public office? Yes _____ No _____.
If yes, give details. _____

PRIOR JUDICIAL EXPERIENCE

29. a) Have you ever held judicial office or been a candidate for judicial office? If so, state the courts involved and the dates of service, or dates of candidacy.

b) If you have held judicial office, state the names and addresses of counsel who have appeared before you who would be knowledgeable of your work, temperament, and abilities. _____

c) Prior quasi-judicial service:

Name of agency _____

Position held _____

Hearings on what types of issues _____

Number of cases adjudicated _____

Dates of service _____

BUSINESS INVOLVEMENT

30. a) If you are now an officer, director, or otherwise engaged in the management of any business enterprise, state the name of such enterprise, the nature of the business, the nature of your duties, and whether you intend to resign such position immediately upon your appointment to judicial office.

b) Since being admitted to the Bar, have you ever engaged in any occupation, business, or profession other than the practice of law? Yes _____ No _____.
If yes, give the details, including dates.

c) During the past five years have you received any fees or compensation of any kind, other than for legal services rendered, from any business enterprise, institution, organization, or association of any kind? Yes _____ No _____.

If yes, identify the source of such compensation, the nature of the business enterprise, institution, organization or association involved, and the dates such compensation was paid. _____

31. a) Have you ever been arrested, charged, or convicted for violation of any federal law, state law, county or municipal law, regulation, or ordinance? Yes _____ No _____ .
If yes, give details. (Do not include traffic violations for which a fine of \$200 or less was imposed unless it also included a jail sentence.) _____

b) Have you, to your knowledge, ever been under federal, state or local investigation for possible violation of a criminal statute? Yes _____ No _____ .
If yes, give particulars. _____

32. a) Have you ever been sued by a client? Yes _____ No _____ .
If yes, give particulars. _____

b) Have you or your professional liability insurance carrier ever settled a claim against you for professional malpractice? Yes _____ No _____ .
If yes, give particulars, including the amounts involved. _____

33. Have you ever been charged in any civil or criminal proceedings with conduct alleged to involve moral turpitude, dishonesty, or unethical conduct? Yes _____ No _____ . If yes, give particulars. _____

34. Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by any court, administrative agency, bar association, or other professional group? Yes _____ No _____ .
If yes, give particulars. _____

35. Have you filed appropriate tax returns as required by federal, state, local, and other government authorities? Yes _____ No _____. If no, explain.

36. Have any liens or claims ever been instituted against you by the federal, state or local authorities? Yes _____ No _____. If yes, explain.

PROFESSIONAL AND OTHER ACTIVITIES

37. a) List all bar associations and legal professional societies of which you are a member and give the titles and dates of any office you have held in such groups, and committees to which you belonged. _____

b) List all organizations and clubs, other than bar associations and professional societies identified in response to Question No. 37.a), of which you have been a member during the past ten years, including the titles and dates of any offices you have held in each such organization. _____

SUPPLEMENTAL INFORMATION

38. State any achievements or actions you have accomplished, demonstrating your commitment to equal justice under the law. _____

39. State any additional education or other experiences you believe would assist you in holding judicial office. _____

40. State any other pertinent information reflecting positively or adversely on you which you believe should be disclosed to the district court and the selection panel in connection with your possible selection as United States magistrate judge. _____

41. a) List three individuals as references who are familiar with your abilities.

Name _____

Address _____

Telephone _____

Name _____

Address _____

Telephone _____

Name _____

Address _____

Telephone _____

b) List three individuals as references who are familiar with your personal character.

Name _____

Address _____

Telephone _____

Name _____

Address _____

Telephone _____

Name _____

Address _____

Telephone _____

CONFIDENTIALITY STATEMENT

This form will be kept confidential and will be examined only by members of the merit selection panel and the judges of the district court. The individuals whom you have listed as references above may be contacted by the panel, but no other employers, colleagues, or other individuals will be contacted without your prior approval.

I declare under penalty of perjury that the foregoing is true and correct.

Date _____

Signature of Applicant _____

Appendix F

SAMPLE WAIVER OF CONFIDENTIALITY

(To be completed after initial screening of applicants)

The merit selection panel has completed its initial screening of applicants for the position of United States magistrate judge. The panel is now in need of additional information on your background and qualifications to determine whether to recommend you to the district court for appointment as a magistrate judge. Accordingly, we request your approval to consult with your current or past employers or colleagues, and other individuals who have material knowledge of your qualifications (including your physician) in order to verify and to supplement the information contained in your application. Any information obtained will be kept in strict confidence by the panel and the court. A “waiver of confidentiality” is printed immediately below for this purpose.

WAIVER

I hereby authorize the custodian of any records or information to permit the examination or receipt of such information, whether written or oral, by the merit selection panel and the district judges of the court. I also authorize the merit selection panel to consult with my former employers, my current employer, my professional colleagues, and my physician with regard to matters pertinent to my qualifications for the position of a United States magistrate judge.

Date _____ Signature _____

Appendix G

THE FEDERAL MAGISTRATES ACT OF 1968, AS AMENDED (codified provisions only)

Provisions in Title 28, United States Code

CHAPTER 43 UNITED STATES MAGISTRATES

- § 631. Appointment and tenure.
- § 632. Character of service.
- § 633. Determination of number, locations, and salaries of magistrates.
- § 634. Compensation.
- § 635. Expenses.
- § 636. Jurisdiction, powers, and temporary assignment.
- § 637. Training.
- § 638. Dockets and forms; United States Code; seals.
- § 639. Definitions.

§ 631. Appointment and tenure

- (a) The judges of each United States district court and the district courts of the Virgin Islands, Guam, and the Northern Mariana Islands shall appoint United States magistrate judges in such numbers and to serve at such locations within the judicial districts as the Judicial Conference may determine under this chapter. In the case of a magistrate judge appointed by the district court of the Virgin Islands, Guam, or the Northern Mariana Islands, this chapter shall apply as though the court appointing such a magistrate judge were a United States district court. Where there is more than one judge of a district court, the appointment, whether an original appointment or a reappointment, shall be by the concurrence of a majority of all the judges of such district court, and when there is no such concurrence, then by the chief judge. Where the conference deems it desirable, a magistrate may be designated to serve in one or more districts adjoining the district for which he is appointed. Such a designation shall be made by the concurrence of a

majority of the judges of each of the district courts involved and shall specify the duties to be performed by the magistrate in the adjoining district or districts.

- (b) No individual may be appointed or reappointed to serve as a magistrate under this chapter unless:
 - (1) He has 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, except that an individual who does not meet the bar membership requirements of this paragraph may be appointed and serve as a part-time magistrate if the appointing court or courts and the conference find that no qualified individual who is a member of the bar is available to serve at a specific location;
 - (2) He is determined by the appointing district court or courts to be competent to perform the duties of the office;
 - (3) In the case of an individual appointed to serve in a national park, he resides within the exterior boundaries of that park, or at some place reasonably adjacent thereto;
 - (4) He is not related by blood or marriage to a judge of the appointing court or courts at the time of his initial appointment; and
 - (5) He is selected pursuant to standards and procedures promulgated by the Judicial Conference of the United States. Such standards and procedures shall contain provision for public notice of all vacancies in magistrate positions and for the establishment by the district courts of merit selection panels, composed of residents of the individual judicial districts, to assist the courts in identifying and recommending persons who are best qualified to fill such positions.
- (c) A magistrate may hold no other civil or military office or employment under the United States: Provided, however, That, with the approval of the conference, a part-time referee in bankruptcy or a clerk or deputy clerk of a court of the United States may be appointed and serve as a part-time United States magistrate, but the conference shall fix the aggregate amount of compensation to be received for performing the duties of part-time magistrate and part-time referee in bankruptcy, clerk or deputy clerk: And provided further, That retired officers and retired enlisted personnel of the Regular and Reserve components of the Army, Navy, Air Force, Marine Corps, and Coast Guard, members of the Reserve components of the Army, Navy, Air Force, Marine Corps, and Coast Guard, and members of the Army National Guard of the United States, the Air National Guard of the United States, and the Naval Militia and of the National Guard of a State, territory, or the District of Columbia, except the National Guard disbursing officers who are on a full-time salary basis, may be appointed and serve as United States magistrates.
- (d) Except as otherwise provided in sections 375 and 636(h) of this title, no individual may serve under this chapter after having attained the age of seventy years: Provided, however, That upon a majority vote of all the judges of the appointing court or courts, which is taken upon the magistrate's attaining age

seventy and upon each subsequent anniversary thereof, a magistrate who has attained the age of seventy years may continue to serve and may be reappointed under this chapter.

- (e) The appointment of any individual as a full-time magistrate shall be for a term of eight years, and the appointment of any individuals as a part-time magistrate shall be for a term of four years, except that the term of a full-time or part-time magistrate appointed under subsection (k) [should be subsection (j)] shall expire upon—
 - (1) the expiration of the absent magistrate's term,
 - (2) the reinstatement of the absent magistrate in regular service in office as a magistrate,
 - (3) the failure of the absent magistrate to make timely application under subsection (j) of this section for reinstatement in regular service in office as a magistrate after discharge or release from military service,
 - (4) the death or resignation of the absent magistrate, or
 - (5) the removal from office of the absent magistrate pursuant to subsection (i) of this section, whichever may first occur.
- (f) Upon the expiration of his term, a magistrate may, by a majority vote of the judges of the appointing district court or courts and with the approval of the judicial council of the circuit, continue to perform the duties of his office until his successor is appointed, or for 180 days after the date of the expiration of the magistrate's term, whichever is earlier.
- (g) Each individual appointed as a magistrate under this section shall take the oath or affirmation prescribed by section 453 of this title before performing the duties of his office.
- (h) Each appointment made by a judge or judges of a district court shall be entered of record in such court, and notice of such appointment shall be given at once by the clerk of that court to the Director.
- (i) Removal of a magistrate during the term for which he is appointed shall be only for incompetency, misconduct, neglect of duty, or physical or mental disability, but a magistrate's office shall be terminated if the conference determines that the services performed by his office are no longer needed. Removal shall be by the judges of the district court for the judicial district in which the magistrate serves; where there is more than one judge of a district court, removal shall not occur unless a majority of all the judges of such court concur in the order of removal; and when there is a tie vote of the judges of the district court on the question of the removal or retention in office of a magistrate, then removal shall be only by a concurrence of a majority of all the judges of the council. In the case of a magistrate appointed under the third sentence [should be fourth sentence] of subsection (a) of this section, removal shall not occur unless a majority of all the judges of the appointing district courts concur in the order of removal; and where there is a tie vote on the question of the removal or retention in office of a magistrate, then removal shall be only by a

concurrence of a majority of all the judges of the council or councils. Before any order or [should be “of”] removal shall be entered, a full specification of the charges shall be furnished to the magistrate, and he shall be accorded by the judge or judges of the removing court, courts, council, or councils an opportunity to be heard on the charges.

- (j) Upon the grant by the appropriate district court or courts of a leave of absence to a magistrate entitled to such relief under chapter 43 of title 38, such court or courts may proceed to appoint, in the manner specified in subsection (a) of this section, another magistrate, qualified for appointment and service under subsections (b), (c), and (d) of this section, who shall serve for the period specified in subsection (e) of this section.
- (k) A United States magistrate appointed under this chapter shall be exempt from the provisions of subchapter I of chapter 63 of title 5.

§ 632. Character of service

- (a) Full-time United States magistrates may not engage in the practice of law, and may not engage in any other business, occupation, or employment inconsistent with the expeditious, proper, and impartial performance of their duties as judicial officers.
- (b) Part-time United States magistrates shall render such service as judicial officers as is required by law. While so serving they may engage in the practice of law, but may not serve as counsel in any criminal action in any court of the United States, nor act in any capacity that is, under such regulations as the conference may establish, inconsistent with the proper discharge of their office. Within such restrictions, they may engage in any other business, occupation, or employment which is not inconsistent with the expeditious, proper, and impartial performance of their duties as judicial officers.

§ 633. Determination of number, locations, and salaries of magistrates

(a) Surveys by the Director.—

- (1) The Director shall, within one year immediately following the date of the enactment of the Federal Magistrates Act, make a careful survey of conditions in judicial districts to determine (A) the number of appointments of full-time magistrates and part-time magistrates required to be made under this chapter to provide for the expeditious and effective administration of justice, (B) the locations at which such officers shall serve, and (C) their respective salaries under section 634 of this title. Thereafter, the Director shall, from time to time, make such surveys, general or local, as the conference shall deem expedient.
- (2) In the course of any survey, the Director shall take into account local conditions in each judicial district, including the areas and the populations to be served, the transportation and communications facilities available, the amount and distribution of business of the type expected to arise before officers appointed under this chapter (including such matters as may be assigned under section 636(b) of this chapter), and any other material fac-

tors. The Director shall give consideration to suggestions from any interested parties, including district judges, United States commissioners or officers appointed under this chapter, United States attorneys, bar associations, and other parties having relevant experience or information.

- (3) The surveys shall be made with a view toward creating and maintaining a system of full-time United States magistrates. However, should the Director find, as a result of any such surveys, areas in which the employment of a full-time magistrate would not be feasible or desirable, he shall recommend the appointment of part-time United States magistrates in such numbers and at such locations as may be required to permit prompt and efficient issuance of process and to permit individuals charged with criminal offenses against the United States to be brought before a judicial officer of the United States promptly after arrest.

(b) Determination by the conference.

Upon the completion of the initial surveys required by subsection (a) of this section, the Director shall report to the district courts, the councils, and the conference his recommendations concerning the number of full-time magistrates and part-time magistrates, their respective locations, and the amount of their respective salaries under section 634 of this title. The district courts shall advise their respective councils, stating their recommendations and the reasons therefor; the councils shall advise the conference, stating their recommendations and the reasons therefor, and shall also report to the conference the recommendations of the district courts. The conference shall determine, in the light of the recommendations of the Director, the district courts, and the councils, the number of full-time United States magistrates and part-time United States magistrates, the locations at which they shall serve, and their respective salaries. Such determinations shall take effect in each judicial district at such time as the district court for such judicial district shall determine, but in no event later than one year after they are promulgated.

(c) Changes in number, locations, and salaries.

Except as otherwise provided in this chapter, the conference may, from time to time, in the light of the recommendations of the Director, the district courts, and the councils, change the number, locations, and salaries of full-time and part-time magistrates, as the expeditious administration of justice may require.

§ 634. Compensation

- (a) Officers appointed under this chapter shall receive, as full compensation for their services, salaries to be fixed by the conference pursuant to section 633, at rates for full-time United States magistrates up to an annual rate equal to 92 percent of the salary of a judge of the district court of the United States, as determined pursuant to section 135, and at rates for part-time magistrates of not less than an annual salary of \$100, nor more than one-half the maximum salary payable to a full-time magistrate. In fixing the amount of salary to be paid to any officer appointed under this chapter, consideration shall be given to the average number and the nature of matters that have arisen during the

immediately preceding period of five years, and that may be expected thereafter to arise, over which such officer would have jurisdiction and to such other factors as may be material. Disbursement of salaries shall be made by or pursuant to the order of the Director.

- (b) Except as provided by section 8344, title 5, relating to reductions of the salaries of reemployed annuitants under subchapter III of chapter 83 of such title and unless the office has been terminated as provided in this chapter, the salary of a full-time United States magistrate shall not be reduced, during the term in which he is serving, below the salary fixed for him at the beginning of that term.
- (c) All United States magistrates, effective upon their taking the oath or affirmation of office, and all necessary legal, clerical, and secretarial assistants employed in the offices of full-time United States magistrates shall be deemed to be officers and employees in the judicial branch of the United States Government within the meaning of subchapter III (relating to civil service retirement) of chapter 83, chapter 87 (relating to Federal employees' group life insurance), and chapter 89 (relating to Federal employees' health benefits program) of title 5. Part-time magistrates shall not be excluded from coverage under these chapters solely for lack of a prearranged regular tour of duty. A legal assistant appointed under this section shall be exempt from the provisions of subchapter I of chapter 63 of title 5, unless specifically included by the appointing judge or by local rule of court.

§ 635. Expenses

- (a) Full-time United States magistrates serving under this chapter shall be allowed their actual and necessary expenses incurred in the performance of their duties, including the compensation of such legal assistants as the Judicial Conference, on the basis of the recommendations of the judicial councils of the circuits, considers necessary, and the compensation of necessary clerical and secretarial assistance. Such expenses and compensation shall be determined and paid by the Director under such regulations as the Director shall prescribe with the approval of the conference. The Administrator of General Services shall provide such magistrates with necessary courtroom, office space, furniture and facilities within United States courthouses or office buildings owned or occupied by departments or agencies of the United States, or should suitable courtroom and office space not be available within any such courthouse or office building, the Administrator of General Services, at the request of the Director, shall procure and pay for suitable courtroom and office space, furniture and facilities for such magistrate in another building, but only if such request has been approved as necessary by the judicial council of the appropriate circuit.
- (b) Under such regulations as the Director shall prescribe with the approval of the conference, the Director shall reimburse part-time magistrates for actual expenses necessarily incurred by them in the performance of their duties under this chapter. Such reimbursement may be made, at rates not exceeding those prescribed by such regulations, for expenses incurred by such part-time magistrates for clerical and secretarial assistance, stationery, telephone and other communications services, travel, and such other expenses as may be deter-

mined to be necessary for the proper performance of the duties of such officers: Provided, however, That no reimbursement shall be made for all or any portion of the expense incurred by such part-time magistrates for the procurement of office space.

§ 636. Jurisdiction, powers, and temporary assignment

- (a) Each United States magistrate serving under this chapter shall have within the territorial jurisdiction prescribed by his appointment—
- (1) all powers and duties conferred or imposed upon United States commissioners by law or by the Rules of Criminal Procedure for the United States District Courts;
 - (2) the power to administer oaths and affirmations, issue orders pursuant to section 3142 of title 18 concerning release or detention of persons pending trial, and take acknowledgments, affidavits, and depositions;
 - (3) the power to conduct trials under section 3401, title 18, United States Code, in conformity with and subject to the limitations of that section;
 - (4) the power to enter a sentence for a petty offense; and
 - (5) the power to enter a sentence for a class A misdemeanor in a case in which the parties have consented.
- (b) (1) Notwithstanding any provision of law to the contrary—
- (A) a judge may designate a magistrate to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate's order is clearly erroneous or contrary to law.
 - (B) a judge may also designate a magistrate to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A), of applications for posttrial relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.
 - (C) the magistrate shall file his proposed findings and recommendations under subparagraph (B) with the court and a copy shall forthwith be mailed to all parties.

Within ten days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a *de novo* deter-

mination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate. The judge may also receive further evidence or recommit the matter to the magistrate with instructions.

- (2) A judge may designate a magistrate to serve as a special master pursuant to the applicable provisions of this title and the Federal Rules of Civil Procedure for the United States district courts. A judge may designate a magistrate to serve as a special master in any civil case, upon consent of the parties, without regard to the provisions of rule 53(b) of the Federal Rules of Civil Procedure for the United States district courts.
 - (3) A magistrate may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States.
 - (4) Each district court shall establish rules pursuant to which the magistrates shall discharge their duties.
- (c) Notwithstanding any provision of law to the contrary—
- (1) Upon the consent of the parties, a full-time United States magistrate or a part-time United States magistrate who serves as a full-time judicial officer may conduct any or all proceedings in a jury or non-jury civil matter and order the entry of judgment in the case, when specially designated to exercise such jurisdiction by the district court or courts he serves. Upon the consent of the parties, pursuant to their specific written request, any other part-time magistrate may exercise such jurisdiction, if such magistrate meets the bar membership requirements set forth in section 631(b)(1) and the chief judge of the district court certifies that a full-time magistrate is not reasonably available in accordance with guidelines established by the judicial council of the circuit. When there is more than one judge of a district court, designation under this paragraph shall be by the concurrence of a majority of all the judges of such district court, and when there is no such concurrence, then by the chief judge.
 - (2) If a magistrate is designated to exercise civil jurisdiction under paragraph (1) of this subsection, the clerk of court shall, at the time the action is filed, notify the parties of the availability of a magistrate to exercise such jurisdiction. The decision of the parties shall be communicated to the clerk of court. Thereafter, either the district court judge or the magistrate may again advise the parties of the availability of the magistrate, but in so doing, shall also advise the parties that they are free to withhold consent without adverse substantive consequences. Rules of court for the reference of civil matters to magistrates shall include procedures to protect the voluntariness of the parties' consent.
 - (3) Upon entry of judgment in any case referred under paragraph (1) of this subsection, an aggrieved party may appeal directly to the appropriate United States court of appeals from the judgment of the magistrate in the

same manner as an appeal from any other judgment of a district court. The consent of the parties allows a magistrate designated to exercise civil jurisdiction under paragraph (1) of this subsection to direct the entry of a judgment of the district court in accordance with the Federal Rules of Civil Procedure. Nothing in this paragraph shall be construed as a limitation of any party's right to seek review by the Supreme Court of the United States.

- (4) The court may, for good cause shown on its own motion, or under extraordinary circumstances shown by any party, vacate a reference of a civil matter to a magistrate under this subsection.
 - (5) The magistrate shall, subject to guidelines of the Judicial Conference, determine whether the record taken pursuant to this section shall be taken by electronic sound recording, by a court reporter, or by other means.
- (d) The practice and procedure for the trial of cases before officers serving under this chapter shall conform to rules promulgated by the Supreme Court pursuant to section 2072 of this title.
- (e) **Contempt authority.**—
- (1) **In general.**—A United States magistrate judge serving under this chapter shall have within the territorial jurisdiction prescribed by the appointment of such magistrate judge the power to exercise contempt authority as set forth in this subsection.
 - (2) **Summary criminal contempt authority.**—A magistrate judge shall have the power to punish summarily by fine or imprisonment such contempt of the authority of such magistrate judge constituting misbehavior of any person in the magistrate judge's presence so as to obstruct the administration of justice. The order of contempt shall be issued under the Federal Rules of Criminal Procedure.
 - (3) **Additional criminal contempt authority in civil consent and misdemeanor cases.**—In any case in which a United States magistrate judge presides with the consent of the parties under subsection (c) of this section, and in any misdemeanor case proceeding before a magistrate judge under section 3401 of title 18, the magistrate judge shall have the power to punish, by fine or imprisonment, criminal contempt constituting disobedience or resistance to the magistrate judge's lawful writ, process, order, rule, decree, or command. Disposition of such contempt shall be conducted upon notice and hearing under the Federal Rules of Criminal Procedure.
 - (4) **Civil contempt authority in civil consent and misdemeanor cases.**—In any case in which a United States magistrate judge presides with the consent of the parties under subsection (c) of this section, and in any misdemeanor case proceeding before a magistrate judge under section 3401 of title 18, the magistrate judge may exercise the civil contempt authority of the district court. This paragraph shall not be construed to limit the authority of a magistrate judge to order sanctions under any other statute, the Federal Rules of Civil Procedure, or the Federal Rules of Criminal Procedure.

(5) **Criminal contempt penalties.**—The sentence imposed by a magistrate judge for any criminal contempt provided for in paragraphs (2) and (3) shall not exceed the penalties for a Class C misdemeanor as set forth in sections 3581(b)(8) and 3571(b)(6) of title 18.

(6) **Certification of other contempts to the district court.**—Upon the commission of any such act—

(A) in any case in which a United States magistrate judge presides with the consent of the parties under subsection (c) of this section, or in any misdemeanor case proceeding before a magistrate judge under section 3401 of title 18, that may, in the opinion of the magistrate judge, constitute a serious criminal contempt punishable by penalties exceeding those set forth in paragraph (5) of this subsection, or

(B) in any other case or proceeding under subsection (a) or (b) of this section, or any other statute, where—

(i) the act committed in the magistrate judge's presence may, in the opinion of the magistrate judge, constitute a serious criminal contempt punishable by penalties exceeding those set forth in paragraph (5) of this subsection,

(ii) the act that constitutes a criminal contempt occurs outside the presence of the magistrate judge, or

(iii) the act constitutes a civil contempt,

the magistrate judge shall forthwith certify the facts to a district judge and may serve or cause to be served, upon any person whose behavior is brought into question under this paragraph, an order requiring such person to appear before a district judge upon a day certain to show cause why that person should not be adjudged in contempt by reason of the facts so certified. The district judge shall thereupon hear the evidence as to the act or conduct complained of and, if it is such as to warrant punishment, punish such person in the same manner and to the same extent as for a contempt committed before a district judge.

(7) **Appeals of magistrate judge contempt orders.**—The appeal of an order of contempt under this subsection shall be made to the court of appeals in cases proceeding under subsection (c) of this section. The appeal of any other order of contempt issued under this section shall be made to the district court.

(f) In an emergency and upon the concurrence of the chief judges of the districts involved, a United States magistrate may be temporarily assigned to perform any of the duties specified in subsection (a), (b), or (c) of this section in a judicial district other than the judicial district for which he has been appointed. No magistrate shall perform any of such duties in a district to which he has been temporarily assigned until an order has been issued by the chief judge of such district specifying (1) the emergency by reason of which he has been transferred, (2) the duration of his assignment, and (3) the duties which he is

authorized to perform. A magistrate so assigned shall not be entitled to additional compensation but shall be reimbursed for actual and necessary expenses incurred in the performance of his duties in accordance with section 635.

- (g) A United States magistrate may perform the verification function required by section 4107 of title 18, United States Code. A magistrate may be assigned by a judge of any United States district court to perform the verification required by section 4108 and the appointment of counsel authorized by section 4109 of title 18, United States Code, and may perform such functions beyond the territorial limits of the United States. A magistrate assigned such functions shall have no authority to perform any other function within the territory of a foreign country.
- (h) A United States magistrate who has retired may, upon the consent of the chief judge of the district involved, be recalled to serve as a magistrate in any judicial district by the judicial council of the circuit within which such district is located. Upon recall, a magistrate may receive a salary for such service in accordance with regulations promulgated by the Judicial Conference, subject to the restrictions on the payment of an annuity set forth in section 377 of this title or in subchapter III of chapter 83, and chapter 84, of title 5 which are applicable to such magistrate. The requirements set forth in subsections (a), (b)(3), and (d) of section 631, and paragraph (1) of subsection (b) of such section to the extent such paragraph requires membership of the bar of the location in which an individual is to serve as a magistrate, shall not apply to the recall of a retired magistrate under this subsection or section 375 of this title. Any other requirement set forth in section 631(b) shall apply to the recall of a retired magistrate under this subsection or section 375 of this title unless such retired magistrate met such requirement upon appointment or reappointment as a magistrate under section 361 [should be section 631].

§ 637. Training

The Federal Judicial Center shall conduct periodic training programs and seminars for both full-time and part-time United States magistrates, including an introductory training program for new magistrates, to be held within one year after initial appointment.

§ 638. Dockets and forms; United States Code; seals

- (a) The Director shall furnish to United States magistrates adequate docket books and forms prescribed by the Director. The Director shall also furnish to each such officer a copy of the current edition of the United States Code.
- (b) All property furnished to any such officer shall remain the property of the United States and, upon the termination of his term of office, shall be transmitted to his successor in office or otherwise disposed of as the Director orders.
- (c) The Director shall furnish to each United States magistrate appointed under this chapter an official impression seal in a form prescribed by the conference. Each such officer shall affix his seal to every jurat or certificate of his official acts without fee.

§ 639. Definitions

As used in this chapter—

- (1) “Conference” shall mean the Judicial Conference of the United States;
- (2) “Council” shall mean the Judicial Council of the Circuit;
- (3) “Director” shall mean the Director of the Administrative Office of the United States Courts;
- (4) “Full-time magistrate” shall mean a full-time United States magistrate;
- (5) “Part-time magistrate” shall mean a part-time United States magistrate; and
- (6) “United States magistrate” and “magistrate” shall mean both full-time and part-time United States magistrates.

* * *

Provisions in Title 18, United States Code

CHAPTER 219

TRIAL BY UNITED STATES MAGISTRATES

§ 3401. Misdemeanors; application of probation laws.

§ 3402. Rules of procedure, practice and appeal.

§ 3401. Misdemeanors; application of probation laws

- (a) When specially designated to exercise such jurisdiction by the district court or courts he serves, any United States magistrate shall have jurisdiction to try persons accused of, and sentence persons convicted of, misdemeanors committed within that judicial district
- (b) Any person charged with a misdemeanor, other than a petty offense may elect, however, to be tried before a district judge for the district in which the offense was committed. The magistrate judge shall carefully explain to the defendant that he has a right to trial, judgment, and sentencing by a district judge and that he may have a right to trial by jury before a district judge or magistrate judge. The magistrate judge may not proceed to try the case unless the defendant, after such explanation, expressly consents to be tried before the magistrate judge and expressly and specifically waives trial, judgment, and sentencing by a district judge. Any such consent and waiver shall be made in writing or orally on the record.
- (c) A magistrate who exercises trial jurisdiction under this section, and before whom a person is convicted or pleads either guilty or nolo contendere, may, with the approval of a judge of the district court, direct the probation service of the court to conduct a presentence investigation on that person and render a report to the magistrate prior to the imposition of sentence.
- (d) The probation laws shall be applicable to persons tried by a magistrate under this section, and such officer shall have power to grant probation and to

revoke, modify, or reinstate the probation of any person granted probation by a magistrate judge.

- (e) Proceedings before United States magistrates under this section shall be taken down by a court reporter or recorded by suitable sound recording equipment. For purposes of appeal a copy of the record of such proceedings shall be made available at the expense of the United States to a person who makes affidavit that he is unable to pay or give security therefor, and the expense of such copy shall be paid by the Director of the Administrative Office of the United States Courts.
- (f) The district court may order that proceedings in any misdemeanor case be conducted before a district judge rather than a United States magistrate upon the court's own motion or, for good cause shown, upon petition by the attorney for the Government. Such petition should note the novelty, importance, or complexity of the case, or other pertinent factors, and be filed in accordance with regulations promulgated by the Attorney General.
- (g) The magistrate judge may, in a petty offense case involving a juvenile, exercise all powers granted to the district court under chapter 403 of this title. The magistrate judge may, in the case of any misdemeanor, other than a petty offense, involving a juvenile in which consent to trial before a magistrate judge has been filed under subsection (b), exercise all powers granted to the district court under chapter 403 of this title. For purposes of this subsection, proceedings under chapter 403 of this title may be instituted against a juvenile by a violation notice or complaint, except that no such case may proceed unless the certification referred to in section 5032 of this title has been filed in open court at the arraignment.
- (h) The magistrate judge shall have power to modify, revoke, or terminate supervised release of any person sentenced to a term of supervised release by a magistrate judge.
- (i) A district judge may designate a magistrate judge to conduct hearings to modify, revoke, or terminate supervised release, including evidentiary hearings, and to submit to the judge proposed findings of fact and recommendations for such modification, revocation, or termination by the judge, including, in the case of revocation, a recommended disposition under section 3583(e) of this title. The magistrate judge shall file his or her proposed findings and recommendations.

§ 3402. Rules of procedure, practice and appeal

In all cases of conviction by a United States magistrate an appeal of right shall lie from the judgment of the magistrate to a judge of the district court of the district in which the offense was committed.

Appendix H

REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES ESTABLISHING STANDARDS AND PROCEDURES FOR THE APPOINTMENT AND REAPPOINTMENT OF UNITED STATES MAGISTRATE JUDGES

- 62 CHAPTER 1 • QUALIFICATIONS OF UNITED STATES MAGISTRATE JUDGES
 - Sec. 1.01. Minimum Qualifications
 - Sec. 1.02. Additional Qualifications
- 63 CHAPTER 2 • PUBLIC NOTICE
 - Sec. 2.01. Publication
 - Sec. 2.02. Contents of Notice
 - Sec. 2.03. Filing of Notice
- 63 CHAPTER 3 • MERIT SELECTION PANEL
 - Sec. 3.01. Establishment of Panel
 - Sec. 3.02. Membership
 - Sec. 3.03. Duties
 - Sec. 3.04. Panel Report
- 64 CHAPTER 4 • NEW APPOINTMENT OF MAGISTRATE JUDGES
 - Sec. 4.01. Selection from List and Majority Decision of Judges
 - Sec. 4.02. FBI and IRS Reports
 - Sec. 4.03. Order of Appointment
 - Sec. 4.04. Oath of Office
 - Sec. 4.05. Record of Appointment
- 65 CHAPTER 5 • SELECTION OF PART-TIME MAGISTRATE JUDGES
 - Sec. 5.01. Alternative Procedures

- 65 CHAPTER 6 • REAPPOINTMENT OF MAGISTRATE JUDGES
 - Sec. 6.01. Qualifications
 - Sec. 6.02. Alternative Selection Methods
 - Sec. 6.03. Procedures

- 66 CHAPTER 7 • APPOINTMENTS TO COMBINATION POSITIONS
 - Sec. 7.01.

**REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES
ESTABLISHING STANDARDS AND PROCEDURES FOR THE APPOINTMENT
AND REAPPOINTMENT OF UNITED STATES MAGISTRATE JUDGES**

(Promulgated March 1980; Last Amended September 2001)

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.

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) Law clerk to any judge or judicial officer (limited to two years).
 - (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 a general local newspaper, in a widely-circulated local legal periodical, or in both.

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 active 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 active 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. 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.

Sec. 3.03. Duties

- (a) The chairperson shall have such duties as the court may assign.
- (b) 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 except as provided in section 3.04 of these regulations.
- (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 including women and members of minority groups.
- (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 APPOINTMENT OF MAGISTRATE JUDGES

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

The active district judges shall select from the list provided by the panel. However, if no applicant receives a majority vote of the active 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 active district judges, whether it wishes to con-

sider 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 a general local newspaper, in a widely-circulated local legal periodical, or in both. 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 active 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.

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

Thurgood Marshall Federal Judiciary Building
Washington, D.C. 20544