

JUDICIAL COUNCIL OF THE FOURTH CIRCUIT
MANDATORY CONFLICT SCREENING PLAN

Preface: On September 19, 2006, the Judicial Conference of the United States adopted a mandatory conflict screening policy requiring courts and judges to implement automated screening to identify financial conflicts of interest. Although automated screening (like manual screening) is not foolproof, it is a valuable tool for detecting possible financial and other conflicts of interest. The Judicial Conference policy is to be administered and directed by the circuit councils or by those individual courts not subject to the authority of a circuit council.

Authority: The Judicial Council of the Fourth Circuit adopts this plan under the authority set forth in 28 U.S.C. § 332(d)(1) and in accordance with the mandatory financial conflict screening policy adopted on September 19, 2006, by the Judicial Conference. Report of the Proceedings of the Judicial Conference of the United States.

§ 1. Scope. This plan applies to the court of appeals, district courts, and bankruptcy courts within the Fourth Circuit as defined by law, and to each judge of those courts in regular active service, retired under 28 U.S.C. §§ 371(b) or 372(a) and performing duties pursuant to a designation under 28 U.S.C. §§ 291 to 294, or recalled to judicial service. This plan does not apply to judges retired under 28 U.S.C. §§ 371(b) or 372(a) but not performing duties or retired judges eligible for recall but not serving on recall.

§ 2. Definitions. For purposes of this plan:

- (a) “Conflict of interest” refers to an interest that disqualifies a judge as provided in Canon 3C(1) of the Code of Conduct for United States Judges. See also 28 U.S.C. § 455(a), (b).
- (b) “Financial conflict” or “financial conflict of interest” refers to a financial interest that disqualifies a judge as provided in Canon 3C(1)(c) of the Code of Conduct for United States Judges. See also 28 U.S.C. § 455(b)(4).
- (c) “Financial interest” has the meaning set forth in Canon 3C(3)(c) of the Code of Conduct for United States Judges. See also 28 U.S.C. § 455(d)(4).
- (d) “Judge” refers to circuit, district, bankruptcy, and magistrate judges and any other judicial officers subject to the Code of Conduct for United States Judges.

§ 3. Court Obligations. Each court shall implement automated screening to identify possible financial conflicts of interest for each judge appointed, designated and assigned, transferred, temporarily assigned, or recalled to serve the court. Each court shall use the screening component of the Case Management/Electronic Case Files (CM/ECF) system, the screening component of the Appellate Information Management System (AIMS), or other automated

screening approved by the circuit council under § 6 of this plan. In implementing the screening, each court shall:

- (a) enter the following information into the database used for automated screening or (when feasible) arrange for the parties to do so: the parties, attorneys, law firms, and corporate parents disclosed by the parties;
- (b) at the request of a judge, enter the judge's conflicts list into the database used for automated screening or assist the judge or chambers staff to do so;
- (c) take reasonable steps to ensure that parties and/or attorneys provide information needed for conflict screening, including corporate parent statements as required by Fed.R. App. P. 26.1, Fed. R. Bankr. P. 1007(a)(1) and 7007.1, Fed R. Civ. P. 7.1, and Fed. R.Crim. P. 12.4;
- (d) conduct automated screening on a regular schedule, including screening new matters as they are assigned or to be assigned to a judge or panel and screening all existing matters periodically or after each new entry of relevant information into the database used for automated screening;
- (e) notify the judge (or designee) when a possible conflict is identified;
- (f) provide periodic notices to judges reminding them to review and update their conflicts lists and to review and update the designee who will receive notice when a possible conflict is identified; and
- (g) provide information, training, and assistance to judges and staff to facilitate their participation in automated screening.

§ 4. Obligations of Judges. Each judge has the ultimate responsibility for identifying and avoiding conflicts of interest and should ensure that assigned matters are reviewed for conflicts before action is taken in the matter. To assist in discharging this obligation, each judge shall use automated screening to identify financial conflicts of interest by using the screening system implemented by each court to which the judge is appointed, designated and assigned, transferred, temporarily assigned, or recalled to serve. Each judge may also use the court's automated screening to identify conflicts of interest other than financial conflicts. Each judge also shall:

- (a) keep informed about personal and fiduciary financial interests, and make a reasonable effort to keep informed about the personal financial interests of the spouse and minor children residing in the household, as required by Canon 3C(2) of the Code of Conduct for United States Judges; see also 28 U.S.C. § 455(c);

- (b) develop a “conflicts list,” identifying financial conflicts, for use in automated screening;¹
- (c) review the conflicts list at regular intervals and update the conflicts list as financial interests change;
- (d) employ the conflicts list in the court’s automated screening by entering the interests listed into the database used for automated screening; the information may be entered personally, by chambers staff, or with the assistance of court staff; and
- (e) when notice is provided to the judge (or designee) that a possible conflict has been identified, determine or cause to be determined whether a conflict exists and then arrange for appropriate action to resolve the conflict (i.e., non assignment, recusal, divestiture of the interest).

§ 5. Exceptions.

- (a) Upon application, the circuit council may except a court from § 3 of this plan, and may except the judges of that court from § 4 of this plan, where automated screening through CM/ECF, AIMS, or any other automated screening system is not available. The circuit council shall limit the duration of the exception to one year to allow the court to implement automated screening as provided in this plan. Extensions may be granted for good cause.
- (b) Upon application, the circuit council may except a judge from § 4 of this plan where the circumstances indicate that the judge’s participation in automated screening is unnecessary to identify financial conflicts of interest or is otherwise infeasible, including in the following circumstances:
 - (1) the judge has no case currently assigned and is not receiving new assignments (e.g., due to serious illness); and
 - (2) the judge files a written certification stating that he or she knows of no financial interest attributable to the judge requiring disqualification as a financial conflict of interest and does not expect to acquire such an interest in the foreseeable future.

¹ Form AO-300, “Checklist for Financial Conflicts,” may assist judges in developing conflicts lists. Financial disclosure reports prepared pursuant to 5 U.S.C. app. 4 may also be used for this purpose, although the disclosures on these reports are not co-extensive with disqualification requirements.

The circuit council shall specify the duration of the exception (i.e., a specified time period or permanent), provided, however, that an exception under § 5(b)(2) of this plan shall not exceed one year.

§ 6. Approval of Alternative Screening. A court may request that the circuit council approve an alternative automated screening system other than CM/ECF or AIMS (such alternative system may not receive automation support from the Administrative Office). The circuit council shall approve an alternative system only if its functionality is comparable to the automated screening in CM/ECF or AIMS in all major respects, including the ability to:

- (a) create and store electronically a judge's conflicts list;
- (b) compare entries on a judge's conflicts list to parties, attorneys, law firms, and corporate parents in the court's docket;
- (c) allow for screening on a regularly scheduled basis and on an ad hoc basis; and
- (d) provide notice to a judge when a possible conflict is identified.

§ 7. Reporting Obligations.

- (a) Each chief judge shall make such reports as are requested by the circuit council.
- (b) The circuit council shall report to the Judicial Conference by January 31, 2007, with a preliminary plan for implementation of mandatory financial conflict screening within the circuit. The circuit council shall include in the report, as appropriate, a plan of action to increase judges' participation in automated screening for financial conflicts. The circuit council shall also make such additional reports as are requested by the Judicial Conference.

§ 8. Confidentiality of Conflicts Lists. Nothing in this plan requires a court or judge to disclose the interests listed on a conflicts list to anyone except to the limited extent necessary in the court's implementation of its automated screening.

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

§ 10. Effective Date. This plan takes effect on February 1, 2007.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT CONFLICT SCREENING PROCEDURES

(Adopted Under the Judicial Council Mandatory Conflict Screening Plan)

As required by the Judicial Council's Mandatory Conflict Screening Plan, the court of appeals uses the automated conflict screening capability of the Case Management/Electronic Case Filing (CM/ECF) system, supplemented by individual judicial review, to identify case conflicts.

Automated Screening of Cases Against Judge's Conflict List

1. Each judge provides the clerk's office recusal deputy with a list of personal and fiduciary financial interests, as well as financial interests for their spouse and any minor children residing in the household via email. The Checklist for Financial Conflicts (Form AO-300) or the judge's Financial Disclosure Report may be used for this purpose. Judges may also include on their lists any individuals, attorneys, law firms, judges, and companies as to which the judge is recused for any reason.
2. Visiting judges are asked to provide their conflict lists to the recusal deputy well in advance of the session at which they will sit, if the timing of their designation allows.
3. The recusal deputy enters the conflict information into CM/ECF and maintains confidential conflict lists for each circuit judge and visiting judge.
4. Circuit judges who retire or resign from the court and enter practice are added to each circuit judge's conflict list for the period of one year after the judge leaves office (Advisory Opinion 70, Committee on Codes of Conduct June 2009) and thereafter if requested by the judge.
5. Whenever there is a change in the judge's conflicts, for example due to a stock purchase or sale, the judge notifies the recusal deputy via email. Every 60 days, the recusal deputy sends each judge a current conflict report.
6. The CM/ECF system uses an automated search function to compare a judge's conflict list to the parties, attorneys, law firms, judges, and positive disclosures entered for each case. The recusal deputy reviews the database on a daily basis for potential matches between the judge's conflict list and the court's case load resulting from the addition of new persons or entities to the court's case load or the judge's conflict list. A judge is not assigned to a case in which a conflict has been identified unless the judge notifies the clerk's office that he or she is not disqualified in the case. If a new conflict is identified in a case assigned to the judge, the recusal deputy notifies the judge's chambers.

Individual Review of Disqualification Reports and Other Information

7. In light of the inability of an automated conflict check to identify all conflicts, judges review the disqualification report (circulated with any new motion or case assignment, with the tentative argument calendar, and with any petition for rehearing en banc), as well as the case papers, for potential conflicts.
8. The disqualification report provides the following information:
 - Judges involved at the district court level
 - All parties in the case
 - All attorneys and law firms in the case
 - All entities disclosed on a positive disclosure statement (any parent corporation and any publicly held corporation owning 10% or more of a party's stock)
 - Any disqualification previously reported by a judge
 - Any conflict identified by CM/ECF's automated comparison of the parties, attorneys, judges, law firms, and disclosed corporate entities with the judges' conflict lists
9. The ultimate determination whether to sit on a case is made by the judge. If CM/ECF identifies a "false positive" conflict, the judge notifies the referring office that he or she is able to sit. Likewise, if the judge identifies a conflict in a case not flagged by CM/ECF, the judge notifies the referring office that he or she is not able to sit.