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Transparency Takes Shape

The Judicial Conference adopted new policies on ethics and accountability in September 2006. Now policy is being put into practice with the use of automated conflict checking and the posting on the web of educational seminar sponsors.

Educational Seminars Sources

Beginning January 1, 2007, nongovernmental organizations inviting a federal judge to attend an educational program —a significant purpose of which is the education of federal or state judges—and that pay for or reimburse that judge over a certain dollar amount, will be required to disclose financial and program information on the Judiciary's website. The policy applies if the judge is invited as a speaker, panelist, or attendee. An automated system, which will be available at www.uscourts.gov, is being developed for program providers to report their information.

"The Judiciary recognizes that judges' attendance at some educational seminars had posed concerns for some," said Judge D. Brock Hornby, chair of the Judicial Conference Committee on the Judicial Branch. "Our objective in making this policy was to give greater transparency and accountability, while allowing judges to continue their education. The Committee believes that judges' access to knowledge should be neither limited nor censored."

The Judicial Conference excludes certain organizations from the disclosure policy, including state and local bar associations; national, state and local subject-matter bar associations; judicial associations; the National Judicial College; and the Judicial Division of the American Bar Association. The reporting requirement is triggered when any payment or reimbursement is above the threshold at which judges must report gifts and reimbursements on their annual financial disclosure reports—currently $305.

Under the new Judicial Conference policy, educational program providers are required to disclose the name of the program's sponsors; the name or title of the program; dates and location of the program; various presentation topics and the expected speakers; and all the program provider's sources of support, financial or otherwise. Judges are barred from accepting reimbursements unless they first determine that the program providers have made the required disclosures. In addition, judges who accept invitations from such program providers must, within 30 days of the end of the program, file a report with their court's clerk, disclosing the dates of attendance, the name of the program providers, and the title of the education program.

Mandatory Conflict Screening Policy

Judicial circuit councils are in the process of drawing up plans to implement mandatory conflict screening.

The new conflict screening policy, approved by the Judicial Conference in September 2006, requires courts and judges to use automated screening software to help identify cases in which they may have a financial conflict of interest and should disqualify themselves. The screening can also be used to check for nonfinancial conflicts. The software has been deployed by the Administrative Office as part of the Case Management/Electronic Case Files (CM/ECF) system used by nearly all district and bankruptcy courts. As appeals courts begin implementing the CM/ECF system over the next year, they'll also begin using the accompanying conflict checking software.

As new matters are docketed in CM/ECF, the conflict checking software compares names of parties and attorneys to the names on a judge's recusal list.

However, the software cannot catch every conflict. And that's due in part to the ever-changing nature of big business.

"Keeping track of conflicts can be extremely complicated," said Judge Gordon J. Quist, chair of the Judicial Conference Committee on Codes of Conduct. "Especially when mergers and acquisitions lead to continual changes in investment portfolios. The parties are responsible for providing notice of corporate changes, and the courts need to make sure this happens. And judges should always perform a manual check for conflicts, in addition to the automated screening."

The AO, with the Judicial Conference Committee on Codes of Conduct and with input from judges, circuit executives and clerks of court, has prepared a model plan for conflict screening that addresses key issues and offers sample language spelling out the obligations of courts and judges. The model plan also offers a number of options for possible adoption by circuit councils or courts. For example, one option is to determine how frequently screening software will run. Circuit councils will report to the Judicial Conference on their preliminary plans by January 31, 2007.

JUDICIAL COUNCIL OF THE DISTRICT OF COLUMBIA 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 District of Columbia 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.

§ 1. Scope. This plan applies to the court of appeals, district court, and bankruptcy court within the District of Columbia 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 <u>or</u> the screening component of the Appellate Information Management System (AIMS). Additionally, pursuant to § 6 of this plan the circuit council approves the use by the court of appeals of its automated calendaring program ("CABS") to further aid in the implementation of this policy. 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, Fed. R. Crim. P. 12.4, and local court rules that supplement the relevant Federal Rules.

(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. While the United States Judicial Conference mandates the use of automated screening for conflicts, nothing in this policy precludes judges from supplementing automated screening resources by utilizing additional methods such as manual screening to identify 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;

(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., nonassignment, recusal, divestiture of the interest).

§ 5. Exceptions.

(a) Upon application, the circuit council shall except a court from § 3 of this plan, and shall 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 the time period necessary to allow the court to implement automated screening as provided in this plan.

(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); or

> (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.

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 make such 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 January 1, 2008.

Adopted by the Judicial Council of the District of Columbia Circuit on December 20, 2007.

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Last substantive revision (Transmittal GR-2) June 30, 2009
Last revised (minor technical changes) June 2, 2011

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