

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

MANDATORY CONFLICTS SCREENING PLAN

Preface: The Judicial Conference of the United States has adopted a mandatory conflict screening policy requiring courts and judges to implement automated screening. The Judicial Conference policy is to be administered and directed by the circuit councils.

Authority: The Judicial Council of the Eighth 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 courts, bankruptcy courts, and bankruptcy appellate panel within the Eighth Circuit, 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 to retired judges eligible for recall but not serving on recall.

§ 2. Definitions. For purposes of this Plan:

(a) “Conflict of interest” means an interest that disqualifies a judge as provided in Canon 3C(1) of the Code of Conduct for United States Judges. “Financial conflict” or “financial conflict of interest” means a financial interest that disqualifies a judge as provided in Canon 3C(1)(c) of the Code of Conduct for United States Judges. “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.

(b) “Judge” refers to all judicial officers subject to the Code of Conduct for United States Judges.

§ 3. Court Obligations. Each court in the Eighth Circuit must 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. Courts may use either the screening component of the Case Management/Electronic Case Files (CM/ECF) system or other automated screening approved by the Judicial Council under § 6 of this Plan. In implementing the screening, the clerk’s office must:

(a) ensure that the following information is entered into the database used for automated screening: 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;

(c) take reasonable steps to ensure that attorneys (or parties who are not represented by counsel) 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) screen cases for conflicts on a regular schedule using automated screening, including new matters when they are assigned (or to be assigned) to a judge or panel, and all pending matters periodically or after each new entry of relevant information;
- (e) notify the judge (or designee) when a possible conflict is identified and reassign the case if an investigation reveals a conflict that cannot otherwise be avoided;
- (f) remind judges on a regular basis to review and update their conflicts lists and to update the designee who will receive notice of a possible conflict, and notify newly-appointed judges and visiting judges of their obligations under this Plan; 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. Judges are encouraged to use the screening system implemented by the court to which the judge is appointed to identify financial and other conflicts of interest. Judges should:

- (a) be continually aware of their personal and fiduciary financial interests, and make a reasonable effort to know about the financial interests of a 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 using the form developed by the clerk of court for automated screening, if any;
- (c) update the conflicts list as financial interests change; and
- (d) determine promptly whether a conflict exists when notice is provided of a possible conflict and arrange for appropriate action to resolve the conflict (i.e., nonassignment, recusal, divestiture of the interest).

§ 5. Exceptions.

- (a) Upon written application, the Judicial Council may except a court from § 3 of this Plan, and should except the judges of that court from § 4 of this Plan, where automated screening through CM/ECF or any other automated screening system is not available.
- (b) Upon written application, the Judicial Council may except a judge from § 4 of this Plan where the circumstances indicate that the judge’s participation is unnecessary or otherwise is not feasible, 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.

(c) In granting an exception, the Judicial Council must specify its duration; an exception under § 5(b)(2) shall not exceed one year but may be renewed for good cause.

§ 6. Adoption of Alternative Screening. A court may notify the Judicial Council in writing that it has adopted an alternative automated screening system other than CM/ECF but should acknowledge that the alternative system may not receive automation support from the Administrative Office. The request shall contain a detailed description of the system. Any alternative system must have 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 (or designee) when a possible conflict is identified.

§ 7. Reporting Obligations.

- (a) Each chief judge must make such reports as are requested by the Judicial Council.
- (b) The Circuit Executive is directed to submit this Mandatory Conflicts Screening Plan to the Judicial Conference by January 31, 2007. The Judicial Council will submit such additional reports as are requested by the Judicial Conference.

§ 8. Confidentiality of Conflicts Lists. Nothing in this Plan shall be construed as requiring 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. Courts and judges subject to this Plan must comply with its requirements. A judge who violates this Plan may be subject to discipline.

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

Adopted by the Judicial Council of the Eighth Circuit on January 18, 2007.