Guide to Judiciary Policy

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Ch. 4: Conflicts Screening Requirements

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§ 410 Mandatory Conflict Screening

§ 410.10 Overview

The Judicial Conference of the United States adopted a mandatory conflict screening policy in September 2006 (JCUS-SEP 2006, p. 11), and amended the policy in March 2022 (JCUS-MAR 2022, p. __). This chapter includes three main elements:

(a)   policy requirements (§ 410.30);

(b)   a model certification statement for judges (§ 410.40); and

(c)   a model implementation plan (§ 410.50).

§ 410.20 Definitions

(a)   "Conflict of interest" or "conflict" 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) and (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 established 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, such as a special master, subject to the Code of

Conduct for United States Judges under the "Compliance with the Code of Conduct" section.

§ 410.30 Policy Requirements

(a)   Based on the proven effectiveness of automated conflict screening and the importance of extending its use to all courts, the Judicial Conference in 2006 adopted a mandatory conflict screening policy requiring the use of automated conflict screening. That policy was amended in 2022.

(b)   This mandatory conflict screening policy applies to financial conflicts of interest, but courts and judges should use automated conflict screening for other types of conflicts that would require a judge to disqualify himself or herself from a proceeding.

(c)   Automated conflict screening is required in addition to each judge's personal review of cases for conflicts. Each judge is ultimately responsible for identifying and avoiding conflicts of interest and must ensure that assigned matters are reviewed for conflicts before action is taken in a case.

(d)   This policy is administered and directed by the circuit councils, under 28 U.S.C. § 332(d)(1), or by the individual courts not subject to the authority of a circuit council. (**Note:** This Judicial Conference policy extends to courts of appeals, district courts, the Court of International Trade, the Court of Federal Claims, and bankruptcy courts, and to the judicial officers of those courts, but does not extend to the Supreme Court.)

§ 410.30.10 Administrative Office of the U.S. Courts

The Administrative Office, in cooperation with the courts, must do the following:

(a)   Continue developing, refining, and deploying the necessary technological tools for automated conflict screening in the Case Management/Electronic Case Files (CM/ECF) system or any future system approved by the Judicial Conference.

(b)   Examine ways to improve the screening, including more sophisticated matching mechanisms and features available in other software.

(c)   Provide information, training, and assistance to facilitate implementation of and participation in the screening.

§ 410.30.20 Judges' Responsibilities

Each judge must do the following:

(a)   Keep informed about personal and fiduciary financial interests and make a reasonable effort to keep informed about the personal financial interests of a spouse and minor children residing in the household.

(b)   Develop a "financial recusal list," identifying financial conflicts for use in conflict screening. Form AO 300 (Checklist for Financial Conflicts) may assist judges in developing a financial recusal list.

(c)   Review the financial recusal list regularly, at least semiannually, and update it whenever there is a change in the judge's financial interests (or the financial interests of a spouse or minor child) that would require recusal.

(d)   Enter the financial recusal list into the court's automated screening process database, either personally or with the assistance of chambers staff or clerk's office staff.

(e)   Personally review each case for financial conflicts at or before case assignment, if practicable, or no later than before taking any action in a case.

(f)   When notice is provided to the judge (or designee) that a possible conflict has been identified, determine whether a conflict exists and then arrange for appropriate action to resolve the conflict (i.e., recusal or divestiture of the interest).

(g)   Complete and submit a conflict review "certification statement" semiannually, or more frequently if required by the circuit council. **See:** § 410.40 (Model Conflict Review Certification Statement).

§ 410.30.30 Court Responsibilities

Each court must do the following:

(a)   Implement automated conflict screening to identify financial conflicts of interest for judges.

(b)   Take reasonable steps to ensure that parties provide timely information relevant to conflict screening (including corporate parent information) and either:

   (1)   enter the information promptly into the automated conflict screening system; or

   (2)   require that the parties enter and update the information, if feasible.

(c)   Screen for financial conflicts:

        (1)   either before or at the time a case is assigned to a judge;

        (2)   on a regular schedule — at least weekly;

        (3)   each time a judge updates his or her financial recusal list; and

        (4)   each time a new party is added to a case.

(d)   Notify the judge (or designee) when a financial conflict is identified so that the judge can decide how to address it. For the court of appeals and the bankruptcy appellate panel, allow the judges to authorize the clerk of court to assign a matter to another judge when a financial conflict is identified before an initial assignment is made.

(e)   Make reports as requested by the chief judge of the court and the circuit council.

(f)   Provide information about automated conflict screening, including regular reminders to judges, training, and assistance, to facilitate participation in the screening.

(g)   Implement the conflict screening software to identify financial conflicts based on the existing capabilities of the screening software for each court type (appellate, district, bankruptcy) and consistent with this policy.

(h)   Each court not subject to the authority of a circuit council must assume the responsibilities in § 410.30.40, below.

§ 410.30.40 Circuit Council Responsibilities

Each circuit council must do the following:

(a)   By June 30, 2022, adopt a Conflict Review Certification Statement that is consistent with this chapter and the model statement in § 410.40.

(b)   By June 30, 2022, adopt a conflict screening implementation plan that is consistent with this chapter and the model plan in § 410.50. Afterwards, make further reports as required by the Judicial Conference. The implementation plan adopted by the circuit council may include requirements beyond those included in this chapter, and each circuit council is strongly encouraged to consider extending the mandatory use of automated conflict screening to include other types of conflicts under Canon 3C(1) of the Code of Conduct for United States Judges.

(c)   Require chief judges within the circuit to report annually to the circuit council on the status of automated financial conflict screening in their court.

(d)   Make all necessary and appropriate orders to implement this mandatory conflict screening policy within the circuit, considering the specific circumstances of that circuit, and each judicial officer and court within it, and providing for appropriate exceptions.

§ 410.40 Model Conflict Review Certification Statement

Circuit councils must adopt a conflict review certification statement that is consistent with this chapter and the model below.

Judge's Semiannual Conflict Review Certification Statement

As required by the Judicial Conference Mandatory Conflict Screening Policy and the [_____ Circuit] Conflict Screening Implementation Plan, I certify that:

(1)   I have read and understand the Judicial Conference Mandatory Conflict Screening Policy (*Guide to Judiciary Policy,* Vol. 2, Pt. C, Ch. 4), and the Code of Conduct for U.S. Judges.

(2)   Consistent with my obligations under Canon 3C(1)(c) and 3C(2) of the Code of Conduct, I have reviewed my financial holdings and those of my spouse and any minor child residing in my household. (In addition, the Commentary to Canon 3C provides: "Recusal considerations applicable to a judge's spouse should also be considered with respect to a person other than a spouse with whom the judge maintains both a household and an intimate relationship.")

(3)   I have prepared or updated my financial recusal list to include all financial conflicts known to me or I do not have any financial interests (including those of my spouse and any minor child) that would create a financial conflict under Canon 3C(1)(c). See *Ethics Deskbook for United States Judges*, § 4.03. See also Form AO 300 (Checklist for Financial Conflicts).

(4)   I have implemented appropriate procedures to screen for all other types of conflicts under Canon 3C(1) of the Code of Conduct for United States Judges. See *Ethics Deskbook for United States Judges*, § 4.01. See also Form AO 301 (Checklist for Other Conflicts).

Dated this ____ day of 20____   _____
                                                                                    Judge

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§ 410.50 Model Conflict Screening Implementation Plan

Circuit councils must adopt a conflict screening implementation plan that is consistent with this chapter and the model below.

JUDICIAL COUNCIL OF THE _____ CIRCUIT

MANDATORY CONFLICT SCREENING IMPLEMENTATION PLAN

Authority: The Judicial Council of the _____ Circuit ("circuit council") adopts this plan under the authority provided in 28 U.S.C. § 332(d)(1) and consistent with the mandatory financial conflict screening policy adopted by the Judicial Conference on Sept. 19, 2006 (Report of the Proceedings, p. 11), and amended on March 15, 2022 (Report of the Proceedings, p. __).

§ 1 Scope. This plan applies to the court of appeals, bankruptcy appellate panel, district courts, and bankruptcy courts within the _____ Circuit, and to each active, senior and recalled judge of those courts, and to visiting judges to those courts to the extent practical. This plan does not apply to judges retired under 28 U.S.C. §§ 371(b) or 372(a) and not performing duties. While the Judicial Conference policy requires automated screening only for financial conflicts, circuit councils are strongly encouraged to consider extending the mandatory use of automated conflict screening to include other types of conflicts under Canon 3C(1) of the Code of Conduct for United States Judges.

§ 2 Definitions. For purposes of this plan:

    (a)   "Conflict of interest" or "conflict" 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, such as a special master, subject to the Code of Conduct for United States Judges under the "Compliance with the Code of Conduct" section.

§ 3 Obligations of Courts. Each court is required to implement automated screening to identify possible conflicts of interest for each judge appointed, designated and assigned, transferred, temporarily assigned, or recalled to serve on the court. Each court must use the screening component of the Case Management/Electronic Case Files (CM/ECF) system or other automated screening approved by the circuit council under § 6 of this plan or the Judicial Conference. In implementing the screening, each court must:

    (a)   ensure that relevant information is added to the conflict screening system on a timely basis for each matter (including the parties, attorneys, law firms, and corporate parents disclosed by the parties);

(b)   either enter the judge's recusal 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 of all new matters as they are assigned or about to be assigned to a judge or panel, and screen existing matters each time a judge updates his or her recusal list, or whenever a new party is added to a case, and no less frequently than on a weekly basis;

(e)   notify the judge (or designee) when a possible conflict is identified, or for the court of appeals and the bankruptcy appellate panel, allow the judges to authorize the clerk of court to assign a matter to another judge when a conflict is identified before an initial assignment is made;

(f)   provide periodic notices to judges reminding them to review and update their recusal lists and to review and update the designee (if any) 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 must ensure that assigned matters are reviewed for conflicts before action is taken in the matter. To assist in discharging this obligation, each judge is required to 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 must also use the court's automated screening to identify conflicts of interest other than financial conflicts. Form AO 300 (Checklist for Financial Conflicts) and Form AO 301 (Checklist for Other Conflicts) may be helpful to judges in developing a recusal list. (Financial disclosure reports prepared under 5 U.S.C. app. §§ 101-111 may also be used for this purpose, although the disclosures on these reports are not co-extensive with disqualification requirements).

Each judge must:

(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 "recusal list," identifying financial and other conflicts, for use in automated screening.

(c)   Review the recusal list regularly and update the recusal list whenever there is a change in the judicial officer's financial interests (or the financial interests of a spouse or minor child) that would require recusal.

(d)   Complete a "Conflict Review Certification Statement" and submit it to the chief judge of the court or circuit council semiannually.

(e)   Use the recusal list in the court's automated screening process by entering the financial interests and other conflicts listed into the database used for automated screening, either personally or with the assistance of chambers staff or court staff.

(f)   Personally review each case for conflicts at or before the time of case assignment, if practicable, or no later than before taking any action in a case.

(g)   When notice is provided to the judge (or designee) that a possible conflict has been identified, determine whether a conflict exists and then arrange for appropriate action to resolve the conflict (i.e., recusal or divestiture of the interest).

§ 5. Exceptions. Upon application, the circuit council may except a judge from § 4 of this plan if the circumstances indicate that the judge's participation in automated screening is unnecessary to identify conflicts of interest or is otherwise infeasible, such as when the judge has no case currently assigned and is not receiving new case assignments (e.g., due to serious illness).

§ 6. Approval of Alternative Screening. A court may request that the circuit council approve an alternative automated screening system other than CM/ECF or any future system approved by the Judicial Conference. The circuit council must approve an alternative system only if its functionality is comparable to the automated screening in CM/ECF in all major respects, including the ability to:

(a)   create and store electronically a judge's recusal list;

(b)   compare entries on a judge's 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 must make such reports as are requested by the circuit council. The first report must be filed by January 1, 2023, and further reports should be filed annually.

(b)   Each chief judge's annual report must contain the following information:

(1)   the availability of automated screening at the court;

(2)   a description of how the system is used including:

- who enters information from recusal lists (chambers or clerk's office),
- how frequently lists are updated,
- how frequently the screening program is run,
- whether the program is run automatically or only on request, and
- the means used to notify judges of possible conflicts;

(3)   the identity of judges not using automated screening;

(4)   the reasons given for not using automated screening;

(5)   how conflict screening works for visiting judges;

(6)   difficulties with or complaints about automated screening, including any observed failure to identify a conflict;

(7)   confidentiality concerns;

(8)   difficulty entering information into the database or running the screening;

(9)   suggestions for improving the conflict screening process; and

(10)   such other information as requested.

§ 8. Confidentiality of Recusal Lists. Nothing in this plan requires a court or judge to disclose the contents of a recusal list to anyone except to the limited extent necessary in the court's implementation of its automated screening. The Judicial Conference previously rejected a suggestion that it encourage courts to maintain a recusal list for each judge that would be available to litigants upon written request (JCUS-MAR 1999, pp. 11-12, 17-18).

§ 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 under 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 _____ *[insert date]*.

Adopted by the Judicial Council of the _____ Circuit on _____ *[insert date]*.