

How Magistrate Judges Are Selected, Appointed, and Reappointed

The process by which U.S. Magistrate Judges are selected and appointed—and, in the case of an incumbent Magistrate Judge, reappointed—may not be familiar to many members of the bar. Each is a merit-based process. Initial selection involves widespread public distribution of a notice of vacancy and intention to fill a Magistrate Judge position, followed by appointment by the district court of a merit selection panel to evaluate candidates, then recommendation by the panel of the most qualified candidates to the court. Appointment of a new Magistrate Judge represents a district court's own evaluation of the recommended candidates and choice of the person best suited to serve in the designated Magistrate Judge position. And, with respect to those already appointed as a Magistrate Judge, there is another merit process at the end of his or her term (eight years in the case of full-time Magistrate Judges and four years for part-time Magistrate Judges) undertaken by the court and bar on whether he or she should be reappointed for another term of office.

The process for each of these steps arises from two sources, the Federal Magistrates Act, codified at 28 U.S.C. §§ 631-639 and 18 U.S.C. §§ 3401-3402, and the Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Appointment and Reappointment of U.S. Magistrate Judges. The Administrative Office of the United States periodically publishes a guidebook to assist district courts and the merit selection panels appointed by them in carrying out their responsibilities under the Federal Magistrates Act and Judicial Conference Regulations in the selection, appointment, and reappointment of U.S. Magistrate Judges. The most recent version of this guidebook is titled, *The Selection, Appointment, and Reappointment of United States Magistrates*, Judges Information Series No. 2, Administrative Office of the U.S. Courts (March 2010).

Qualifications and Requirements for Appointment as a Magistrate Judge

There are a number of requirements one must satisfy to be considered for appointment or reappointment to a Magistrate Judge position. These are set forth in 28 U.S.C. § 631 and the Judicial Conference Regulations.

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. While the term “member in good standing” is not defined in the Federal Magistrates Act or statutory provisions applicable to Magistrate Judges, it is generally governed by the requirements of state law (or other pertinent jurisdiction), which in many jurisdictions includes those who may be on “inactive” status. This requirement can be waived for those being considered for a part-time Magistrate Judge position 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.

The applicant must have actively practiced law for at least five years, or possess other equivalent substitute experience, including experience as a judge of a state court or other state judicial officer; experience as a U.S. Magistrate Judge, Bankruptcy Judge, or other federal judicial officer; experience as an attorney for a federal or state agency; experience (up to two years) as a law clerk to any judge or judicial officer, staff attorney, or *pro se* law clerk in a court; or other legal experience suitable as a substitute in the opinion of a majority of the District Judges of the appointing court.

At the time of initial appointment, a Magistrate Judge cannot have reached 70 years of age. One can, however, continue to serve and be reappointed after age 70 upon a majority vote of all the District Judges of the court, which is taken when a Magistrate Judge turns 70 and upon each following anniversary.

Also, at the time of initial appointment, a Magistrate Judge cannot 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, which is “by affinity or consanguinity within the degree of first cousin.”

There is a final objective requirement. Under 28 U.S.C. § 631(b) (3), “[i]n 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.”

To be considered for a Magistrate Judge position, an applicant

James W. Satola is an FBA vice president for the Sixth Circuit and an attorney in Cleveland, Ohio.



must also possess attributes harder to measure. Included among the standards set by the Judicial Conference of the United States, explicitly referenced in 28 U.S.C. § 631(b), is that one appointed as a Magistrate Judge must be “competent to perform the duties of 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.” A district court may also establish additional qualification standards appropriate for a particular Magistrate Judge position based on the specific responsibilities anticipated, but in no event may such additional qualification standards be inconsistent with the court’s policy and responsibility as an equal opportunity employer.

the candidates. The merit selection panel is appointed by a majority vote of the District Judges. The panel must consist of a chairperson and at least six other members for the selection of a full-time Magistrate Judge. The panel must include lawyers and at least two nonlawyers.

Evaluation by Merit Selection Panel and Recommendation to Court

The work of the merit selection panel consists of screening and evaluating the applications and other materials submitted by the candidates, as well as any other materials that may be submitted on a candidate’s behalf. Personal interviews of the candidates are part of the process.

While the various factors considered by the panel, and the weight



Application Process and Appointment of a Merit Selection Panel

The selection process for a Magistrate Judge position begins with wide circulation of a Magistrate Judge vacancy announcement, which includes a description of the duties of the position to be filled, the qualification standards, and the application procedures. A district court has discretion to determine how to best meet the requirements of wide distribution, with the goal of attracting the greatest number of applicants and encouraging applications from all qualified persons, including those from underrepresented groups, and without regard to race, color, age (40 and over), gender, religion, national origin, or disability. Distribution of the notice may include, but not be limited to, publication in a general local newspaper, a widely circulated local legal periodical, the court’s website, bar association websites, government websites, national legal journals and websites, and other resources relied upon by legal professionals.

The next step is appointment by the district court of a merit selection panel to review the applications received and to evaluate

to be given each factor, is left to the discretion of the panel, the provisions of the Federal Magistrates Act and the Judicial Conference Regulations essentially require that the elements of scholarship, academic and professional achievement, civic engagement, legal experience, knowledge of the law and federal court system, and the personal attributes of the candidates will be considered.

Upon completion of their evaluation, the merit selection panel is directed to prepare a report designating those five applicants that it finds most qualified. In the case of selecting a part-time Magistrate Judge whose salary is less than one-third of the salary authorized for a full-time Magistrate Judge, the court may give the panel discretion to submit a list of less than five names. All written information received or prepared by the panel must accompany its report. If, for some reason, the panel believes that either the number or the caliber of the applicant pool is inadequate to recommend five names to the district court for appointment, measures may be taken to attract

Selected continued on page 42

for weeks, and even months, with follow-up phone calls with the attorneys to ensure a settlement was reached. I observed several of these and recognized the hard work and patience required to mediate a case.

The judge's high volume of criminal cases certainly impacted my work as well. (The Dayton seat of court is near Wright Patterson Air Force Base and a Veterans Administration hospital, giving rise to a large number of misdemeanor criminal cases.) The judge was on criminal duty every third month and was extremely busy during those times. He had a full morning criminal docket every Wednesday and other criminal proceedings scheduled on most afternoons. While on criminal duty, the judge also reviewed search warrants with federal agents. I occasionally conducted research on matters related to motions to suppress evidence.

In addition to his judicial duties, the judge put tremendous efforts into outreach activities for the court. For example, he hosted a "court camp" last summer to educate high school students about the federal criminal justice system. He also routinely hosted law

school externs. He took the time to genuinely get to know each one and provided mentoring advice. The externs were exposed to many aspects of the law and gained a better understanding of the federal court system. Additionally, the judge worked with his fellow federal judges in Dayton to create a weekly lunch-and-learn program, whereby guest speakers would meet with the court's externs every Tuesday and Wednesday over the lunch hour. Speakers included federal and state judges, assistant U.S. attorneys, federal public defenders, private practitioners, and many others.

Finally, I was fortunate to develop many professional relationships during my clerkship. The judge is very active in the Federal Bar Association, as well as other organizations, and he was regularly asked to speak at CLEs on various topics. I helped him prepare materials for these CLEs and presentations. Through this experience, I had the opportunity to work with the other federal judges in our court and with practicing attorneys. It was wonderful professional training for which I am very thankful. ☺

SELECTED continued from page 40

additional qualified candidates, such as publication of a second notice of the vacancy and soliciting assistance from bar association officials, law school faculties, and other community leaders.

Selection by the Court

On receiving the merit selection panel's report, the district court reviews the qualifications of the persons recommended. It may accept the findings, or it may conduct additional inquiry into the qualifications of those recommended.

Thereafter, all the District Judges must determine, by a majority vote, a final selectee for appointment from the list provided by the panel. If the district court is unable to select by majority vote a final appointee from the five names on the merit selection panel's list, it must request a second list of five names from the panel. The district court must then choose from either list. If a final appointee still cannot be identified by a majority vote, the Chief Judge of the district is authorized by statute to make the selection from the candidates recommended on either list.

Upon selection, the applicant's name is submitted to the Administrative Office of the U.S. Courts, which will request necessary background reports from the Federal Bureau of Investigation (FBI) and the Internal Revenue Service (IRS). Applicants 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. The results of the investigations are forwarded to the Administrative Office, which then transmits the information to the Chief Judge of the district court. Once the district court has reviewed and is satisfied with the results of the investigations, the court issues an order of appointment of the new Magistrate Judge.

Before entering into duty as a Magistrate Judge, the appointee is required to take the judicial oath or affirmation prescribed by 28 U.S.C. § 453 and the constitutional oath of office prescribed by 5 U.S.C. § 3331.

The Reappointment Process

The process for reappointment of a Magistrate Judge shares many of the same basic elements of the process for initial consideration, selection, and appointment, with modification for the fact that the evaluation is of a known individual already holding the position of Magistrate Judge rather than a pool of new applicants for a vacant position.

If a district court desires to consider reappointment of a Magistrate Judge (it can choose not to, by a majority vote of the District Judges), the first step is the issuance of a public notice well before the expiration of the incumbent Magistrate Judge's current term, noting the court's consideration of reappointment of the incumbent Magistrate Judge and seeking comments from the bar and public to assist the members of a merit selection panel in its evaluation on whether to recommend reappointment to the district court. A key difference in the notice of reappointment consideration is that it does not seek applications for the position, but rather comments on the person under consideration for reappointment.

The reappointment process also includes appointment by the district court of a merit selection panel, the composition of which is the same as that appointed to consider the selection of a new Magistrate Judge. The attributes considered by the panel are much the same as those considered by panels evaluating candidates for initial appointment—good character, judgment, legal ability, temperament, and a commitment to equal justice under the law—with one additional factor, the quality of the incumbent Magistrate Judge's performance in office.

After considering the merit selection panel's report, the district court independently decides whether to reappoint the incumbent Magistrate Judge. If a majority of the District Judges vote for reappointment, the Magistrate Judge will be reappointed. The reappointment process for an incumbent Magistrate Judge does not require new FBI and IRS background checks, but does include a retaking of the judicial oath or affirmation and the constitutional oath of office. ☺