

**MEMORANDUM OF UNDERSTANDING
BANKRUPTCY JUDGE VACANCY PILOT PROGRAM**

This is a Memorandum of Understanding (MOU) between the Judicial Councils of the Eighth Circuit and the Sixth Circuit.

A. Introduction

For years, budget restraints have not favored requesting additional bankruptcy judgeships or extending the lapse dates of existing temporary bankruptcy judgeships. As of September 30, 2014, there were 349 authorized bankruptcy judgeships—33 temporary and 316 permanent. Of the 33 temporary positions, 29 expire on May 25, 2017, without legislation to extend or convert them.

Since 1994, the Judicial Conference Committee on the Administration of the Bankruptcy System (Bankruptcy Committee) has studied options to align available bankruptcy judgeships with districts having consistently high weighted filings per judgeship. In June 2014, the Committee voted to recommend the bankruptcy judge vacancy pilot program (Pilot) to the Judicial Conference. On September 16, 2014, the Judicial Conference approved the Pilot.

B. Summary of the Pilot

The Eighth Circuit volunteers to allow two bankruptcy judgeships to be filled and to transfer the appointed judges to one district in the Sixth Circuit and one district in the Eleventh Circuit, both having emergency need for judicial resources. This will be accomplished through long-term intercircuit assignments under 28 U.S.C. § 155(a), and through MOUs prescribing the specific aspects of the Pilot. The Pilot has a maximum of two (2) bankruptcy judges appointed by the Eighth Circuit. The Federal Judicial Center (FJC) will assess and evaluate the Pilot during its term. This evaluation will be presented to each Circuit's Judicial Council, the Bankruptcy Committee, the Committee on Intercircuit Assignments, and the Judicial Conference within one year after the end of the Pilot.

C. Purpose of the MOU

This MOU formalizes the specific terms and agreements between the Eighth Circuit and the Sixth Circuit, as they relate to filling a bankruptcy judgeship in the Northern District of Iowa and lending the selected judge for service in the Eastern District of Michigan.

D. Selection of the Bankruptcy Judge

1. Notice of Filling a Vacancy

The Eighth Circuit will notify the chair of the Bankruptcy Committee and the Director of the AO before filling the bankruptcy judgeship in the Northern District of Iowa. *Guide to Judiciary Policy*, vol. 3, § 310(c).

2. National Announcement

The Eighth Circuit will nationally advertise the vacancy in the Northern District of Iowa to be assigned to the Eastern District of Michigan, with advice and consent of the Sixth Circuit. The announcement will comply with the Judicial Conference regulations and procedures listed in the *Guide to Judiciary Policy*, vol. 3, § 320.20. The announcement will include the requirements in this MOU sufficient to ensure that applicants understand the mobile nature of the Pilot, the rules governing aspects of court governance, the budget restrictions for the Pilot, and the requirements for FJC assessment and evaluation.

3. Merit Selection Panel and Intercircuit Selection Committee

The Eighth Circuit, in close coordination with the Sixth Circuit, will appoint a merit selection panel pursuant to the Guide to Judiciary Policy, vol. 3, § 320.30, except that all members will be residents of the Eastern District of Michigan. The panel will screen applicants and provide a detailed written report recommending not less than five but no more than ten candidates deemed to be most qualified to serve as a bankruptcy judge based on character, experience, ability, and commitment to equal justice under the law. The Sixth Circuit Executive will provide administrative support to the Merit Selection Panel.

The Panel's recommendations will be considered by an Intercircuit Selection Committee (ISC) comprised by four members from each circuit representing each circuit. The ISC will interview the recommended candidates and prepare a report to the Sixth and Eighth Circuit courts of appeal ranking the three candidates deemed to be most qualified for appointment. The Sixth Circuit court of appeals will consider the report and upon its approval, the Eighth Circuit court of appeals will select a bankruptcy judge from the recommended candidates approved by the Sixth Circuit.

4. Appointment

The selected judge will be appointed to a 14-year term of office by the Eighth Circuit Court of Appeals. 28 U.S.C. § 152(a). The selected judge will review and acknowledge this MOU in writing before appointment by the Eighth Circuit Court of Appeals. A copy of the appointment order will be sent to the Director of the AO and the chair of the Bankruptcy Committee.

If the judge returns to the Eighth Circuit, the Northern District of Iowa will then be subject to a continuing-need survey (and the Bankruptcy Committee's recommendation to the Judicial Conference whether to fill a future vacancy).

5. Intercircuit Assignment

The Sixth Circuit will request an intercircuit designation from the Committee on Intercircuit Assignments after the appointment of the selected judge, along with an

executed copy of this MOU. All designations and assignments of the selected judge shall be filed with the clerks of the Eighth and the Sixth Circuits and entered in their minutes. A copy of the designation will be sent to the Director of the AO and the chair of the Bankruptcy Committee.

6. Duty Station

The official duty station for the selected judge is in the Northern District of Iowa in the Eighth Circuit. 28 U.S.C. § 152(a). However, the normal reimbursement rules for the selected judge will apply as if the duty station for the selected judge is in the Sixth Circuit, Eastern District of Michigan. For the duration of the Pilot and for all other travel and relocation questions, the current regulations and guidance in the *Guide to Judiciary Policy*, vol. 19, will apply as if the selected judge is in the Eastern District of Michigan, and the selected judge will reside in the Eastern District of Michigan.

7. Administrative Details

The site of investiture, email addresses, security, and other administrative matters will be decided by agreement between the Circuit Executives in the Eighth and Sixth Circuits. Because such details are important in the assessment and evaluation of the Pilot, such agreements shall be in writing (including saved emails) as a historical record of the Pilot available to the FJC.

E. Term of the Pilot

1. Length

The Pilot ends five (5) years after the date of the order appointing the selected bankruptcy judge, or upon the first judicial vacancy to occur within the Eastern District of Michigan at least three years after the date of the appointing order, whichever occurs first.

2. Options at the End of the Pilot Term

a. The Eighth Circuit and the Sixth Circuit may renegotiate this MOU to keep the selected judge in the Sixth Circuit. Notice of intent to renegotiate will be sent by the Sixth Circuit to the Eighth Circuit at least one (1) year before the end of the Pilot term. OR

b. The incumbent judge will be transferred to the Sixth Circuit and the Eastern District of Michigan upon the first vacancy to occur at least three years after the appointing order.

3. Eighth Circuit Future Need for the Selected Judge

The selected judge will attend all scheduled Sixth and Eighth Circuit Judicial Conferences during the Pilot. Reimbursement for costs and expenses will be paid from the centrally held budget account for judges' travel.

The Eighth Circuit will make every effort to complete the term of the Pilot as outlined in this MOU. However, if the weighted filings of the Northern District of Iowa increase to a level of 1,501 weighted filings (or more) for more than four consecutive quarters (as confirmed by the official AO data), the Eighth Circuit may terminate the intercircuit assignment order and end the Pilot. If the Eighth Circuit terminates the intercircuit assignment order, it must give written notice to the Sixth Circuit at least 180 days before terminating the intercircuit assignment order.

F. Budget

1. Northern District of Iowa

The Northern District of Iowa will receive its non-salary allocations, as adjusted by the Budget Division at the AO, for a vacant but statutorily authorized judgeship during the Pilot.

2. Eastern District of Michigan

The Eastern District of Michigan agrees the selected judge will use existing court and chambers space. The recurring salary and non-salary allotments to the Eastern District of Michigan will be adjusted as if the authorized judgeship and associated chambers authorized positions were allocated. Funding will be issued via supplemental allotments less the applicable financial plan reductions with 50 percent being issued with the interim allotments and the balance being issued with the final allotments each year for the duration of the Pilot

3. Supplemental Budget Requests

Only the Eastern District of Michigan may make supplemental budget requests related to the Pilot.

4. Procurement

Normal procurement rules in the Eastern District of Michigan will apply in conformance with the *Guide to Judiciary Policy*, vol. 14.

G. Selected Judge

The selected judge will agree to cooperate with the FJC as it assesses and evaluates the Pilot. The judge shall receive no compensation for this cooperation, but may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law.

The selected judge will have court governance rights in the Eastern District of Michigan and will be subject to the Sixth Circuit's judicial conduct and disability procedures.

Although the selected judge's duty station will be in the Northern District of Iowa, the judge's time, as recorded on the B-102 form, will be statistically credited to the Eastern District of Michigan during the Pilot. For purposes of case assignment and docketing, the judge will be treated as a resident judge in the Eastern District of Michigan and may be required to enter time for the FJC and on the B-102 form, depending on the technology utilized by the FJC.

The selected judge will sign and date an acknowledgment of, and agreement to, this MOU before the execution of the appointment order by the Eighth Circuit Court of Appeals. By signing the acknowledgement and agreement, the selected judge waives all benefits, reimbursements, and all other applicable Judicial Conference regulations that conflict with this MOU. The selected judge also agrees to the terms detailed in the judgeship announcement for the Pilot and the requirements of this MOU and any agreements authorized by this MOU.

H. Chambers Staff

The appointed judge's chambers staff will be subject to all the hiring and personnel rules for the Eastern District of Michigan. All staff will be hired and stationed in the Eastern District of Michigan. Because of the length of the Pilot, the selected judge will be limited to term law clerks and may not hire career clerks.

I. FJC Assessment and Evaluation

Both circuits will cooperate fully with the FJC in assessment and evaluation of the Pilot. This cooperation will entail, for example, providing budget, financial, personnel, and case management records as requested by the FJC; making available for interview by the FJC, the circuit executives, bankruptcy clerks, bankruptcy judges, and other persons in the circuit; and supporting other data collection efforts such as FJC surveys of attorneys and observations of court meetings and proceedings. The selected judge shall track time as requested by the FJC. The main point of contact at the FJC for the evaluation is Beth Wiggins, J.D., Ph.D., Senior Research Associate.

After the second year of the Pilot, the FJC will make an interim report to the Bankruptcy Committee and the Committee on Intercircuit Assignments. Within one (1) year after the end of the Pilot, the FJC will make a final report to the same Committees. The Bankruptcy Committee with the assistance of the FJC will prepare a summary report for the Judicial Conference.

J. Miscellaneous

1. Cooperation

The Pilot and the administration of this MOU will require the maximum coordination and cooperation between the Eighth Circuit and the Sixth Circuit.

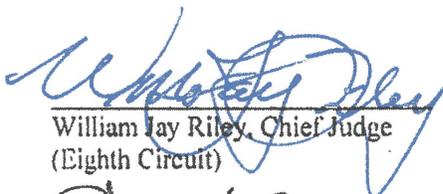
2. Contacts

All communications and notices under this MOU should be sent to:

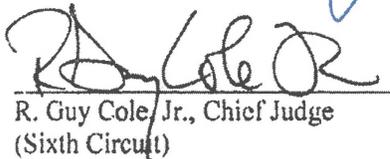
- a. The Circuit Executive for the Eighth Circuit.
- b. The Circuit Executive for the Sixth Circuit.
- c. The Chief Bankruptcy Judge and the Bankruptcy Clerk for the Bankruptcy Court in the Northern District of Iowa.
- d. The Chief Bankruptcy Judge and the Bankruptcy Clerk for the Bankruptcy Court in the Eastern District of Michigan.
- e. The Director of the AO, and
- f. The Chair for the Bankruptcy Committee.

3. This MOU may be modified by written agreement of the Eighth and Sixth Circuits, with copies to all parties listed in paragraph J.2. above.

Agreed to:


William Jay Riley, Chief Judge
(Eighth Circuit)

Dated: June 29, 2015


R. Guy Cole Jr., Chief Judge
(Sixth Circuit)

Dated: 6/16/15

Millie B. Adams
Millie B. Adams, Circuit Executive
(Eighth Circuit)

Dated: 6/29/15

Clarence Maddox
Clarence Maddox, Circuit Executive
(Sixth Circuit)

Dated: June 14, 2015

Thad J. Collins
Thad J. Collins, Chief Bankruptcy Judge
(Northern District of Iowa)

Dated: June 29, 2015

Phillip J. Shefferly
Phillip J. Shefferly, Chief Bankruptcy Judge
(Eastern District of Michigan)

Dated: June 15, 2015

Jean L. Hekel
Jean L. Hekel, Bankruptcy Clerk
(Northern District of Iowa)

Dated: June 29, 2015

Katherine B. Gullo
Katherine B. Gullo, Bankruptcy Clerk
(Eastern District of Michigan)

Dated: June 15, 2015

I acknowledge and agree to all terms of the MOU:

Nominee for Judgeship in
the Northern District of Iowa

Dated: _____