

United States District Court, \_\_\_\_\_ District of \_\_\_\_\_  
Internal Operating Procedure (As Amended Effective 3/30/2017)

**Internal Operating Procedure in the Event of Impairment of a Judge of this Court**

At its regular meeting on March 30, 2016 the Court approved its first “Internal Operating Procedure in the Event of Impairment of a Judge of this court” (“IOP”). The IOP was amended effective March 30, 2017. The IOP is based on the following principles and should be interpreted accordingly.

**General Principles**

- a. Life tenure of Article III judges is an essential component of an independent judiciary. Nevertheless, our ability to address issues of judicial impairment of any judge is an important factor in preserving the independence of the judiciary and public confidence in our court. Therefore, the court has decided that an IOP is required to address circumstances where the effective dispensation of justice may be compromised by a judge’s physical or mental impairment.
- b. The court accords great respect for, and fidelity to, the random case assignment system.
- c. The procedures contemplated by this IOP emphasize collective rather than unilateral decision-making regarding an affected judge.
- d. To the greatest extent practicable, this IOP should be implemented and applied in a manner that affords the utmost sensitivity and respect to an affected judge.
- e. This IOP is intended to provide a less formal and more flexible procedure that affords the utmost sensitivity and respect to an affected judge and is designed to precede, and hopefully avoid the need for, the more formal procedures set forth in the Judicial Conduct and Disability Act of 1980 and the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States.
- f. It is also intended that by providing an informal “early warning” from trusted friends or colleagues, an affected judge may obtain early evaluation and treatment, which with today’s advances in the field, may ameliorate a condition, slow the progress of symptoms, or even completely cure or eliminate an impairment.
- g. This IOP must not be made public, and may not serve as a means or avenue of filing a complaint of disability against a judge by counsel or a member of the general public.

**Procedures**

1. Each judge will designate one or more “trusted persons” who will both advise the judge when they perceive changes in the judge’s behavior or cognitive functioning and serve as a point of contact for the Chief Judge of the \_\_\_\_\_ District \_\_\_\_\_. The designations, with contact information, will be made in writing and provided to the Chief Judge in a sealed envelope. The trusted person may be anyone of the judge’s choosing including, for instance, a colleague, former law

partner, or career law clerk. However, each person must be an adult; no more than one of the trusted persons shall be a member of the judge's family and no more than one trusted person shall be a member of the judge's staff. The judge shall, upon submitting the sealed envelope to the Chief Judge, confirm to the Chief Judge that the trusted persons selected conform to these requirements. The judge should discuss this designation with each designee and provide that person with a copy of this IOP, stressing the need for confidentiality of this IOP and its implementation.

2. The designations shall be made by all judges (including bankruptcy judges and magistrate judges) now on the court within thirty days of the adoption of this IOP. Judges who join this court after the adoption of this IOP shall receive a copy of this IOP upon being sworn in and shall provide a designation within thirty days after being sworn in. The Chief District Judge shall provide his or her designations to the next most senior active district judge. Designations shall be maintained in confidence and kept in a secure location by the Chief District Judge and by the judge to whom the Chief Judge provides a designation.

3. To ensure that designations do not become "stale" they shall be updated as follows:

a. A judge's designation shall be reviewed, updated, and provided to the Chief Judge whenever a judge so desires or perceives the need to change a designation, such as upon the inability or unwillingness of a designee to serve;

b. All designations shall be reviewed and submitted with any necessary or desired changes within thirty days of a new judge assuming the duties of Chief Judge; and

c. In the event the Chief District Judge has served for two years and does not expect to relinquish the position within the following twelve months, the Chief Judge shall call for new designations to be made within thirty days so that designations shall remain current. It is intended that designations shall be updated no less frequently than every three years.

4. If it is brought to the attention of the Chief District Judge by a "trusted person" or from other sources that the physical or mental impairment of a judge of this court may be affecting the ability of the judge to perform the functions of a judge, and the Chief District Judge agrees that use of this IOP is warranted, the Chief District Judge shall ask the designated trusted person or persons, or if no designation has been made or a designee is unwilling or unable to perform this duty, two judges who are close to the affected judge, to approach the judge informally to make inquiries, to try to determine whether there is a problem, and if so, to try to resolve the problem or encourage the affected judge to seek appropriate assistance. The trusted person(s) or assigned judge(s) will attempt to obtain an appropriate resolution with as much sensitivity, confidentiality, and respect as possible for the affected judge, being mindful of the judge's professional independence and personal pride. An affected judge may have a representative present at such consultations and conferences.

5. In the event such informal measures do not resolve the issues facing the affected judge and the court, the Chief District Judge shall bring the matter to the district court en banc (the active district judges, and the senior district judges who choose to participate) for one or more confidential special Judges' Meetings. The Chief District Judge will compile relevant materials which will be made available sufficiently in advance of any such meeting in

the chambers of the Chief District Judge or in the office of the District Clerk of Court. The affected judge's representative may not be present during the en banc discussion and vote on a resolution of an affected judge's impairment. By a majority vote, the district court en banc may take one or more of the following actions:

a. Randomly appoint three judges to investigate the allegations. The judges will conduct their inquiry as informally and confidentially as possible;

b. Adjust the participation of the affected judge in, or temporarily remove the affected judge from, the random case assignment program;

c. Temporarily reassign the cases of the affected judge to other members of the court (all such reassignments shall be made by random draw or as otherwise designated by a majority vote of the district court en banc. In no event may a decision to reassign any matter be based upon a disagreement with the substance of a ruling made by the affected judge in the matter;

d. Take action to prepare a complaint for filing with the Chief Judge of the Circuit in accordance with 28 U.S.C. § 351(a) and the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference;

e. Determine that action by the court is not warranted or appropriate.

6. If, in the view of the Chief District Judge, the physical or mental impairment resolves, the Chief District Judge shall promptly notify the judges of the district court en banc, and a vote shall be taken as to whether the affected judge's docket shall be restored. If the Chief District Judge is of the view that the disability has not yet resolved and the affected judge disagrees, the affected judge may bring the matter to the district court en banc for discussion and decision, or may request that the entire matter be referred to the Chief Judge of the \_\_\_\_ Circuit Court of Appeals (see 7, below). A properly documented medical opinion from the judge's health care provider may be sufficient to establish resolution of impairment. However, the Chief District Judge must have access to an affected judge's medical records, if necessary to make the determination.

7. If the affected judge chooses, in lieu of the procedure set forth in paragraphs 4 and 5 above, the affected judge may ask the Chief District Judge to refer the entire matter to the Chief Judge of the \_\_\_\_ Circuit Court of Appeals via a complaint from the Chief Judge of this district under the Judicial Conference Rules for Judicial-Conduct and Judicial-Disability Proceedings. If the affected judge makes such a request, the Chief District Judge shall file such a complaint under the Judicial Conference Rules. However, if the Chief District Judge believes that an emergency exists, the matter may be presented to the district court en banc as set out in paragraph 4 for temporary emergency action until the Chief Judge of the \_\_\_\_ Circuit Court of Appeals has time to act.

8. If the affected judge is the Chief District Judge, then the active judge next in seniority will implement the procedures set forth in this policy.

9. No procedure set forth in this IOP is meant to diminish the authority of the Chief District Judge or the court to take appropriate action in an emergency, as authorized by statute or rule.

**ADOPTED** this 30th day of March, 2017

For the Court,

\_\_\_\_\_  
Chief Judge  
\_\_\_\_\_ District of