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Folder Title: President's Judges Plan : Judges
Proposal

If judgeship, however, the earlier years of toward eligibility for retirement from office. A judge who resigns in order to accept appointment may, in limited circumstances, receive credit for the Civil Service Retirement System or the Federal Employees Retirement System (see chapters 12 and 13 at pages 57 and

2

SENIOR

STATUS

A judge who retires from regular active judicial service but elects to retain judicial office is known and designated as a senior judge. 28 U.S.C. § 294(b). Senior status may be taken under either 28 U.S.C. § 371(b)(1) (retirement from regular active service based on the Rule of 80) or 28 U.S.C. § 372(a) (retirement on disability). These statutes are reprinted in Appendix B.

ELIGIBILITY

Rule of 80 (28 U.S.C. § 371(b))

A judge who satisfies the Rule of 80 age and service requirements may choose senior status. The number of years of service and the judge's age must total at least 80, with the minimum retirement age fixed at 65 years and the service years ranging from 10 to 15 years. Only whole years, not fractions of years, are computed for purposes of the Rule of 80.

Voluntary Certification of Permanent Disability (28 U.S.C. § 372(a))

Any judge, regardless of age or length of service, may also retire from regular active service and take senior status if the judge becomes permanently disabled from performing judicial duties. A judge must certify the disability to the President in writing, and also furnish the President a certificate of disability signed by—

- the Chief Justice (in the case of an associate justice of the Supreme Court, a chief circuit judge, or the chief judge of the Court of International Trade),
- the chief circuit judge (in the case of another circuit judge or a district judge), or

- the chief judge of the Court of International Trade (in the case of another judge of that court).

A judge who takes senior status on disability and has 10 or more years of Article III service will continue to receive the full salary of the judicial office, including any future COLAs and other salary increases. If a judge takes senior status on disability and has less than 10 years of Article III service, the judge receives one-half the salary of the judicial office, plus future COLAs and other salary increases.

A circuit judicial council or the Judicial Conference of the United States may request that a judge who is 65 years of age or older retire voluntarily from office or from regular active service without being required to satisfy the "Rule of 80" as to length of service if the judge is found to be disabled or to have committed an act of misconduct. See 28 U.S.C. §§ 372(c)(6)(B) (iii) & (c)(8)(A).

The disability of a circuit or district judge who does not retire voluntarily may be certified by a majority of the members of the circuit judicial council. In this case, the President may appoint an additional judge to the respective court if the judge in question is found to be unable to discharge all judicial duties efficiently and appointment of another judge is necessary for the efficient dispatch of business. The judge certified as disabled remains in active status but loses seniority in relation to all other active judges of the respective court for purposes of precedence, service as chief judge, or temporary performance of chief judge duties. See 28 U.S.C. § 372(b).

OFFICIAL NOTIFICATIONS

In March 1988, the Judicial Conference considered the subject of judgeship vacancies and determined that "vacancies place significant burdens on the courts by increasing the workloads of those judges available for duty and diminishing the courts' ability to discharge their responsibilities." As a result, the Conference adopted a policy urging all judges nearing retirement to notify the President and the Administrative Office, if possible, six to twelve months before the contemplated change in status. This policy is further reflected in the *Long Range Plan for the Federal Courts* approved by the Conference in 1995 (see Recommendation 67).

A judge who decides to take senior status under 28 U.S.C. § 371(b) must notify the President in writing of the intention to leave active service and take senior status. Sample letters are included in Appendix G. Copies of that letter (or a similar notification) should be sent to the following:

- (1) Chief Justice of the United States
Washington, D.C. 20543
- (2) Director
Administrative Office of the United States Courts
Thurgood Marshall Federal Judiciary Building
Washington, D.C. 20544
- (3) Director
Federal Judicial Center
Thurgood Marshall Federal Judiciary Building
Washington, D.C. 20002
- (4) Chief, Judges Compensation and Benefits Branch
Article III Judges Division
Administrative Office of the United States Courts
Thurgood Marshall Federal Judiciary Building
Washington, D.C. 20544.

A judge should also provide written notice to his or her court of the intention to take senior status:

- Circuit judges should notify the chief circuit judge and the circuit executive (or the clerk of court, in the case of judges of the Federal Circuit).
- District judges and judges of the Court of International Trade should notify the chief judge and the clerk of their respective courts.

A judge who retires from regular active service on disability grounds under 28 U.S.C. § 372(a) must certify the disability to the President in writing accompanied by a certificate of disability signed by—

- (1) the Chief Justice (in the case of a chief circuit judge or the chief judge of the Court of International Trade),
- (2) the chief judge of the circuit (in the case of another circuit judge or a district judge), or
- (3) the chief judge of the Court of International Trade (in the case of another judge of that court).

Sample letters are included in Appendix G. Copies of that letter (or a similar notification) should be sent to the following (at the addresses indicated above):

- (1) the Chief Justice of the United States
- (2) the Director of the Administrative Office of the United States Courts
- (3) the Director of the Federal Judicial Center
- (4) the Chief of the Judges Compensation and Benefits Branch, Article III Judges Division.

A judge should also provide written notice to his or her court of the intention to retire from active service on disability grounds:

- Circuit judges should notify the chief circuit judge and the circuit executive (or the clerk of court, in the case of judges of the Federal Circuit).
- District judges and judges of the Court of International Trade should notify the chief judge and the clerk of their respective courts.

COMPENSATION

A senior judge receives retirement compensation equal to the full salary of the judicial office at the time of retirement, plus any post-retirement COLAs and (subject to the workload certification requirement described below) other periodic salary increases. (If retired from regular active service on disability grounds before completing 10 years of service, a senior judge receives only one-half the judicial salary, including post-retirement adjustments and increases.) See 28 U.S.C. §§ 371(b), 372(a), 461(a). No statutory authority exists to provide either senior or active Article III judges any other types of salary adjustments provided to federal employees generally, such as "locality" pay or "post differential" pay.

Workload Certification

In order to receive post-retirement salary increases other than cost-of-living adjustments, a judge who takes senior status under the Rule of 80 generally must be certified each year, by the chief judge of the circuit in which the judge was commissioned (for a senior judge of the Court of International Trade, the chief judge of that court), as having performed certain judicial or administrative duties in the preceding calendar year. The nature and amount of these duties are described in 28 U.S.C. § 371(f) and the Rules for Certification of Senior Judges (contained in volume III of the *Guide to Judiciary Policies and Procedures* and reprinted in Appendix I) and may comprise:

- administrative duties equal to the full-time work of an employee of the judicial branch;
- or
- judicial duties, in an amount equal to or greater than the amount of work an average active service judge of the same office (i.e., circuit or district) performs in three months, consisting of (1) a caseload involving courtroom participation, (2) substantial judicial duties not involving courtroom participation, or (3) a combination of (1) and (2);

TRANSMITTAL COVER SHEET

DAN JACKSON
Chief, Judges Compensation and Benefits Branch
Article III Judges Division
Administrative Office of the United States Courts
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, NE
Room 2-300N
Washington, DC 20544

VOICE: 202-502-1880

FAX: 202-502-1811

Date: 7/10/02

To: Brent Greenfield

From: Dawn Farello

Description: See Status

Number of pages (including transmittal sheet): 4

Transmitted by: _____

Will follow by mail:

Yes

No