

FEDERAL PUBLIC DEFENDER
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September 24, 2018

Senator Charles Grassley
Chairman, United States Senate
Committee on the Judiciary
Washington, DC 20510-6275

Dear Senator Grassley,

I am writing in response to your letter of September 10, 2018, regarding written questions in connection with my testimony at the hearing on the nomination of Judge Brett Kavanaugh to be an Associate Justice of the Supreme Court. The answers to the questions are set forth below.

1. Accompanying this letter are the Procedures Governing The Appointment of Federal Public Defenders for the D.C. Circuit.
2. I was last reappointed as Federal Public Defender on September 24, 2018.
3. The term on which I was just reappointed expires on September 23, 2022—I have no idea if I will be considered for reappointment then.
4. a. Judge Kavanaugh did not sit on the Criminal Justice Act Panel Committee that considered my last reappointment.
 - b. See a.
 - c. See a.

I assume from questions 1-4, however, that they may relate to my reappointment as Federal Public Defender on September 24, 2014, the term prior to my most recent reappointment. Judge Kavanaugh was a member of The Criminal Justice Act Committee at that time. It never occurred to me to put that in my testimony, both because I did not remember that, and because it had nothing to do with any of the topics I discussed. I have no concern that there could be any appearance of a conflict of interest, because it is irrelevant.

5. I have seen Judge Kavanaugh at a number of courthouse events and occasionally on the street, and I believe that he has also on occasion attended our office holiday party. When I see him, we chat about our families, sports, and he always asks how our office is doing. I have not engaged in any sporting activities with him, nor have we attended any sporting events together.

6. I perhaps should have worded my written testimony more carefully to make clearer that the statement that “Judge Kavanaugh treats all litigants fairly” is my opinion. That opinion is based upon my personal experience in criminal cases and my observations of him at oral argument in both civil and criminal cases.

7. Again, I could have worded my written testimony more carefully to make clearer that the statements in the referenced paragraph are my opinions.

a. Those statements are my opinions.

b. Again, those statements are my opinions.

c. Again, those statements are my opinions.

8. The only official resources I used was my work computer—no personnel were involved.

9. Sean Mirski assisted me in preparing my written testimony, but the substance of it is mine.

10. I gave Sean Mirski my written testimony to review before I submitted it.

Please just let me know if you have any more questions or need any more information.

Very truly yours,



A. J. Kramer
Federal Public Defender

UNITED STATES COURT OF APPEALS
FOR THE
DISTRICT OF COLUMBIA CIRCUIT

PROCEDURES
GOVERNING THE APPOINTMENT OF FEDERAL PUBLIC DEFENDERS

September 12, 1989

As Amended October 6, 1989

And As Further Amended September 1994

- C. possess the ability to administer a Federal Public Defender's office effectively;
- D. possess, and have a reputation for:
 - 1. integrity and good character;
 - 2. the physical and mental health necessary to perform the responsibilities of the office;
 - 3. commitment to equal justice under law and vigorous representation of his or her client;
 - 4. outstanding legal ability and competence (evidenced by substantial legal experience, ability to deal with complex legal problems, aptitude for legal scholarship and writing, familiarity with courts and court processes);
- E. have a commitment to the vigorous representation of those unable to afford counsel; and
- F. not be related by blood or marriage to a judge of the United States Court of Appeals for the District of Columbia Circuit or to a judge of the District Court for the District of Columbia, within the degrees specified in section 458 of Title 28, United States Code at the time of the initial appointment.

The Criminal Justice Committee will resolve any questions regarding the qualifications of applicants.

CHAPTER 3. APPOINTMENTS ARE TO FOUR-YEAR TERMS

Section 3.01 - Applications by Federal Public Defender for Additional Four-Year Terms

Section 3006A provides that the Court of Appeals shall appoint a person to serve as Federal Public Defender to a four-year term. The statute does not prohibit appointment

The public requirements set forth in Section 4.01 shall advise all applicants that the United States Court of Appeals for the District of Columbia Circuit encourages applications from all qualified persons including women, members of minority groups, and individuals with non-interfering handicaps and that the Merit Screening Committee is searching for the best qualified person currently available for this position. If the Federal Public Defender has applied for an additional four-year term, the notice shall also state that the Federal Public Defender has applied for reappointment.

CHAPTER 4. PUBLIC RECRUITMENT FOR THE
OFFICE OF THE FEDERAL PUBLIC DEFENDER

During the last six months of each four-year term or when a vacancy occurs due to the resignation, removal, or incapacity of the Federal Public Defender, a public notice shall be issued announcing that applications are being accepted for a four-year term for the position of Federal Public Defender. The Criminal Justice Committee will seek qualified applicants who reflect the make-up of all such persons in the relevant national labor market and will use adequate means to publicize the existence of a vacancy to all segments of the relevant national labor market.

Section 4.01 - Public Notice

A. The Criminal Justice Committee shall publish a notice that applications are being accepted for a four-year term as Federal Public Defender in a national publication for the legal profession.

B. Whenever possible, the Criminal Justice Committee should advertise in publications from each of the following categories:

Section 4.04 - Submission of Applications

Applications must be received by the Criminal Justice Committee by the posted deadline.

Section 4.05 - Initial Consideration of Completed Applications

After the closing date for receipt of applications, the Criminal Justice Committee shall review copies of all timely applications. If the incumbent has applied for an additional term, the Criminal Justice Act Committee shall then recommend in writing to the Court of Appeals whether a Merits Screening Committee should be appointed pursuant to Sections 5.01 and 5.02 of these procedures. A recommendation not to appoint a Merits Screening Committee shall be supported by the results of the evaluation of the Federal Public Defender as set out in Section 7.01 and after evaluating the applications received in response to the recruitment efforts. If the evaluation demonstrates that the incumbent is held in high regard for the quality of his or her performance as the Federal Public Defender, and that there are no new applicants of similar caliber, the Criminal Justice Committee may recommend that the reappointment process proceed without the appointing of a Merits Screening Committee. In the event the Court of Appeals votes by a majority not to appoint a Merits Screening Committee, the Criminal Justice Act Committee shall proceed to seek the recommendation of the District Court pursuant to Section 6.01 of these procedures.

CHAPTER 5. MERIT SCREENING COMMITTEES

Section 5.01 - Appointment of Merit Screening Committees

A. The Merit Screening Committee shall examine all applications and evaluate all qualified candidates, without regard to race, color, age, gender, religion, handicap, or national origin.

B. If a Federal Public Defender has applied for an additional four-year term, the Merit Screening Committee shall consider a summary of the results of the survey conducted pursuant to Section 7.01 A. of these procedures in its evaluation of the Federal Public Defender's application.

C. The Merit Screening Committee shall determine which applicants meet the standards set forth in Chapter 2 of these procedures. The Merit Screening Committee shall interview qualified applicants.

D. Upon completion of its duties set forth in Section 5.03 A., B., and C. of these procedures, the Merit Screening Committee shall submit a report to the Chief Judge of the Court of Appeals and to the members of the Criminal Justice Committee. This report shall constitute its recommendations concerning the appointment of the Federal Public Defender in that district, and shall include the following.

1. a description of actions taken pursuant to Chapter 4 of these procedures regarding a notice of the position;
2. a brief description of the professional background of members of the Merit Screening Committee;
3. the names of all persons who submitted applications and the names of those deemed by the Merit Screening Committee to be best qualified for appointment pursuant to Chapter 2 of these procedures;

by the Chair of the Criminal Justice Committee upon application by the Chief Judge of the District Court.

Section 6.02 - Suggested Procedures for the District Court

A. The Chief Judge of the District Court may circulate to the judges of the District Court copies of the Merit Screening Committee's report, or the recommendation of the Criminal Justice Act Committee required in Section 4.05, and the summary of the results of the survey if the Federal Public Defender has applied for an additional four-year term.

B. The District Court may wish to consider the Merit Screening Committee's report, or the Criminal Justice Committee's recommendation, and the summary of the results of the survey in arriving at its recommendation. The District Court may, in its discretion, conduct its own investigations and, if a Merits Screening Committee was appointed, interview any of the applicants who have met the qualifications set forth in Chapters 2 and 4 of these procedures. Within 30 days of receipt of the summary and report and recommendation, the District Court may either:

1. submit its written recommendation(s) to the Chief Judge of the Court of Appeals and to the Chair of the Criminal Justice Committee; or
2. notify the Chief Judge of the Court of Appeals and Chair of the Criminal Justice Committee that the District Court declines to make a recommendation.

C. If the District Court decides to submit a recommendation, its report should include, as relevant:

1. a written statement of the District Court's endorsement of the

1. The identity of a respondent to the request for public comment shall not be divulged without prior consent.

B. The Criminal Justice Committee shall also conduct a written survey of the administration of the Office of the Federal Public Defender.

1. The survey should be distributed to District Court Judges and Magistrates, the Defender Services Division of the Administrative Office of the United States Courts, and other persons whose employment places them in a position to observe the performance of the Federal Public Defender, the quality of representation, the level of commitment to vigorous representation and service to clients, and administrative efficiency of the Office of the Federal Public Defender.

2. The identity of a respondent to the survey shall not be divulged without prior consent.

C. The Criminal Justice Committee may make such additional inquiry as it considers appropriate concerning the quality of services provided by the Office of the Federal Public Defender.

1. With the approval of the Chief Judge of the Court of Appeals, the Criminal Justice Committee may appoint consultants to assist it in its evaluation of the administration of the Federal Public Defender's office.

D. The Federal Public Defender shall be afforded an opportunity to review and respond to a statistical summary of the survey and a narrative summary of the responses to the request for public comment.

E. The Criminal Justice Committee should meet with the Federal Public Defender

of Investigation background investigation, unless the nominee is the current Federal Public Defender.

A. The Criminal Justice Committee's recommendations on the nomination to a vacancy, together with the recommendations received from the Merit Screening Committee, if one was appointed, and the District Court pursuant to Section 6.01 of these procedures, shall be presented at a regularly scheduled court meeting of the full Court of Appeals.

B. If the Criminal Justice Committee's recommendation is in accord with that submitted by the District Court, a vote of the Judges of the Court of Appeals may be conducted by mail or telephone. If any Judge of the Court of Appeals indicates a desire to discuss the appointment at a court meeting prior to voting, the vote will be conducted at a meeting of the Court of Appeals.

C. After voting to nominate a candidate to fill a vacancy,

1. the name of the nominee shall be submitted by the Chief Judge of the Court of Appeals to the Director of the Administrative Office of the United States Courts for a Federal Bureau of Investigation background investigation pursuant to United States Judicial Conference Regulations, Guidelines to Judiciary Policies and Procedures, Volume VII, Section A, Chapter 4, 4.02A, unless the nominee is the current Federal Public Defender.

2. The Administrative Office of the United States Courts shall send the completed Federal Bureau of Investigation report to the Chief Judge of the Court of Appeals, who shall refer the report to the Criminal Justice Committee on Federal

C. Should the Criminal Justice Committee, with the consent of the Chief Judge, decide to appoint consultants pursuant to Section 7.01 B. 1. of these procedures to assist it in considering the appointment of a Federal public Defender, it may provide any confidential information to the consultants, as it considers necessary or appropriate.

Section 8.02 - Appointment to a One-Year Term

28 U.S.C. § 3006A permits the Court of Appeals to allow a Federal Public Defender whose four-year term of office has expired to continue to perform the duties of his or her office until a successor is chosen or until one year passes, whichever is earlier.

A. Extension of the Federal Public Defender's term of office must be approved by a majority of the Judges of the Court of Appeals.

B. The expiration date of the term is defined in Section 3.01 B.