

## MEMORANDUM

April 23, 2018

TO: Article III Judges in Senior Status

FROM: FJA Senior Judges Committee

RE: Inactive Senior Status

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Some of us that are Senior Status Judges and other Judges approaching eligibility for that status may not be aware of the flexibility that Senior Status provides.

There is no publication from the Administrative Office that specifically deals with Inactive Senior Status. However, the Office of Judges Compensation and Retirement Division led by Carol Sefren can provide a wealth of information and guidance on Inactive Senior Status and Senior Status in general. As to Senior Status generally, see the 1999 AO publication entitled "Senior Status and Retirement for Article III Judges." Also "Planning for Senior Status" by Carol Sefren, a 108 page 2017 update of the 1999 booklet. Brett Hanlon, 202-502-1880, ext. 1886, within that office is a person who specializes in this area. This memorandum is to briefly alert you to some of the possibilities and resources available. There are about 100 Article III Judges on either Inactive Senior Status or Disabled Status.

As we all know, if you do not have a three-month workload for a year, then you are not eligible for a pay raise subject to other qualifications in 28 U.S.C. § 371(e)(1). The last statutory pay raise was in 1990. Any additions since then have been COLAs and the litigation catch up on COLAs that were bargained for but not paid. We know that the likelihood of an actual pay raise in the foreseeable future is dim.

If you go on Inactive Senior Status and have no staff and do no work, you will still receive any COLAs and other benefits except for staff with space possibly being a local question. The Federal Judicial Center has its own certification standards for attending their educational programs. The FJC advised that if some work is being performed, but not imposing the three-month requirement, there would be no problem in attending their programs. They experienced that self selection worked if no work was being performed. You would be reimbursed for expenses in attending your Circuit Conference, at least in the Eighth Circuit, although that could vary from circuit to circuit. You still remain subject to the Code of Conduct. Needless to say, Inactive Senior Status does not free one to engage in political activity.

So what are the benefits of Inactive Senior Status? The main one is that you retain judicial authority and can return to Active Senior Status. Also you would not be working if that is a benefit and not meeting six-month reports. Anyone not providing 60 days of work does not have to file the annual Financial Disclosure Report. An example of a benefit would be if a family member had a serious illness to which you wanted to devote your full attention until recovery was sufficient for you to return to Active Senior Status at whatever level of duties you choose. The Chief Judge of the

Circuit certifies your return to Active Senior Status. The Chief District Judge would likely also be consulted in the case of a District Judge. We say apparently as to these statements as there is no explicit statutory provision for Inactive Senior Status.

Information technology has opened up many possibilities of service for those of us on Senior Status. We are considering an empirical survey of Senior Status Judges to learn more about the status and how it is being used.

In addition to Inactive Senior Status, there is Disabled Status within Senior Status. Judges on Disabled Status would get a pay raise even if they were not doing the workload required by 28 U.S.C. § 371(e)(1). Some Judges are on Disabled Status but are with staff and carrying a full or significant workload. A Judge can be on temporary disability or permanent disability. [§ 620.45.20(d)] and (e). Temporary or permanent disability is requested on AO Form 27, “Senior Judge Certification” that Senior Judges complete each year and submit to the Chief Circuit Judge. Once certified as permanently disabled, you are not required to be certified for any year thereafter. Disabled Status for a Judge not on Senior Status presents other questions.