

Supreme Court of the United States
Washington, D. C. 20543

THE LEGAL OFFICE

July 12, 2021

Senator Sheldon Whitehouse
United States Senate
Washington, DC 20510

Senator Lindsey O. Graham
United States Senate
Washington, DC 20510

Dear Senator Whitehouse and Senator Graham:

Thank you for your letter of February 4 regarding financial disclosure requirements for the Justices. The Court appreciates the opportunity to hear your perspectives on these and other issues facing the Judiciary and the rest of the government. Because your queries concern the Court's ethics policies and practices, the Clerk of the Court has asked me to respond.

Before turning to the specific questions included in your letter, it is important to clarify a key point concerning financial disclosure rules. Specifically, the Ethics in Government Act of 1978 directs the Justices and other federal judges to make financial disclosures, and it grants to the Judicial Conference the authority to issue implementing regulations for the Judiciary. *See* 5 U.S.C. App. §§ 101(d), 101(f)(11), 109(10), 111(3); Guide to Judiciary Policy, vol. 2, Pt. D, ch. 1, §§ 120, 170. The Justices follow the financial disclosure regulations issued by the Judicial Conference's Committee on Financial Disclosure. As a result, the Justices file exactly the same types of reports that other federal judges do, and those reports are made available to the public in the same way that reports from other federal judges are.

With this important point in mind, I can provide the following responses to the questions posed in your letter.

1. *What plans, if any, does the Court have to adopt a code of ethics, or to bring its gift, travel, and hospitality restrictions and disclosure policies in line with those of the Executive Branch and Congress? If it has no such plans, what justifies the Court having a lower disclosure standard than the other branches of government?*

Just as the Justices follow the same financial disclosure rules that are applicable to other federal judges, so too do they comply with the same restrictions on gifts and outside activities that are applicable to the rest of the federal judiciary. The Judicial Conference – the judicial branch's policy-making body consisting of circuit and district judges from around the country – has developed comprehensive policies on those matters tailored to the unique characteristics of

the judicial branch. While the Judicial Conference Regulations on Gifts and the Judicial Conference Regulations on Outside Earned Income, Honoraria, and Outside Employment are not by their own terms applicable to the Supreme Court, the Justices have complied with them. Under the regulations, the Justices may not accept gifts from those who seek official action from or do business with the Court, with only limited exceptions. Judicial ethics principles also provide that recusal is appropriate when a Justice has a financial interest in a party before the Court.

The Justices also rely upon the Code of Conduct for United States Judges in evaluating ethical issues more broadly. As the Chief Justice explained in his 2011 Year-End Report on the Federal Judiciary, the Justices view this code as “a current and uniform source of guidance designed with specific reference to the needs and obligations of the federal judiciary.” But because the Code of Conduct is phrased in general terms and does not address all questions that the Justices may face, they may also consult a variety of other sources in evaluating ethics issues, including the Constitution, federal statutes, judicial opinions, legislative and executive branch guidance, the Justices’ historical practices, treatises, scholarly articles, state court guidance, and disciplinary decisions, and they may seek advice from the Court’s Legal Office, the Judicial Conference Committee on Codes of Conduct, or their colleagues.

- 2. Does the Court (or do the individual Justices) maintain records of emoluments in the nature of gifts, travel, hospitality, and reimbursements received by members of the Court? Do such records include the dollar value and descriptions of the emoluments?*

The Justices individually maintain records of gifts, reimbursements, and other financial information needed to prepare annual financial disclosure reports. In accordance with the Foreign Gifts and Decorations Act, 5 U.S.C. § 7342, the Justices also make disclosures relating to gifts and decorations from foreign governments. The Court collects that information from the Justices each year, and provides relevant information to the Director of the Administrative Office of the United States Courts for inclusion in a single report relating to the federal judiciary. Disclosure rules under the Foreign Gifts and Decorations Act call for the description and value of items to be listed.

- 3. What steps does the Court take to identify or prevent the Justices’ receipt of gifts, travel, or hospitality from those who may have business before the Court?*

The rules noted above are well known at the Court. The Justices and their chambers staff take care to ensure that any items received are in full compliance with those rules.

- 4. For purposes of the Justices’ disclosures, how does the Court define the term “personal hospitality” that appears in the Ethics in Government Act? See 5a U.S.C. § 102(a)(2)(A) (exempting from disclosure any gifts in the form of “food, lodging, or entertainment received as personal hospitality”).*

The term “personal hospitality of any individual” is defined by statute as “hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the

personal residence of that individual or his family or on property or facilities owned by that individual or his family.” See 5 U.S.C. App. § 109(14). See also Guide to Judiciary Policy, vol. 2, Pt. D, ch. 1, § 170 (defining “personal hospitality of any individual” as “[h]ospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of or on property or facilities owned by that individual or his family”). The Justices may also look to executive and legislative branch interpretations of financial disclosure rules in individual cases.

5. *What plans, if any, does the Court have to make the Justices’ financial disclosure reports more accessible to the public?*

As noted above, the Justices’ financial disclosure reports are available to the public in the same way that those of other federal judges are. They are also routinely posted on a variety of internet sites shortly after they become available for public review.

Thank you again for your letter. I hope and trust that the information provided here sheds additional light on the many statutes, rules, and regulations applicable to and relied upon by the Justices on these issues.

Very truly yours,



Ethan V. Torrey
Legal Counsel