



ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

HONORABLE ROSLYNN R. MAUSKOPF
Director

WASHINGTON, D.C. 20544

April 29, 2022

Honorable Sheldon Whitehouse
Chair
Subcommittee on Federal Courts, Oversight,
Agency Action, and Federal Rights
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Whitehouse:

I am writing on behalf of the Chief Judges of the U.S. Courts of Appeals and the Chairs of the Committee on Codes of Conduct and the Committee on Financial Disclosure in response to your letter dated August 30, 2021, relating to the exclusion of “personal hospitality” from the disclosure requirements under the Ethics in Government Act. The judiciary appreciates the opportunity to hear your perspective on these issues and I apologize for the delay in responding.

Our answers to your numbered questions are provided below. Many of your inquiries fall under the jurisdiction of the Committee on Financial Disclosure, which deals directly with financial disclosure reporting. The Committee on Codes of Conduct, on the other hand, primarily provides ethics advice to judges. Please be aware that these answers are dependent on the interplay between the judiciary’s gift regulations and its financial disclosure reporting requirements. The gift regulations may prohibit the acceptance of a gift under many of the circumstances described, and therefore the financial disclosure reporting requirements would only become relevant in those situations in which gifts were permitted in the first instance.

- 1. General Scope of Personal Hospitality. Is hospitality to a judge from any person subject to exemption from any reporting so long as the person has invited the judge to receive the hospitality at any property the person owns?*

The Ethics in Government Act requires that a financial disclosure filer must report information relating to gifts of more than minimal value (currently \$415) “received from any source other than a relative of the reporting individual during the preceding calendar year, except that any food, lodging, or entertainment received as personal hospitality of an individual need not be reported.” 5 U.S.C. App. 4 § 102(a)(2)(A). “Personal hospitality of any individual” means “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.” 5 U.S.C. App. 4 § 109(14) (emphasis added). It is not

correct to state that a judge need not report hospitality from “any person” as long as the judge receives the hospitality at any property that the person owns. At a minimum, the exclusion from reporting applies only if the hospitality was extended for a *nonbusiness purpose*, and there may be other limitations on the exception as well. *See infra*.

2. *Personal Hospitality at Commercial Properties.*
 - a. *Is a judicial officer permitted to decline to disclose “personal hospitality” received at a commercial property, such as a commercial resort which ordinarily charges visitors for hospitality?*
 - b. *For example, if the owner of a commercial resort has invited the judge to the resort, which guests ordinarily pay to visit, may the judge treat the hospitality as “personal”?*

I have requested that the Committee on Financial Disclosure provide guidance on whether “personal hospitality” may encompass hospitality extended at a commercial property such as a resort. Judicial Conference regulations provide that “[a]ny food, lodging, or entertainment received as ‘personal hospitality of any individual’ (as defined in Guide, Vol. 2D, Ch. 1, § 170) need not be reported.” *Guide to Judiciary Policy*, Vol. 2D, Ch. 3, § 330.30(b). Section 170 of those regulations defines “personal hospitality of any individual” as it is defined in the statute – that is, 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.” *Guide to Judiciary Policy*, Vol. 2D, Ch. 1, § 170 (incorporating language of 5 U.S.C. App. 4 § 109(14)). I have asked the Committee on Financial Disclosure to provide guidance on whether “property or facilities owned by that individual or his family” could include commercial property. The Committee will begin addressing this issue at its next semiannual meeting and will likely consider executive and legislative branch guidance on the scope of the exclusion.¹

3. *“Personal Hospitality” from Persons Not Known to the Judge. If the person invites a judge to a commercial property the person owns, and has no preexisting personal relationship with the judge, is hospitality received by that judge at the commercial property nevertheless exempt from disclosure as “personal hospitality”?*

As noted, I have requested that the Committee on Financial Disclosure provide guidance on whether hospitality furnished at a commercial property owned by an individual is “personal

¹ *See, e.g.*, U.S. Senate Select Comm. on Ethics, Financial Disclosure Instructions for Calendar Year 2021 at 24 (Mar. 2022) (permitting exclusion from reporting for gifts of personal hospitality “as defined in the Senate Ethics Manual (2003, ed.), p. 37”); Senate Ethics Man. 37 (2003) (“As a general rule, to qualify for the exemption, the residence or other property should not be property which is rented out to others by the individual providing the hospitality. . . . The personal hospitality exemption does not apply to hospitality by individuals in restaurants, nightclubs, or in any other commercial establishment.”); *id.* (private plane travel is not “personal hospitality” where it is “a substitute for commercial transportation”); *id.* (free lodging at a “guest house in Aspen” would not be personal hospitality because “the guest house is a commercial establishment”).

hospitality.” If it is not, then the judge must report the hospitality. If it is, then the judge may still need to report the hospitality if it was furnished for a business purpose. That inquiry would depend on the facts, but it is possible that the hospitality in such an instance would not be within the scope of the exclusion for personal hospitality.

4. *Solicitation of Personal Hospitality. May judges directly or indirectly solicit invitations from owners of commercial properties, and then claim exemption from disclosure on grounds that the owner invited the judge to a property the person owns? Would the solicitation of such an invitation to a commercial property be reportable?*

The judiciary’s gift regulations state that a “judicial officer or employee is not permitted to solicit a gift from any person who is seeking official action from or doing business with the court...or from any other person whose interests may be substantially affected by the performance or nonperformance of the judicial officer’s or employee’s official duties.” *Guide to Judiciary Policy*, Vol. 2C, Ch. 6, § 620.30. We are not aware of any obligation to report the solicitation of a gift of hospitality. The statute requires that a judge report gifts “received from any source,” except that hospitality “received as” personal hospitality need not be reported. *See* 5 U.S.C. App. 4 § 102(a)(2)(A). If such a gift were received, however, this would implicate the question of whether hospitality at commercial properties may constitute personal hospitality, a question we will study further.

Note also that judges are subject to the statutory restriction on gifts, as well as the gift regulations promulgated by the Judicial Conference, and may not solicit or accept anything of value from a person seeking official action from or doing business with the judge’s court or whose interests may be substantially affected by the performance or nonperformance of the judge’s official duties. *See* 5 U.S.C. § 7353(a); *Guide to Judiciary Policy*, Vol. 2C, Ch. 6, § 620.30. A judge may therefore be unable to solicit or accept a gift in the first place, even aside from whether the gift must be reported.

5. *Solicitation of Personal Hospitality from Persons Not Known to the Judge. May judges directly or indirectly solicit invitations from owners of commercial properties if there is no preexisting personal relationship with the judge, and then claim exemption from disclosure as “personal hospitality” on grounds that the owner invited the judge to a property the person owns?*

We are aware of no obligation to report solicitations of hospitality. As noted above, a gift from an individual not previously known to the judge might not be “personal hospitality,” depending on the facts, because such hospitality might not be extended for a nonbusiness purpose. But a judge might not be able to solicit such a gift at all, depending on the context.

6. *Third-Party Reimbursement. If a judge solicits or receives an invitation from an owner of a commercial property, and then claims exemption from disclosure on grounds that the owner has invited the judge to a property the person owns, what are the responsibilities of the judge where a third party reimburses the*

commercial property for the cost of the hospitality extended to the judge? Is the third party's reimbursement of the commercial property for hospitality provided to the judge reportable as a gift to the judge, even though the judge was invited to a property the person owns?

Regarding the reporting of gifts given for which the offeror has been reimbursed by a third party, "each financial disclosure report must contain the identity of the source [of the gift], a brief description, and the value of all gifts" that meet the threshold for reporting and for which no exclusions apply. *Guide to Judiciary Policy*, Vol. 2D, Ch. 3, § 330.10. Irrespective of whether "personal hospitality" includes hospitality furnished at a commercial property, "personal hospitality" must be "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." 5 U.S.C. App. 4 § 109(14). If a third party reimburses the host for the costs, then the hospitality may not have been extended for a nonbusiness purpose, nor by the "individual" owner such that it would fall outside the scope of the exemption. I have asked the Committee on Financial Disclosure to also provide guidance on this topic.

7. *Acceptance and Disclosure of Gifts from Those Seeking Official Action from or Doing Business with the Court. Does the judicial branch's prohibition on the acceptance of gifts from persons who are seeking official action from or doing business with the court extend to gifts in the form of invitations to property the person owns? Does it extend to corporations or organizations owned or controlled by the person that has business before the court, or vice versa? For example, if an individual is not personally seeking official action or doing business before the court but owns a company with a case pending before the court, or if a person who is seeking official action extends hospitality to the judicial officer at property the person owns through a corporation, do the Judicial Conference's rules permit the judge to accept hospitality from the person at property the person or their company owns without disclosing it?*

The judiciary's gift regulations prohibit the acceptance of gifts not only from those seeking official action from the judge's court or doing business with the judge's court, but also from anyone else whose interests might be affected substantially by the performance or nonperformance of the judge's official duties, unless the gift is permitted under one of the enumerated exceptions. *Guide to Judiciary Policy*, Vol. 2C, Ch. 6, § 620.35; *see also* Code of Conduct for United States Judges, Canon 4D(4) ("A judge should comply with the restrictions on acceptance of gifts and the prohibition on solicitation of gifts set forth in the Judicial Conference Gift Regulations. A judge should endeavor to prevent any member of the judge's family residing in the household from soliciting or accepting a gift except to the extent that a judge would be permitted to do so by the Judicial Conference Gift Regulations."). If an individual was not seeking official action from the judge's court and was not doing business with the judge's court, but owned a company that was, it would seem likely that the individual's interests would be substantially affected by the judge's actions.

The regulations further provide that “no gift may be accepted...if a reasonable person would believe it was offered in return for being influenced in the performance of an official act..., nor may a judicial officer or employee accept gifts from the same or different sources on a basis so frequent that a reasonable person would believe that the public office is being used for private gain. A judicial officer or employee should decline a gift permitted by these regulations if acceptance would cause the officer or employee to violate any applicable provision of the Codes of Conduct.” *Guide to Judiciary Policy*, Vol. 2C, Ch. 6, § 620.45. Thus, a judge may well not be permitted to accept a gift even if acceptance is otherwise permitted under the regulations.

Thank you again for your letter. We hope that this response provides you with additional insight on the statutes and regulations on which the judiciary relies relating to these issues. If we may be of additional assistance to you, please do not hesitate to contact the Office of Legislative Affairs at 202-502-1700.

Sincerely,



Roslynn R. Mauskopf
Director

cc: Honorable John Kennedy
Honorable Henry C. “Hank” Johnson, Jr.
Honorable Darrell Issa
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