



JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

HONORABLE ROBERT J. CONRAD, JR.
Secretary

January 2, 2025

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

Dear Mr. Chairman:

I write in response to your joint letter of April 14, 2023, directed to Judge Roslynn Mauskopf, my predecessor as the Secretary of the Judicial Conference, and to your joint letters dated respectively June 17, 2024 and December 23, 2024, directed to me as Director of the Administrative Office of the United States Courts. In the first two of your letters, you “request that the Judicial Conference exercise its authority pursuant to 5 U.S.C. § 13106(b) to refer Associate Justice of the Supreme Court Clarence Thomas to the U.S. Attorney General” on the ground that he “willfully” failed to comply with the financial disclosure requirements applicable to federal judges under the Ethics in Government Act of 1978. Since those letters, the Committee on Financial Disclosure has proposed, and the Judicial Conference has approved, several changes to these reporting requirements—some in 2023 and some in 2024. Justice Thomas has agreed to follow all of them. With this letter, I write to explain the Judicial Conference’s actions and our resolution of your inquiry.

Let me start by describing the Conference’s actions with respect to the reporting requirements applicable to federal judges. Through the leadership of the Financial Disclosure Committee, the Judicial Conference has been busy over the last few years in this area. I want to highlight a few changes (among many others) made between March 2023 and September 2024:

- In March and April 2023, the Financial Disclosure Committee, with the approval of the Judicial Conference, issued guidance that the personal hospitality gift reporting exemption applies only to food, lodging, or entertainment. The exemption, it explained, does not apply to gifts of “transportation that substitute[] for commercial transportation,” gifts “extended

for a business purpose,” or gifts “extended at a commercial property, e.g., a resort or restaurant, or at a property that is regularly rented out to others for a business purpose.” The Financial Disclosure Committee, generally speaking, does not apply new guidance retroactively to previously filed reports.

- A question arose whether an exception should be made with respect to the guidance regarding gifts of transportation. In September 2024, the Judicial Conference approved a recommendation from the Financial Disclosure Committee that the March 2023 guidance on gifts of transportation should apply only to travel in 2022 and subsequent years, and it should not apply to any transportation before then “due to confusion arising from past guidance.”
- In September 2024, the Judicial Conference approved a recommendation from the Financial Disclosure Committee that judges have an obligation to amend reports that contain errors or omissions for six years. The Ethics in Government Act of 1978 requires the Conference to destroy financial disclosure reports of judges six years after it receives them. In view of this provision, the Conference approved the Committee’s recommendation that, “upon a filer’s discovery of an error or omission in previously filed reports, those reports must be amended promptly if filed in the past six years but need not be amended after six years.”

As you know, the Judicial Conference does not superintend the Justices of the Supreme Court of the United States. Nonetheless, the Justices have agreed to follow the reporting requirements applicable to other federal judges and to comply with guidance provided by the Judicial Conference about these requirements, including by filing an annual report with the Financial Disclosure Committee. Justice Thomas has filed amended financial disclosure statements that address several issues identified in your letter. In addition, he has agreed to follow the relevant guidance issued to other federal judges, which would include the guidance mentioned above. We have no reason to believe he has done anything less. That provides one answer to your referral request.

Two other considerations deserve mention. First, the Judicial Conference has never taken a position on whether its referral authority under 5 U.S.C. § 13106(b)—to refer judges to the Attorney General for investigation into whether they have “willfully” violated their reporting obligations—applies to Justices of the Supreme Court of the United States. The question, to be clear, is not whether the Ethics in Government Act applies to the Justices of the Court. It is whether the Judicial Conference’s *referral authority* applies to the Justices. There is reason to doubt that the Conference has any such authority. Because the Judicial Conference does not superintend the Supreme Court and because any effort to grant the Conference such authority would raise serious

constitutional questions, one would expect Congress at a minimum to state any such directive clearly. But no such express directive appears in this provision. The provision in fact contains a suggestion to the contrary. “Whenever the Judicial Conference refers a name to the Attorney General under this subsection,” it says, “the Judicial Conference also shall notify the judicial council of the circuit in which the named individual serves of the referral.” 5 U.S.C. § 13106(b). A Justice of the Supreme Court of the United States does not “serve[]” in a “circuit.” The Conference has never addressed the meaning of this provision, and I write only to identify the issue, not to resolve it. In view of another referral request made with respect to Justice Jackson and her financial disclosure statements, however, the Conference plans to study this question in the months ahead.

Second, your request largely became moot over the summer. On July 3, 2024, you and Senator Wyden wrote directly to the Attorney General to ask him to appoint a Special Counsel to investigate these same matters. For this additional reason and those identified above, there is no longer any cognizable basis for acting on your referral request.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. Conrad, Jr.", written in a cursive style.

Robert J. Conrad, Jr.
Secretary

Identical letter sent to: Representative Henry “C.” Johnson Jr.