

United States Senate
WASHINGTON, DC 20510

August 31, 2023

The Honorable Roslynn R. Mauskopf
Director, Administrative Office of the United States Courts
Secretary, Judicial Conference of the United States
One Columbus Circle NE
Washington, D.C. 20544

Dear Judge Mauskopf:

Thank you for your response to my letters dated April 21, April 27, and May 5, 2023. Those letters sought information about the Judicial Conference's consideration of the 2011 complaints regarding Justice Clarence Thomas's compliance with the financial disclosure provisions of the Ethics in Government Act. I appreciate the clarity your letter provided about some aspects of the Judicial Conference's handling of that matter. However, your response left several questions unanswered. Additionally, as you are aware, Judge Mark L. Wolf of the District of Massachusetts testified before my Subcommittee about related concerns he voiced as a member of the Judicial Conference in 2012. His testimony raised additional questions about the Judicial Conference's process for handling reports of possible violations of federal financial disclosure requirements.

These questions are particularly relevant now, given that the Judicial Conference again has before it remarkably similar complaints about Justice Thomas's failure to comply with the Ethics in Government Act. Furthermore, as you know, the Judicial Conference is a body established by Congress, which maintains an obvious and ongoing interest in the Conference's proper functioning and execution of statutory requirements enacted by Congress. Accordingly, I ask that you provide answers to the following questions, which will help inform the Senate's continuing consideration of legislation to better enforce existing ethics laws and ensure the Judicial Conference is faithfully discharging the duties that Congress has assigned to it. I would appreciate answers to these questions by September 29, 2023. Thank you for your continued patients with and responsiveness to my inquiries in recent months.

1. Before receiving the 2011 complaints against Justice Thomas, did anyone from the Judicial Conference, Committee on Financial Disclosure, or Administrative Office of the United States Courts communicate with Justice Thomas or any other officials at the Supreme Court regarding the omissions that were the subject of those complaints? If so, who, and when? Please provide a copy of any such communications.
2. Your letter stated that, under the "current process," when the Committee receives "a public written allegation of a willful error or omission in a filer's financial disclosure report,"

“Committee staff reviews the allegation, prepares a review packet, and forwards it to the Committee members responsible for reviewing the filer’s report.”¹

- a. Were these requirements part of the Committee’s process in 2011?
 - b. Did such staff reviews occur with respect to any of the 2011 allegations against Justice Thomas? If so, please provide a copy of the review packet(s) prepared as part of that process.
3. Did anyone from the Judicial Conference or Administrative Office of the United States Courts send Justice Thomas a letter of inquiry related to any allegations raised during 2011? If so, please provide copies of any such letter.
4. According to your letter, Judge Baldock “reviewed the January 2011 allegations and the amended reports and concluded that the reports were properly amended and that no further action was warranted. . . . Judge Baldock took the extra step of reporting the matter to the Subcommittee on Compliance for its review, which concurred with his conclusion.” Judge McKinley also reviewed the fall 2011 allegations, and “took additional steps beyond the procedures in effect at the time. The Subcommittee on Compliance was asked to review the issues, and the matter was discussed by the full Committee at its January 2012 meeting.”²
- a. Please provide the dates on which each of these events occurred, as well as the dates on which the full Committee on Financial Disclosure was first notified of the January and fall 2011 allegations. Please provide documentation of each of those events.
 - b. Did the full Committee on Financial Disclosure ever review or discuss the January 2011 allegations? If so, on what date(s), and what actions did the Committee take? Please provide relevant portions of any minutes or documentation related to those discussions or actions.
5. Your letter stated that the “Committee reported on its actions in writing” to Judge Hogan in April 2012, with Judge McKinley communicating his determination “based on his review of all documentation and the discussion by the Committee members.”³
- a. Did the April 2012 letter from Judge McKinley to Judge Hogan reflect Judge McKinley’s individual determination, based on his own review of the documentation and the full Committee’s discussion, or a determination by the full Committee?
 - b. Please provide a copy of that April 2012 letter from Judge McKinley to Judge Hogan.

¹ Letter from Hon. Roslynn R. Mauksopf to Sen. Sheldon Whitehouse 2 (May 15, 2023) (hereinafter Mauksopf Letter).

² *Id.* at 3.

³ *Id.*

- c. Judge Wolf testified that the April 2012 letter was preceded by a February 23, 2012, letter from Judge McKinley to Judge Hogan on the same topic.⁴ Please provide a copy of that letter.
 - d. Judge Wolf further testified, and stated in an August 29, 2012, letter to Judges Hogan and Sentelle, that Judge Sentelle informed Judge Wolf that Judge Sentelle “would be requesting a revised letter from the Committee on Financial Disclosure” after Judge Wolf’s review of the February 23, 2012, letter and conversation with Judge McKinley.⁵ Please provide a copy of that request.
6. According to your letter and the excerpt of the March 2013 Report of the Committee on Financial Disclosure, the Committee “found that it had fulfilled its duty to inform the [Judicial] Conference of its review by communicating its findings to the Secretary of the Conference in April 2012.”⁶
- a. Did any member of the Committee on Financial Disclosure communicate the Committee’s findings regarding the January 2011 allegations to any other member of the Judicial Conference at any point before 2012? If so, please provide a copy of those communications. If not, what was the reason for not notifying the Secretary until 2012?
 - b. Did Judge Hogan ever communicate the Committee on Financial Disclosure’s conclusions to other members of the Judicial Conference after receiving the Committee’s April 2012 report? If so, when and under what circumstances? Please provide a copy of such communications.
7. Judge Wolf provided to my Subcommittee an August 21, 2012, letter from Judge David Sentelle to Judge McKinley regarding the 2011 allegations. In that letter, Judge Sentelle states that, “Following a discussion at its August 2012 meeting, the [Judicial Conference’s] Executive Committee decided to seek the views of the Financial Disclosure Committee on the issues raised in Judge Wolf’s letter” requesting that the Conference discuss the 2011 allegations at the Conference’s September 11, 2012 meeting.⁷
- a. Please provide relevant portions of any minutes taken of the Executive Committee’s August 2012 meeting.
 - b. Please provide a copy of any response to Judge Sentelle’s letter.
 - c. Please provide relevant portions of any minutes taken of the September 11, 2012, meeting of the Judicial Conference.

⁴ *Review of Federal Judicial Ethics Processes at the Judicial Conference of the United States Before the S. Comm. on the Judiciary Subcomm. on Fed. Cts., Agency Action, and Fed. Rights*, 118th Cong., at 28 (May 17, 2023) (testimony of Hon. Mark Wolf) (hereinafter Wolf Testimony).

⁵ *Id.* at 28, 74.

⁶ Mauskopf Letter, *supra* note 1, at 4, 31.

⁷ Wolf Testimony, *supra* note 4, at 71.

8. Judge Wolf testified that on January 29, 2013, he was “copied on an email to the members of the Judicial Conference transmitting a January 28, 2013 letter from Judge McKinley to Judge Sentelle, with attachments.”⁸ Similarly, your letter and the excerpt of the March 2013 Report of the Committee on Financial Disclosure stated that the Committee had forwarded to the full Conference a letter further addressing these issues.⁹
 - a. Please provide a copy of the January 28, 2013, letter and attachments.
 - b. Please provide a copy of the January 29, 2013, email.
9. Are formal reports from the Committee on Financial Disclosure (and other standing committees) to the Judicial Conference on particular matters such as referrals to the Attorney General under the Ethics in Government Act, once reported to the Conference, available to the public or to Congress via electronic search or upon request?
10. Please provide copies of any existing guidelines governing the Judicial Conference’s procedures for the consideration of possible violations of the Ethics in Government Act and referrals to the Attorney General under that statute. Please include any guidelines governing the process by which: the Judicial Conference refers such matters to the Committee on Financial Disclosure, the Committee convenes to deliberate (including when such deliberation occurs), the reporting out of the Committee’s findings and recommendations to the Judicial Conference, and any deliberation by the full Judicial Conference before deciding on the resolution of these matters.
11. When the Committee considered whether it was obligated to refer Justice Thomas to the Attorney General under 5 U.S.C. § 13106(b), what was the precise question that the Committee considered (did the Committee consider whether Justice Thomas had acted “willfully” or whether it had “reasonable cause” to believe he acted “willfully”)?

Sincerely,



SHELDON WHITEHOUSE
Chairman, Senate Judiciary Subcommittee on
Federal Courts, Oversight, Agency Action,
and Federal Rights

⁸ *Id.* at 38.

⁹ Mauskopf Letter, *supra* note 1, at 4, 31-32.