



PRESIDENT
RAKIM BROOKS

CHAIR
PAULETTE MEYER

October 26, 2021

The Honorable Jerrold Nadler
Chairman
House Committee on the Judiciary

Dear Chairman Nadler,

On behalf of the Alliance for Justice (AFJ), a national association representing over 130 public interest and civil rights organizations, I write to thank you for holding the hearing, “*Judicial Ethics and Transparency: The Limits of Existing Statutes and Rules.*” We are pleased that you are tackling, among other critical issues, the pattern of judicial ethical violations outlined this month in the *Wall Street Journal* (WSJ). It was alarming to discover that over 100 federal judges failed to disqualify themselves from cases in which they have a financial interest, though they are required to do so. Our organization knows intimately that Americans are losing confidence in the courts because they have been stacked in favor of the wealthy and the powerful. It is crucial that we correct these, and other practices, that undermine our justice system.

As you know, federal judges are bound by a strict set of ethical rules. These rules, including [28 U.S.C. § 455](#)—passed in the [wake](#) of the Watergate crisis—and [Canon 3](#) of the Code of Conduct, require judges to recuse themselves when they, or a close family member, have a financial interest in the proceeding “however small.” Notably, these rules also prohibit the appearance of conflict and require judges to recuse themselves even if their role in the proceeding is minor. Judges are also required to file financial disclosure statements so that the public can identify financial interests that should have led to recusal.

That is why it is so outrageous that, as reported by the Wall Street Journal, between 2010 and 2018, [131](#) federal lower court judges participating in 685 lawsuits failed to follow these laws. In the suits in question, the judges and close family members held shares in companies that were plaintiffs or defendants in cases before their court. In two-thirds of those suits, the judges ultimately ruled in favor of the party in which they held a financial interest. In 61 of these suits, the judges or their families traded the stock of the plaintiff or defendant’s company during the case.

The nondisclosures highlight a compliance issue, lack of reliable processes for conflicts, and a persistent lack of transparency that must be addressed to preserve the basic tenets of justice and fairness. Federal judges often apply laws, make decisions, and in some cases take away someone’s liberty based on what may seem like minor violations of laws or rules. Yet, here, for rules that apply to them, too few judges have the same vigilance they expect of others. We have an ineffective system of transparency and accountability rife with delay and confusion for the public and courts alike. As evidenced by the situation in the WSJ report, the financial disclosures judges are required to complete annually are not regularly updated and requesting and obtaining them can be time-consuming.

What is worse, it does not appear to be the case that these judges were simply unaware of the ethical rules. Many

contacted by the WSJ did not claim ignorance, but blamed the conflict screening software, clerks, or said that because a trade resulted in a loss, it could not have been intentional.

Since at least the “[Powell memo](#),”—in which future Justice Lewis Powell encouraged the business community to weaponize the courts in order to protect their own economic interests—conservatives have been focused on packing the federal courts. Their explicit goal has been to erode our democracy and degrade protections for persons of color, women, LGBTQ+ Americans, workers, consumers, and clean air and water. Indeed, nearly 30 years ago, in 1993, AFJ published [Justice for Sale](#), a comprehensive report detailing the sophisticated campaign to reshape the federal judiciary, elevating corporate profits over social justice and individual rights. Litigants trying to hold large corporations accountable already have the scales of justice stacked against them. Judges who ignore ethics rules and rule in cases they hold a financial interest only further exacerbates the inability of workers and consumers to obtain justice.

Significant reform is required if we are to restore Americans trust in the courts. Public confidence in the federal courts is at an all-time low. As of September 2021, just 40% of Americans approve of the job of the U.S. Supreme Court, according to a Gallup poll. The same poll indicated that just 54% of Americans have confidence in the federal judiciary overall, down from a high of 80% in the late 1990s. The decline in approval noted by the Gallup poll is true for Democrats, Independents, and Republicans alike.

Because federal judicial appointments are for life and the Judicial Conference rarely imposes penalties for misconduct, there must be a better system of checks to ensure judges are acting fairly and all parties receive a fair adjudication of their claims. Federal judges are the keepers of the promise of equal justice before law. They therefore have a legal, ethical, and moral obligation to ensure that anyone entering their courtroom can be confident that they will receive a fair and impartial hearing. That responsibility requires the highest standards of vigilance in avoiding even the appearance of a conflict of interest. Despite federal law and federal judicial policy, the system is not working to ensure that corporations do not receive an unfair advantage.

Finally, we hope this hearing will also address the fact that the judicial code of conduct does not apply to the Supreme Court. There are scores of examples of questionable conduct by Supreme Court justices over the years; and it is long past time for our nation’s highest Court to be subject to the same highest standards of conduct as lower court judges. As over 100 law professors wrote in a 2011 [letter](#): “[a]dherence to mandatory ethical rules by justices, and requiring transparent, reviewable recusal decisions that do not turn solely on the silent opinion of the challenged justice will reinforce the integrity and legitimacy of the Supreme Court.”

Thank you for holding this hearing to shed light on this threat to equal justice. This deeply entrenched pattern of violations should be thoroughly investigated. AFJ looks forward to working with you in the coming years to restore a court system deeply committed to equal justice under law.

Sincerely,



Rakim Brooks
President, Alliance for Justice