



JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

JAMES C. DUFF
Secretary

June 19, 2019

Honorable Martha Roby
Ranking Member
Subcommittee on Courts, Intellectual Property, and
the Internet
Committee on the Judiciary
United States House of Representatives
Washington, DC 20515

Dear Representative Roby:

I write in my capacity as Secretary of the Judicial Conference of the United States (“Judicial Conference”) regarding the hearing that your subcommittee is scheduled to hold on Friday, June 21, 2019.¹ I have been informed that this hearing will discuss various topics, including: a potential code of conduct for justices of the Supreme Court of the United States and other federal judges; a mandate that the financial disclosure reports of judges and justices be posted on the internet; and a requirement for judges and justices to disclose publicly their reasons for recusing from cases. We appreciate your solicitation of our views on these topics. We will address several concerns we have expressed previously regarding each of them herein, as they have been proposed previously.

Mandatory Code of Conduct Administered by the Judicial Conference

The Judicial Conference opposes any legislation that would require it to issue a code of conduct for Supreme Court justices, as it is inappropriate for the Judicial Conference to do so. JCUS-MAR 19, pp. 4-5. The Judicial Conference does not oversee the Supreme Court and does not have the requisite expertise to craft a code for the justices. The Supreme Court is also separately administered from the lower courts and the Judicial Conference. In the few instances where the Judicial Conference or the Administrative Office of the United States Courts (“Administrative Office”) assists the

¹ The Judicial Conference serves as the principal policy making body of all Article III courts except the Supreme Court of the United States. Many of the issues discussed in this letter affect both the Supreme Court and the lower courts, but the views expressed herein only represent those of the lower courts over which the Judicial Conference presides.

Supreme Court administratively, it is at the Supreme Court's own request or delegation.² It is the firm view of the Judicial Conference that Congress should not alter this nearly century old administrative relationship and thereby place lower court judges in an inappropriate supervisory role over Supreme Court justices.

As for a code of conduct for lower court judges, such a code has been in existence for more than four decades. It is reviewed periodically and was amended recently this past March. It is unnecessary for Congress to require such a code to be re-created.

Releasing Financial Disclosure Reports Without Ongoing Safety Review

The Judiciary makes judges' financial disclosure reports routinely available, but in a manner that addresses the security concerns of judges. Each year, the Judiciary releases many thousands of copies of financial reports.³ The Judiciary continually studies ways to make the reports available in a manner more convenient to the public. For example, since March 2017, most reports have been mailed to requesters at no cost to them on electronic storage devices. The Judiciary has considered the feasibility of posting reports online and will continue to do so.

There are serious concerns with a mandate that judges' financial disclosure reports be posted online because a statutory mandate is unlikely to account adequately for judges' security over time. Judges have unique security concerns because of their role in adjudicating individual criminal and civil litigation, which sometimes involve disgruntled or violent individuals and highly contentious issues. Congress has recognized the unique nature of the judicial function, and the increased security risks that it entails, and enacted legislation that allows the redaction of statutorily required information in a financial disclosure report in limited instances when the release of the information could endanger a judicial officer or employee or his or her family.⁴ We thank the members of the Committee for their past support of this critical safeguard.

Regulations require any individual seeking a Judiciary financial disclosure report to provide his or her name, occupation and address, as well as the name and address of any other person or organization on whose behalf the report is requested. In addition, the requestor is required to complete a certification that he or she is aware of the prohibitions and restrictions for obtaining or viewing the report. Under the regulations, judicial

² The Supreme Court currently consults the Code of Conduct for United States Judges that is promulgated by the Judicial Conference. As Chief Justice Roberts explained in his 2011 Year-End Report on the Federal Judiciary, "[a]ll Members of the Court do in fact consult the Code of Conduct in assessing their ethical obligations. In this way, the Code plays the same role for the Justices as it does for other federal judges..."

³ The number of reports requested in 2017 and 2018 was 19,111 and 7,874 respectively.

⁴ The Identity Theft and Assumption Deterrence Act of 1998, Section 7.

officers and employees are notified when their financial disclosure reports are requested and are provided an opportunity to view the written requests. They then may assess the threats posed at a time contemporaneous with the request (which may have changed since the time of filing) and, if necessary, when the reports are filed or upon receipt of a notification that their reports have been requested ask for the redaction of certain information from their financial disclosure reports.

The authority to redact information has been exercised carefully. Although only a small percentage of reports released to the public are approved for any redactions, the written application to examine a financial disclosure report and the ability to withhold sensitive information remain important protections for the judicial officers and employees who are most at risk for facing serious threats and inappropriate communications. A person requesting a report may view the report in person at the Administrative Office or may request a paper copy of the report and pay for the reproduction and mailing costs, if they opt not to receive the reports for free on an electronic storage device.

Simply posting financial disclosure reports online would eliminate the important safeguards the Judiciary currently has in place to ensure threat assessments are timely. It is the view of the Judicial Conference that Congress should allow the Judicial Conference to continue to innovate and adjust its practices as technology evolves.

Public Disclosure of Relationships to Potential Litigants

There are also several concerns with a statutory mandate to post “recusal lists” or requiring judges to explain why they decided to recuse in a particular case. First, such a requirement risks inappropriately impinging on legitimate privacy interests of litigants, family members of judges, and the judges themselves. The legal and ethical requirement for a judge to disqualify himself or herself from a proceeding when his or her impartiality might reasonably be questioned includes not only financial relationships with the subject matter or a party, but also bias or prejudice concerning a party, or the involvement of a relative. This includes, for example, situations in which the judge has a personal conflict or personal relationship with the litigant. Were a judge to specify the nature of every recusal explicitly (or by implication that a disqualification is not related to financial conflict) the effect could be to expose personal information needlessly about the litigant and/or prejudice the litigant before that judge’s colleagues. The law is currently intended to promote recusal when it is necessary. Requiring the disclosure of private personal information of the judge, the judge’s family members, or others as the “price” of recusal runs counter to that goal.

Honorable Martha Roby

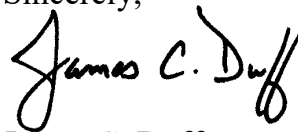
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Additionally, access to personal information about the judge (or financial information not otherwise publicly available) may create the potential for judge shopping and the manipulation of case assignments. If judges' recusal lists are required to be made available upon request, then litigants could join or remove parties to cases in order to disqualify (or avoid the disqualifications of) specific judges. Finally, as discussed above, judges have serious and atypical security concerns and a requirement for public disclosure of a judge's personal associations and relationships can put them at greater risk. The Judicial Conference previously considered and rejected a suggestion that it encourage lower courts to maintain a recusal list for each judge that would be available to litigants upon written request. JCUS-MAR 99, pp. 11-12, 17-18.

In sum, we recognize that many of these proposals are motivated by a desire to promote public confidence in the Judiciary, but having examined them in detail we believe they would have serious negative effects.

Thank you for your consideration of these views. If we may be of further assistance, please do not hesitate to contact me or the Office of Legislative Affairs, Administrative Office of the United States Courts, at 202-502-1700.

Sincerely,

A handwritten signature in black ink that reads "James C. Duff". The signature is written in a cursive, flowing style with a large initial "J" and a long, sweeping underline.

James C. Duff
Secretary

cc: Honorable Hank Johnson