



Scenarios to Help Understand the Differences in Gift and Travel Rules Between Congress and the Judiciary

1A: A member of Congress is offered a gift from a friend

1B: A judge/justice is offered a gift from a friend

1C: A member of Congress is offered free lodging from a friend

1D: A judge/justice is offered free lodging from a friend

2A: A member of Congress is offered a gift from an acquaintance

2B: A judge/justice is offered a gift from an acquaintance

2C: A member of Congress is offered free lodging from a think-tank

2D: A judge/justice is offered free lodging from a think-tank

STEPS: Self-exam → advice/approval → reporting → public access

Scenario 1A: A member of Congress is offered a tangible gift, a painting valued at \$1,000, from a close friend. What happens next?

- Self-exam:** The lawmaker must consider carefully whether the friend might have ulterior motives in offering the gift. If yes, they must decline it.
- Advice/approval:** Under the rules of the House and Senate, [representatives](#) and [senators](#) must receive approval from their respective Committee on Ethics for all gifts from friends valued at \$250 or more. In the House, there is a Personal Friendship Gift Waiver Request [form](#) the representative must file. (This is not made public.) There is not a similar form in the Senate, yet under Senate rules ([p. 14](#)), a senator must receive approval from the Ethics Committee.
- Reporting:** Since the gift is valued at \$480 or greater,¹ the lawmaker by law must report it on their annual financial disclosure report and include a brief description of the gift, its value, the identity of the source and the date of receipt. If they don't report it, and the Ethics Committee finds out about it, there can be repercussions.²
- Public access:** The public will typically be able to access the lawmaker's annual disclosure online within a month of the May 15 annual reporting deadline: [here](#) for senators and [here](#) for representatives (under "search reports").

Scenario 1B: A federal judge or Supreme Court justice is offered a tangible gift, a painting valued at \$1,000, from a close friend. What happens next?

- Self-exam:** The jurist must consider carefully whether the friend might have ulterior motives in offering the gift. If yes, they must decline it.
- Advice/approval:** There is no body with which a judge or justice *must* consult before accepting the gift. (We'd like to change that.)
 - A judge *may* consult with the Judicial Conference Committee on Codes of Conduct or Committee on Financial Disclosure, but those bodies have no enforcement mechanism and their views are merely advisory. The lower courts' [code](#) of conduct simply states that "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 justice *may* consult with the same Judicial Conference committees, but their views hold even less weight since those committees comprise lower court judges who don't have much sway with SCOTUS legally or viewpoint-wise. The justices have no formal code of conduct but say they "consult" the lower courts' code. (We'd like to change that.)

¹ For lawmakers', judges' and justices' 2022 reports, which are due May 15, 2023, the gift reporting threshold is \$415. The threshold will increase to \$480 for the 2023 reports. That number is based on the Ethics in Government Act, 5 U.S.C. [§13104\(a\)\(2\)\(A\)](#).

² Under a section of the Ethics in Government Act, 5 U.S.C. [§13106](#), the Attorney General, either of his own accord or upon a recommendation from the House or Senate Ethics Committee, may bring a civil action against a member of Congress who falsifies "any information that such individual is required to report," and a federal court may assess up to a \$50,000 fine. A more serious infraction could lead to up to one year in prison. In terms of internal disciplinary action, if a senator or representative is found not to have listed the gift on their annual report, the Senate or House Ethics Committee may take disciplinary action against them, which [may include](#) "expulsion, censure, payment of restitution, recommendation to a member's party conference regarding the member's seniority or positions of responsibility, or a combination of these."

3. **Reporting:** The jurist must report the gift on their annual financial disclosure report, since the gift is valued at \$480 or greater, and include the identity of the source, a brief description of the gift and its value. Theoretically under the law,³ the Judicial Conference could file a complaint with the Attorney General to investigate a justice for failing to report the gift, but the reality of that happening is slim for what should be obvious political reasons.
4. **Public access:**
 - A. The public is, [by law](#), supposed to be able to access a lower court judge’s disclosure within a month of the May 15 annual reporting deadline, and the reports are, [by law](#), supposed to be posted in an online [database](#) within 90 days. But as of April 2023, just over half of the lower courts’ 2021 disclosures were posted.
 - B. The justices’ [disclosures](#) come out on time — i.e., by mid-June — each year.

Scenario 2A: A member of Congress is offered a tangible gift, a painting valued at \$1,000, from an acquaintance. What happens next?

1. **Self-exam:** The lawmaker must decline the gift. In general, gifts worth more than \$50 may not be accepted, except in rare instances, based on a family relationship or close personal friendship. There are no steps 2 through 4.

Scenario 2B: A federal judge or Supreme Court justice is offered a tangible gift, a painting valued at \$1,000, from an acquaintance. What happens next?

1. **Self-exam:** The jurist must consider carefully whether the friend might have ulterior motives in offering the gift. If yes, they must decline it.
2. **Advice/approval:** There is no body with which the judge or justice *must* consult before accepting a gift from an acquaintance, though the consultation described in Scenario 1B(2) *may* occur.
3. **Reporting:** The jurist must report the gift on their annual financial disclosure report, since the gift is valued at \$480 or greater, and include the identity of the source, a brief description of the gift and its value. (See note 3 for comment on non-reporting.)
4. **Public access:** The justices’ disclosures are made public within a reasonable amount of time, but lower court judges’ disclosures are often not. See Scenario 1B(4).

Scenario 1C: A member of Congress is offered a free three-night stay at a hunting lodge, valued at \$1,000 per night, paid for by a close friend. What happens next?

1. **Self-exam:** The lawmaker must consider carefully whether the friend has any ulterior motives in offering the free stay. If yes, then they must decline it.
2. **Advice/approval:** As in 1A(2), a representative must file a [Personal Friendship Gift Waiver Request](#), and a senator must ask the Ethics Committee for approval.
3. **Reporting:** Assuming their respective Ethics Committees approve of the stay, both senators and representatives must report the stays on their annual financial disclosure reports. (See note 2 for comment on non-reporting.)
4. **Public access:** The public will typically be able to access the lawmaker’s annual disclosure online within a month of the May 15 annual reporting deadline: [here](#) for senators and [here](#) for representatives (under “search reports”).

Scenario 1D: A federal judge or Supreme Court justice is offered a free three-night stay at a hunting lodge, valued at \$1,000 per night, paid for by a close friend. What happens next?

³ Under a section of the Ethics in Government Act, 5 U.S.C. [§13106](#), the Attorney General, either of his own accord or upon a recommendation from the Judicial Conference, may bring a civil action against a judge or justice who falsifies “any information that such individual is required to report,” and a federal court may assess up to a \$50,000 fine. A more serious infraction could lead to up to one year in prison. (That hasn’t ever happened, nor will it.) If a federal judge is found not to have listed the gift on their annual report, any member of the public or the chief judge of their circuit may file a complaint against the judge, triggering a process where a judge may be investigated by his colleagues (or his colleagues could hire an outside firm to help the investigation). If the judge is found to have committed an offense, they could be publicly or privately reprimanded, censured, sent to ethics training, have cases temporarily reassigned or be recommended for impeachment by the House. There is no complaint process and no real chance for discipline of a Supreme Court justice. ([We’d like to change that.](#))

1. **Self-exam:** The judge or justice should consider carefully whether the friend has any ulterior motives in offering the free stay or if they have any business before their court. If “yes” on motives, then they must decline it. If “yes” on business before the court, they would not have to decline it under the current rules. (We’d like to change that.)
2. **Advice/approval:** There is no approval necessary. (We’d like to change that.)
3. **Reporting:** Per Judicial Conference [regulations](#) approved in March 2023, a judge or justice is now required to report the stay on their annual disclosure. (See note 3 for comment on non-reporting.)
4. **Public access:** The justices’ disclosures are made public within a reasonable amount of time, but lower court judges’ disclosures are often not. See Scenario 1B(4).

Scenario 2C: A member of Congress is offered a free three-night stay at a hunting lodge, valued at \$1,000 per night, paid for by a nonprofit think-tank. What happens next?

1. **Self-exam:** The lawmaker must consider carefully whether the think-tank has any ulterior motives in offering the gift. If yes, then they must decline it.
2. **Advice/approval:** The lawmaker and think-tank each must file documents with the House or Senate Ethics Committee 30 days prior to the trip:
 - A. In the Senate, the [lawmaker](#) must file the “original, unsolicited invitation from the travel sponsor” and a “detailed, hour-by-hour itinerary, including each event or activity” they’ll attend. The think-tank must file a [Private Sponsors Travel Certification Form](#), which describes the purpose of the trip and other key details, like the amount of money the organization is spending on a lawmaker’s transportation, lodging and meals.
 - B. In the House, the rules are effectively the same: a lawmaker must submit a [Traveler Form](#), and the think-tank must submit a [Primary Trip Sponsor Form](#).
 - C. For both the [House](#) and [Senate](#), if the sponsor employs or retains a lobbyist or foreign agent, the trip may not exceed one overnight stay, unless a second night is deemed necessary to accomplish the goals of the trip. A sponsor that does not employ or retain a lobbyist or foreign agent may sponsor trips within the continental U.S. of up to three days and internationally of up to seven days. A sponsor may provide only coach or business class travel; travel on a private aircraft or chartered plane is generally prohibited. A sponsor may not pay for any part of a trip extensions (e.g., if the program at the hunting lodge lasts only three days but the lawmaker wants to stay for seven).
3. **Reporting:** Within 15 days of returning from the trip, the House [member](#) and the [think-tank](#) must file post-travel disclosure reports, and a senator must file a similar post-travel [report](#) within 30 days of their return. There is no post-travel form for sponsors of Senate trips to file. Since the trip is valued at \$480 or greater, the lawmakers must report the trip on their annual financial disclosures and include the dates, names of co-travelers, the destination and who paid. (See note 2 for comment on non-reporting.)
4. **Public access:** The public will typically be able to access the lawmaker’s travel disclosures within a month of their return from a privately sponsored trip: [here](#) for senators and [here](#) for representatives (under “search reports”).

Scenario 2D: A federal judge or Supreme Court justice is offered a free three-night stay at a hunting lodge, valued at \$1,000 per night, paid for by a nonprofit think-tank. What happens next?

1. **Self-exam:** The judge or justice should consider carefully whether the think-tank has any ulterior motives in offering the free stay or if they have any business before their court. If “yes” on motives, then they must decline it. If “yes” on business before the court, they would not have to decline it under the current rules. (We’d like to change that.)
2. **Advice/approval:** There is no approval necessary. (We’d like to change that.) The judge or justice may participate in think-tank sponsored events for as many days and nights as they like, even if the think-tank employs a lobbyist or foreign agent; take a private plane paid for by the think-tank to get to the lodge; and extend the trip on the think-tank’s dime.
3. **Reporting:** The judiciary publishes a daily report of every privately funded seminar that a lower court judge has attended in the three years prior to that day [here](#). In rare instances, justices appear on the list. Otherwise, the trip would have to be reported on a jurist’s annual disclosure report. (See note 3 for comment on non-reporting.)
4. **Public access:** The justices’ disclosures are made public within a reasonable amount of time, but lower court judges’ disclosures are often not. See Scenario 1B(4).