

Hon. David L. Bunning
Chair, Judicial Conference Committee on Financial Disclosure
U.S. District Court for the Western District of Kentucky
35 West 5th Street
Covington, KY 41011
Delivered via email to Judge Bunning and all CFD members

May 3, 2023

Dear Judge Bunning:

My name is Gabe Roth, and I am executive of Fix the Court, a nonpartisan nonprofit organization that advocates for greater openness and accountability in the federal judiciary.

Following several news reports about Supreme Court justices omitting or misstating information in their annual financial disclosure reports, I ask that the Committee on Financial Disclosure consider updating its regulations to clarify some of the confusion, which I am confident is not limited to the high court.¹ (And a big thank you for clarifying the personal hospitality rules in March.) By setting down more explicit rules regarding judicial officers' real estate, and by requiring them to list the dollar amounts of free or reimbursed transportation, lodging, food and entertainment, this Committee would be taking major steps toward improving public confidence in both the disclosure process and in the integrity of our federal judges and justices.

My first three suggestions concern the reporting of judicial officers' real estate holdings and transactions.

First, if an officer's investment property is held in an LLC,² they should be obligated to disclose more information on their annual report than simply the name of the LLC. Listing "ABC LLC" without noting the purpose of the LLC is unnecessary opacity. To use a concrete example of the opposite case, in 2021 Chief Justice Roberts, along with the members of his family with whom he co-owns a cottage in Ireland, "transferred" the "ownership of this property [...] to a partnership," per his disclosure.³ And yet, the Chief Justice not only listed in Part VII of his report the name of the new entity, "Caraheen Partners," which was all he needed to put; he also listed what it was: "1/8 [inter]est in a] cottage, Knocklong, County Limerick, Ireland." That's proper transparency.

Second, a recent change that reduced the amount of the information a filer was required to disclose about the buyer or seller of their property should revert back to *status quo ante*. The instructions for filing 2009 financial disclosure reports⁴ tell filers on page 51, under the heading "Transactions": "As to each acquisition or disposition, you should disclose" six different pieces of information, one of which was "the identity of the buyer or seller [...]."

Yet the instructions for filing 2020 financial disclosures⁵ direct filers on page 45 to include *five* pieces of information — that is, all that was included in 2009 *minus the identity of the buyer or seller*. (The same instructions

¹ I look forward to reviewing the lower court judges' disclosures — calendar year 2021, nominee, initial and final — once the final 1,000 or so are uploaded.

² Or similar business entity or structure, or if they hold a discrete percentage of a property whose value is greater than \$1,000.

³ See Roberts, Jr., John G. "Financial Disclosure Report for Calendar Year 2021," available at https://fixthecourt.com/wp-content/uploads/2022/06/Roberts-JG-J3.-SC_SR_21.pdf.

⁴ See "Filing Instructions for Judicial Officers and Employees," Committee on Financial Disclosure, Jan. 12, 2010, available at <https://fixthecourt.com/wp-content/uploads/2021/11/Instructions-to-file-FDs-2010.pdf>.

⁵ See "Filing Instructions for Judicial Officers and Employees (AO-10)," Committee on Financial Disclosure, Feb. 2021, available at <https://fixthecourt.com/wp-content/uploads/2021/11/Instructions-to-file-FDs-for-2021.pdf>.

are repeated in the instructions for filing 2022 disclosures.⁶ I do not know when exactly the instructions changed since I do not possess the instructions for the years 2010-2019, but they should be changed back.

What’s more, during that time, and up through the 2020 reports, there was a heading in Part VII(D) that requested a filer list the “identity of buyer/seller (if private transaction).” But then for 2021 disclosures, that header seems to have disappeared (*see a side-by-side comparison from Justice Breyer’s 2020[l] and 2021[r] disclosures below*).

FINANCIAL DISCLOSURE REPORT Page 4 of 9	Name of Person Reporting BREYER, STEPHEN G.	Date of Report 04/26/2021
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FINANCIAL DISCLOSURE REPORT Page 4 of 9	Name of Person Reporting BREYER, STEPHEN G.	Date of Report 05/09/2022
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VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

NONE (No reportable income, assets, or transactions.)

A Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				(5) Identity of buyer/seller (if private transaction)
	(1) Amount	(2) Type (e.g., div, rent, or int.)	(1) Value	(2) Value	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value	(4) Gain Code 1 (A-H)	

VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see Guide to Judiciary Policy, Volume 2D, Ch. 3, § 310 Reporting Thresholds for Assets; § 312 Types of Reportable Property; § 315 Interests in Property; § 320 Income; § 325 Purchases, Sales, and Exchanges; § 360 Spouses and Dependent Children; § 365 Trusts, Estates, and Investment Funds.)

NONE (No reportable income, assets, or transactions.)

A Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				(5) Identity of buyer/seller (if private transaction)
	(1) Amount	(2) Type (e.g., div, rent, or int.)	(1) Value	(2) Value	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value	(4) Gain Code 1 (A-H)	

Third, the “gain code” field in Part VII(D)(4) has led to some mix-ups that can easily be fixed by adding text to the drop-down menu in the filing software.

Last a month, a news outlet⁷ stated that a justice “reported making between \$250,001 and \$500,000 from the sale [of his stake in a mountain property] on his federal disclosure forms,” when in fact, more likely than not, he *broke even* on the transaction — and that’s why, consistent with the filing instructions, he left the “gain code” field blank. But a filer should be able to report, via drop-down, that they “broke even.”

What’s more, if a filer loses money on a real estate transaction, they should be able to report a “loss” in the drop-down (also not currently an option) and then use the gain codes, A-H, as loss codes. Here’s why: selling a property at a loss of, say, \$1 million implies something ethically compromising that needs further examination. Yet that filer and one who loses \$1,000 on a real estate transaction⁸ currently discloses the same information in Part VII(D).⁹

Fourth and finally — and I’d argue most importantly — judges and justices should be required to list the costs of their transportation, lodging, food and entertainment. This would be an easy fix (*see proposed heading below*).

Current

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; see Guide to Judiciary Policy, Volume 2D, Ch. 3, § 330 Gifts and Reimbursements; § 360 Spouses and Dependent Children.)

NONE (No reportable reimbursements.)

SOURCE DATES LOCATION PURPOSE ITEMS PAID OR PROVIDED

- 1.
- 2.

⁶ See “Filing Instructions for Judicial Officers and Employees (AO-10),” Committee on Financial Disclosure, March 2023, available at https://s3.documentcloud.org/documents/23740274/financial_disclosure_filing_instructions.pdf.

⁷ See Heidi Przybyla, “Law firm head bought Gorsuch-owned property,” *Politico*, April 25, 2023, available at <https://www.politico.com/news/2023/04/25/neil-gorsuch-colorado-property-sale-00093579>.

⁸ I realize the “transactions” section also includes stock sales, but again, if a judicial official is selling off a stock at, say, a six- or seven-figure loss, that implies there’s more to the story.

⁹ See p. 48, “Filing Instructions for Judicial Officers and Employees (AO-10),” Committee on Financial Disclosure, March 2023, available at https://s3.documentcloud.org/documents/23740274/financial_disclosure_filing_instructions.pdf: “If there is a loss, or no gain or loss, Column D4 under GAIN should be left blank.”

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; see Guide to Judiciary Policy, Volume 2D, Ch. 3, § 330 Gifts and Reimbursements; § 360 Spouses and Dependent Children.)

NONE *(No reportable reimbursements.)*

<u>SOURCE</u>	<u>DATES</u>	<u>LOCATION</u>	<u>PURPOSE</u>	<u>ITEMS PAID OR PROVIDED AND VALUE OF EACH</u>
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- 1.
- 2.

Nongovernmental organizations since 2007 have been required to file a report when they host lower court judges at a privately funded seminar that contains the name of the seminar provider, the name of the program, the dates and location, the presentation topics and the speakers.¹⁰ Thirty days after a judge returns, they must effectively file the same information in a report that’s then posted online.¹¹

But clearly, there are different ethical implications when an institution hosting a judicial officer flies the officer coach, puts them up at the Radisson and gives them a rubber chicken dinner as compared to flying them first class, putting them up at the Ritz and treating them to a meal at a Michelin-starred restaurant.

Such implications can more easily be assessed by requiring officers to include the value, in dollars, of each item a Part IV “source” has paid for, whether transportation, lodging, food and entertainment or some combination thereof.

As you know, I share your commitment to judicial ethics and ensuring that all members of the federal judiciary uphold both the letter and spirit of the Ethics in Government Act. I hope you consider these revisions to clear up misconceptions, ensure greater precision and improve transparency and accountability.

Thank you for your consideration.

Sincerely,
 Gabe Roth
 Executive Director
 Fix the Court

CC: Hon. Vincent L. Briccetti Hon. Raner Collins Hon. Sheryl H. Lipman Hon. Benita Y. Pearson Hon. Mary Elizabeth Phillips Hon. David E. Rice Hon. Alice Senechal Hon. Lance E. Walker	Hon. Nannette Jolivette Brown Hon. William F. Jung Hon. David C. Nye Hon. Gregory Alan Phillips Hon. J. Nicholas Ranjan Hon. Steven C. Seeger Hon. Kara F. Stoll
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¹⁰ See “Judicial Conference Policy on Judges’ Attendance at Privately Funded Educational Programs,” Administrative Office of the U.S. Courts, available at <https://www.uscourts.gov/judges-judgeships/privately-funded-seminars-disclosure/judicial-conference-policy-judges-attendance>.

¹¹ See, e.g., “Second Circuit Court of Appeals Judges Reporting Attendance at Seminars ending after 05/02/20,” available at <https://psds.uscourts.gov/seminar.fwx?mode=pubjdglst&cascode=A02XXXC>.