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Judge Robert J. Jonker  
Chair, Judicial Conference Committee on Codes of Conduct  
c/o U.S. District Court for the Western District of Michigan  
685 Federal Bldg.  
110 Michigan St. NW  
Grand Rapids, MI 49503  
*Delivered via e-mail*

October 25, 2024

Dear Judge Jonker:

Fix the Court is a national nonpartisan organization advocating for greater transparency and accountability in the federal judiciary. Lately, we have been researching judges' decisions whether or not to recuse in cases where the parties have some association with the judges' (and/or their spouses') extra-judicial activities, including employment that brings in additional income. We found that some judges who serve as adjunct professors or lecturers at law schools are recusing in cases involving the school's parent university, while others are not.<sup>1</sup> We bring this issue to your attention here.

It is clear to us that an unbiased and reasonable person who is aware of the relevant circumstances of a case captioned *University of X v. Doe* would expect a judge employed by the University of X Law School — and who, under federal law, may be earning up to \$33,285 in that position — to step aside. In fact, there is precedent for recusal circuits.

Then-Tenth Circuit Judge Neil Gorsuch recused in five cases involving the University of Colorado during his time he served as a paid adjunct at Colorado Law (2008-2017). Though it's not known for certain if the recusals were due to his teaching, Gorsuch did write in his 2017 Supreme Court nomination materials that four of the five cases "implicated my financial interests"<sup>2</sup> (with the reason for fifth recusal being listed as "I do not recall").

Similarly, in 2012, Sixth Circuit Judge Raymond Kethledge recused in *Coalition to Defend Affirmative Action v. Regents of the Univ. of Mich.*, 701 F.3d 466, presumably, per contemporaneous press reports, due to his concurrent job as a paid lecturer at the University of Michigan Law School.<sup>3</sup>

In 2015, S.D. Ohio Judge Algenon Marbley recused in *Ohio State University v. New Par* (2:15-cv-02866, dkt. no. 4), eight months after he left the OSU Board of Trustees (he often recused from OSU cases while on the Board) and at a time he was teaching at the law school, albeit unpaid.<sup>4</sup>

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<sup>1</sup> See Fix the Court, "S.D. Ohio and E.D. Michigan Judges' Conflicts Based on University Employment," Oct. 25, 2024, [link](#).

<sup>2</sup> See Senate Judiciary Committee Questionnaire Appendix 14, Judge Neil M. Gorsuch, "Recusals" ([link](#)). The cases in question were *Lee v. University of Colorado*, 08-1029; *Harrison, Jr. v. University of Colorado Health*, 09-1049; *Walker v. University of Colorado*, 10-1397; *Gray v. University of Colo. Hospital*, 10-1446; *Walker v. University of Colorado*, 11-1021. Gorsuch earned between \$19,000 and \$26,000 from Colorado Law during the years he taught, save his first and last years of teaching.

<sup>3</sup> See Raymond M. Kethledge's 2012 Financial Disclosure Report; [link](#). Kethledge earned \$26,955 from Michigan Law that year. See also, David Eggert, "Anti-affirmative action law may still be intact if 2 judges didn't have University of Michigan ties," MLive Media, Nov. 20, 2012 ([link](#)).

<sup>4</sup> See Colin Binkley, "Ethics inquiry leads to federal judge's resignation as Ohio State trustee" *Columbus Dispatch*, Dec. 17, 2014 ([link](#)). Marbley, who's taught at OSU Law since 2000, has earned income from the school, ranging from \$4,500 to \$31,815, during every year (2003-2023) in which his disclosures are available, save 2015-2017, during which no OSU Law income was reported.

In 2020, then-Seventh Circuit Judge Amy Coney Barrett listed both the University of Notre Dame and the Notre Dame Law School on her conflicts sheet, per her Supreme Court nomination materials.<sup>5</sup> Barrett was a paid adjunct professor at the law school during her three-year appeals court tenure.<sup>6</sup>

All that said, we are aware that last year, a three-judge panel of the Sixth Circuit held, in a case involving Ohio State where the presiding judge is on the OSU Law faculty, that recusal was “not required just because a judge serves as an adjunct professor at the law school of a party-university.”<sup>7</sup> In the opinion, the panel cited opinions from three “sister-circuits” that reached the same conclusion given similar facts.

We are not writing to impugn the Sixth Circuit’s decision or other circuits’ decisions, but we do hope to better understand the conclusion that that court and its sister-circuits reached. We believe that judges’ recusal practices should be somewhat uniform – that two judges who have identical or equivalent financial arrangements and who have parties that are identical or equivalent appear in their courtroom will do the same thing when it comes to stepping aside (or not). Since that does not appear to be the case, we seek some clarification.

Unfortunately, at this time we lack the materials needed to see the full picture, since the judiciary does not make the documents the Sixth Circuit cited — namely, the Guide to Judiciary Policy, Vol. 2, Pt. B, “Ethics Advisory Opinions,” and Vol. 2, Ch. 3, “Compendium of Selected Opinions”<sup>8</sup> — public. **We ask that you publicly publish these materials in due course.**

We realize that these opinions do not have the force of law. But we know judges take them seriously (e.g., “This kind of [advisory] ‘opinion’ is not binding, but here we think the factors it directs judges to consider are sound”<sup>9</sup>).

Given the important role the public can play in surfacing and vetting potential conflicts, we believe that all interested parties should have access to pertinent government-produced materials to assess the extent to which recusal in certain instances might be warranted. Transparency in this regard is a key factor in ensuring that justice is served and trust in the judicial branch is maintained.

Thank you for your attention.

Kind regards,



Gabe Roth  
Executive Director  
Fix the Court



Manny Marotta  
Law Clerk  
Fix the Court

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<sup>5</sup> See Senate Judiciary Committee Questionnaire Appendix 14, Judge Amy Coney Barrett, “Selected Recusal Match for Appellate Judge Barrett,” Sept. 28, 2020 ([link](#)).

<sup>6</sup> See Amy Coney Barrett’s 2018, 2019 and 2020 Financial Disclosure Reports; [link](#). Barrett earned \$28,000 per year from ND Law.

<sup>7</sup> See *Garrett v. Ohio State Univ.*, 60 F.4<sup>th</sup> 369 (6th Cir. 2023).

<sup>8</sup> The Compendium notes that a judge should consider “the size and cohesiveness of the university, the degree of independence of the law school, the nature of the case, and related factors” when deciding whether to recuse. The Moritz College of Law sits next door to OSU’s student union building but is a 10-minute walk to the school’s main administrative building. Does that imply “cohesiveness” or not? We think the public would benefit from the full context of this sentence and that opinion.

<sup>9</sup> *Supra* note 7.