



348 4th Ave., 1007, Brooklyn, N.Y. 11215

Oct. 30, 2024

Dear Members of the ABA Standing Committee on Ethics and Professional Responsibility:

We write to suggest revisions to the Model Code of Judicial Conduct and to follow up on our correspondence last month with ABA President Bill Bay, posted [here](#) and [here](#).

Though 48 of 50 states require their judges and justices to file some type of annual disclosure report, there are wide discrepancies among the states concerning the amount of information that's required to be included. Some states, like Arkansas and California, have comprehensive requirements that go beyond what's required of federal judges under the fairly thorough Ethics in Government Act, while others, like South Dakota and Wyoming, require a single page's worth of information. (Idaho and Utah are the two that don't have annual disclosure requirements.)

Our proposed revisions to Rules 3.13 and 3.15, if implemented, would signal to the states that disclosure reporting must be improved to ensure that jurists across the country are adhering to the highest of standards, especially at a time of greater public scrutiny around judicial ethics. We believe a strong signal from the ABA would encourage states to make critical amendments to their disclosure rules. Thank you for your consideration.

Sincerely,

Gabe Roth
Executive Director
Fix the Court

Manny Marotta
Law Clerk
Fix the Court

Recommendation 1: More clearly define “ordinary social hospitality.”

We believe the term “ordinary social hospitality” can be defined in a more precise way that gives both judges and the public a clearer understanding of the types of benefits judges are not required to report based on their friendships. We think Massachusetts’s definition, with a nod to a California ethics opinion, works best, so an amended Rule 3.13(B)(3) that follows the Bay State may read as follows:

“(3) ordinary social hospitality, which is defined as gifts that are hospitable in nature and commensurate with social norms¹; gifts of minimal or reasonable value exchanged during special occasions such as birthdays and holidays; and courtesies normally exchanged between friends, colleagues and acquaintances, and which would not create an appearance of impropriety to a reasonable, objective observer.”²

Recommendation 2: Include a judge’s immediate family under disclosable gifts and compensation.

Following Comment 4 to Rule 3.13, as well as amendments to Rule 3.15 made by several states, we believe it’s vital to include a judge’s immediate family — that is, the members who live with the judge in his or her household

¹ California Supreme Court Committee on Judicial Ethics Opinions. “Accepting Gifts of Little or Nominal Value Under the Ordinary Social Hospitality Exception.” August 26, 2014 ([link](#)).

² Adapted from Mass. Code, Rule 3.13, Comment [5] ([link](#)).

— in the text that describes whose gifts must be disclosed. We think it’s also important here to remind judges of their duty to make full and accurate disclosures.

The former recommendation is best done through a Kansas amendment³ to Rule 3.15; the latter, through an Ohio amendment.⁴ A modified Model Rule 3.15(A) may read as follows:

“(A) A judge is required to fully, accurately and publicly report the amount or value of, on behalf of him or herself, his or her spouse or domestic partner, or his or her minor child...”

Recommendation 3: Include additional categories of disclosure, such as real estate, debts and investments.

We believe the Model Rules could benefit from including other categories of disclosure that are often included in both state and federal requirements. Nebraska’s⁵ and Kansas’⁶ interpretation of the Model Rules provide a good template. We believe some categories of disclosure mentioned in the Ethics in Government Act (5 U.S.C. §13104) should also be added.

In addition, one category we’ve only seen in Hawaii’s rules — an attestation that a judge attended a required number of CLE/CJE hours in a given year — is something we think should be adopted in judicial disclosures nationwide.

A modified Model Rule 3.15(A)(1) should be replaced with the following, with the current (2) and (3) moved to (9) and (10):

- (1) “Non-investment income of \$200 or more from any one source, including salaries, fees, commissions and wages; any other compensation for personal services (other than government employment); retirement benefits (other than from government employment, such as a Thrift Savings Plan or Social Security); any honoraria (the source, date and amount of payments), including payments made or to be made to charitable organizations on behalf of the filer, in lieu of honoraria; and any other non-investment income such as earnings from teaching or for speaking engagements; prizes; awards; and debt discharge;⁷
- (2) Real property in the judge’s name or in which the judge has a direct ownership interest, except real estate valued at less than \$1,000 and the judge’s personal residence (‘personal residence’ refers to the judge’s principal dwelling-house and adjacent land used for household purposes, such as lawns and gardens);^{8 9}
- (3) Other financial interests, investments and property held during the reporting period with a fair market value of \$1,000 or more, including the value of such, rounded to the nearest \$1,000, except household goods, personal automobiles and other tangible personal property;¹⁰
- (4) Creditors to whom \$1,000 or greater was owed or guaranteed by the judge, their spouse, their domestic partner or a member of the judge’s family residing in the judge’s household;¹¹

³ Adapted from Kansas Code, Rule 3.15(A) ([link](#)).

⁴ Adapted from Ohio Jud. Cond. R. 3.15, Comment 1 ([link](#)).

⁵ Adapted from Nebraska Revised Code of Judicial Conduct §5-303.15, Reporting requirements ([link](#)).

⁶ *Supra*, note 3, Rule 3.15.

⁷ Adapted from 5 U.S.C. §13104(a)(1)(A).

⁸ *Supra*, note 5 (§5-303.15 (B)(1)).

⁹ *Supra*, note 7 (5 U.S.C. §13104 (d)(2)).

¹⁰ *Supra*, note 5 (§5-303.15 (B)(2)).

¹¹ *Supra*, note 5 (§5-303.15 (B)(3)).

- (5) Each client or customer who pays fees or commissions to a business or combination of businesses from which fees or commissions the judge, their spouse or their domestic partner received an aggregate in excess of \$3,000 during the reporting period;¹²
- (6) The source of income earned by a spouse from any person or business which exceeds \$1,000;
- (7) Any business, organization, educational or other institution or entity in which the judge holds a position of officer, director, associate, partner, proprietor, trustee, custodian or similar fiduciary, representative, employee or consultant at the time of filing this report or during the reporting period;¹³ and
- (8) An attestation that the judge has completed at least three hours of Continuing Legal Education or Continuing Judicial Education within each one-year period.”¹⁴

Recommendation 4: Apply the gift-reporting threshold that’s required of federal judges.

Currently, both subsections 3.15(A)(2) and (A)(3) have a “[insert amount]” placeholder. Unfortunately, states have a wide range for what they require their judges to disclose. On one end, California and Wisconsin require gifts greater than \$50 to be reported; on the other end, New Jersey and New York have a \$1,000 threshold. Though we’d rather the national standard be “no gifts of a value greater than \$50 shall be accepted,” as it for members of Congress, we believe at the very least that state judges should have the same reporting standards as federal judges; that threshold is “the minimal value as established by [5 U.S.C. 7342(a)(5)], or \$250, whichever is greater.”

In practice, that value was \$250 from 1981-1999, was increased 25 years ago due to inflation, and has increased every three years since. For the three-year period that began on Jan. 1, 2023, and will end on Dec. 31, 2025, it’s \$480. Though we believe \$480 to be too high (a gift valued at \$479 could theoretically be corrupting), we concede it’s a reasonable starting point — especially given that 10 states don’t even require their judges to report gifts.

Recommendation 5: Explain permitted omissions.

Of course, not everything needs to be disclosed. As in Minnesota,¹⁵ there should be a section of 3.15(A) that includes gifts and compensation that can be omitted, so judges don’t overreport or include benefits they received prior to becoming a judge. We’d add the following between Rule 3.15(A) and (B), with (B) renumbered as (C):

“(B) A judge need not report:

- 1) Compensation or income earned prior to entering judicial service, including fees, salary, benefits, perquisites, disability benefits or retirement benefits;
- 2) Reimbursement of expenses incurred prior to entering judicial service;
- 3) Compensation or income of a spouse or domestic partner attributed to the judge by operation of domestic or international community property such as Indian Reservations, co-ops, homeowners’ associations or other law.”

Recommendation 6: All disclosures should be posted online.

If there ever were a reason to include to words “when technically feasible” in Rule 3.15(D), those reason have long since subsided, and all disclosures should be posted online, as the federal judiciary has done since 2022. We believe that that phrase should be removed to encourage universal online posting of disclosures.

¹² *Supra*, note 6 (3.15(A)(2)).

¹³ *Supra*, note 6 (3.15(A)(6)).

¹⁴ See Hawaii Rules of the Supreme Court, 15(d)(8) and 22(h) ([link](#)).

¹⁵ Minnesota Code of Judicial Conduct R. 3.15 ([link](#))