

*CCCBA proudly presents...*

**There Ought to be a Rule Against That, Right?  
A Look at Ethics and the U.S. Supreme Court**

**Hon. Peter Siggins (Ret.)**

**Presiding Justice, California Court of Appeal, First Appellate  
District – Division Three, Siggins Informed Resolutions**

**AGENDA**

Recently, Justices of the Supreme Court of the United States have been under scrutiny for personal and financial dealings that could potentially compromise the ethical performance of their duties. This program will explore those allegations, the lack of formal ethical rules for the Court, the Court's response to calls for clearly defined rules and some proposals for change.

 Contra Costa County  
Bar Association

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# PROGRAM MATERIALS

There Ought to be a Rule Against That, Right?!

Program Materials

Hon. Peter Siggins (Ret.)

Contra Costa County Bar Association  
2023 MCLE Spectacular



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Code of Conduct  
For  
United States Judges

# Guide to Judiciary Policy

Vol. 2: Ethics and Judicial Conduct  
Pt. A: Codes of Conduct

## Ch. 2: Code of Conduct for United States Judges

### Introduction

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### Introduction

The Code of Conduct for United States Judges was initially adopted by the Judicial Conference on April 5, 1973, and was known as the "Code of Judicial Conduct for United States Judges." **See:** JCUS-APR 73, pp. 9-11. Since then, the Judicial Conference has made the following changes to the Code:

- March 1987: deleted the word "Judicial" from the name of the Code;
- September 1992: adopted substantial revisions to the Code;
- March 1996: revised part C of the Compliance section, immediately following the Code;
- September 1996: revised Canons 3C(3)(a) and 5C(4);
- September 1999: revised Canon 3C(1)(c);
- September 2000: clarified the Compliance section;
- March 2009: adopted substantial revisions to the Code;
- March 2014: revised part C of the Compliance section, which appears below, immediately following the Code;

*Last revised (Transmittal 02-046) March 12, 2019*

- March 2019: adopted revisions to Canon 2A Commentary, Canon 3, Canon 3A(3), Canon 3B(4), Canon 3B(4) Commentary, Canon 3B(6), and Canon 3B(6) Commentary.

This Code applies to United States circuit judges, district judges, Court of International Trade judges, Court of Federal Claims judges, bankruptcy judges, and magistrate judges. Certain provisions of this Code apply to special masters and commissioners as indicated in the "Compliance" section. The Tax Court, Court of Appeals for Veterans Claims, and Court of Appeals for the Armed Forces have adopted this Code.

The Judicial Conference has authorized its Committee on Codes of Conduct to render advisory opinions about this Code only when requested by a judge to whom this Code applies. Requests for opinions and other questions concerning this Code and its applicability should be addressed to the Chair of the Committee on Codes of Conduct by email or as follows:

Chair, Committee on Codes of Conduct  
c/o General Counsel  
Administrative Office of the United States Courts  
Thurgood Marshall Federal Judiciary Building  
One Columbus Circle, N.E.  
Washington, D.C. 20544  
202-502-1100

Procedural questions may be addressed to:

Office of the General Counsel  
Administrative Office of the United States Courts  
Thurgood Marshall Federal Judiciary Building  
One Columbus Circle, N.E.  
Washington, D.C. 20544  
202-502-1100

## **Canon 1: A Judge Should Uphold the Integrity and Independence of the Judiciary**

An independent and honorable judiciary is indispensable to justice in our society. A judge should maintain and enforce high standards of conduct and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.



## COMMENTARY

Deference to the judgments and rulings of courts depends on public confidence in the integrity and independence of judges. The integrity and independence of judges depend in turn on their acting without fear or favor. Although judges should be independent, they must comply with the law and should comply with this Code. Adherence to this responsibility helps to maintain public confidence in the impartiality of the judiciary. Conversely, violation of this Code diminishes public confidence in the judiciary and injures our system of government under law.

The Canons are rules of reason. They should be applied consistently with constitutional requirements, statutes, other court rules and decisional law, and in the context of all relevant circumstances. The Code is to be construed so it does not impinge on the essential independence of judges in making judicial decisions.

The Code is designed to provide guidance to judges and nominees for judicial office. It may also provide standards of conduct for application in proceedings under the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 (28 U.S.C. §§ 332(d)(1), 351-364). Not every violation of the Code should lead to disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline, should be determined through a reasonable application of the text and should depend on such factors as the seriousness of the improper activity, the intent of the judge, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system. Many of the restrictions in the Code are necessarily cast in general terms, and judges may reasonably differ in their interpretation. Furthermore, the Code is not designed or intended as a basis for civil liability or criminal prosecution. Finally, the Code is not intended to be used for tactical advantage.

### **Canon 2: A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities**

- A. *Respect for Law.* A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- B. *Outside Influence.* A judge should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment. A judge should neither lend the prestige of the judicial office to advance the private interests of the judge or others nor convey or permit others to convey the impression that they are in a special position to influence the judge. A judge should not testify voluntarily as a character witness.
- C. *Nondiscriminatory Membership.* A judge should not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, or national origin.



## COMMENTARY

**Canon 2A.** An appearance of impropriety occurs when reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge's honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired. Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges, including harassment and other inappropriate workplace behavior. A judge must avoid all impropriety and appearance of impropriety. This prohibition applies to both professional and personal conduct. A judge must expect to be the subject of constant public scrutiny and accept freely and willingly restrictions that might be viewed as burdensome by the ordinary citizen. Because it is not practicable to list all prohibited acts, the prohibition is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules, or other specific provisions of this Code.

**Canon 2B.** Testimony as a character witness injects the prestige of the judicial office into the proceeding in which the judge testifies and may be perceived as an official testimonial. A judge should discourage a party from requiring the judge to testify as a character witness except in unusual circumstances when the demands of justice require. This Canon does not create a privilege against testifying in response to an official summons.

A judge should avoid lending the prestige of judicial office to advance the private interests of the judge or others. For example, a judge should not use the judge's judicial position or title to gain advantage in litigation involving a friend or a member of the judge's family. In contracts for publication of a judge's writings, a judge should retain control over the advertising to avoid exploitation of the judge's office.

A judge should be sensitive to possible abuse of the prestige of office. A judge should not initiate communications to a sentencing judge or a probation or corrections officer but may provide information to such persons in response to a formal request. Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration and by responding to official inquiries concerning a person being considered for a judgeship.

**Canon 2C.** Membership of a judge in an organization that practices invidious discrimination gives rise to perceptions that the judge's impartiality is impaired. Canon 2C refers to the current practices of the organization. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on how the organization selects members and other relevant factors, such as that the organization is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members, or that it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. *See New York State*



*Club Ass'n. Inc. v. City of New York*, 487 U.S. 1, 108 S. Ct. 2225, 101 L. Ed. 2d 1 (1988); *Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 U.S. 537, 107 S. Ct. 1940, 95 L. Ed. 2d 474 (1987); *Roberts v. United States Jaycees*, 468 U.S. 609, 104 S. Ct. 3244, 82 L. Ed. 2d 462 (1984). Other relevant factors include the size and nature of the organization and the diversity of persons in the locale who might reasonably be considered potential members. Thus the mere absence of diverse membership does not by itself demonstrate a violation unless reasonable persons with knowledge of all the relevant circumstances would expect that the membership would be diverse in the absence of invidious discrimination. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex, or national origin persons who would otherwise be admitted to membership.

Although Canon 2C relates only to membership in organizations that invidiously discriminate on the basis of race, sex, religion or national origin, a judge's membership in an organization that engages in any invidiously discriminatory membership practices prohibited by applicable law violates Canons 2 and 2A and gives the appearance of impropriety. In addition, it would be a violation of Canons 2 and 2A for a judge to arrange a meeting at a club that the judge knows practices invidious discrimination on the basis of race, sex, religion, or national origin in its membership or other policies, or for the judge to use such a club regularly. Moreover, public manifestation by a judge of the judge's knowing approval of invidious discrimination on any basis gives the appearance of impropriety under Canon 2 and diminishes public confidence in the integrity and impartiality of the judiciary, in violation of Canon 2A.

When a judge determines that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under Canon 2C or under Canons 2 and 2A, the judge is permitted, in lieu of resigning, to make immediate and continuous efforts to have the organization discontinue its invidiously discriminatory practices. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible (and in all events within two years of the judge's first learning of the practices), the judge should resign immediately from the organization.

### **Canon 3: A Judge Should Perform the Duties of the Office Fairly, Impartially and Diligently**

The duties of judicial office take precedence over all other activities. The judge should perform those duties with respect for others, and should not engage in behavior that is harassing, abusive, prejudiced, or biased. The judge should adhere to the following standards:

#### **A. Adjudicative Responsibilities.**



- (1) A judge should be faithful to, and maintain professional competence in, the law and should not be swayed by partisan interests, public clamor, or fear of criticism.
- (2) A judge should hear and decide matters assigned, unless disqualified, and should maintain order and decorum in all judicial proceedings.
- (3) A judge should be patient, dignified, respectful, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity. A judge should require similar conduct by those subject to the judge's control, including lawyers to the extent consistent with their role in the adversary process.
- (4) A judge should accord to every person who has a legal interest in a proceeding, and that person's lawyer, the full right to be heard according to law. Except as set out below, a judge should not initiate, permit, or consider *ex parte* communications or consider other communications concerning a pending or impending matter that are made outside the presence of the parties or their lawyers. If a judge receives an unauthorized *ex parte* communication bearing on the substance of a matter, the judge should promptly notify the parties of the subject matter of the communication and allow the parties an opportunity to respond, if requested. A judge may:
  - (a) initiate, permit, or consider *ex parte* communications as authorized by law;
  - (b) when circumstances require it, permit *ex parte* communication for scheduling, administrative, or emergency purposes, but only if the *ex parte* communication does not address substantive matters and the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the *ex parte* communication;
  - (c) obtain the written advice of a disinterested expert on the law, but only after giving advance notice to the parties of the person to be consulted and the subject matter of the advice and affording the parties reasonable opportunity to object and respond to the notice and to the advice received; or
  - (d) with the consent of the parties, confer separately with the parties and their counsel in an effort to mediate or settle pending matters.

- (5) A judge should dispose promptly of the business of the court.
- (6) A judge should not make public comment on the merits of a matter pending or impending in any court. A judge should require similar restraint by court personnel subject to the judge's direction and control. The prohibition on public comment on the merits does not extend to public statements made in the course of the judge's official duties, to explanations of court procedures, or to scholarly presentations made for purposes of legal education.

B. Administrative Responsibilities.

- (1) A judge should diligently discharge administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court personnel.
- (2) A judge should not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when that conduct would contravene the Code if undertaken by the judge.
- (3) A judge should exercise the power of appointment fairly and only on the basis of merit, avoiding unnecessary appointments, nepotism, and favoritism. A judge should not approve compensation of appointees beyond the fair value of services rendered.
- (4) A judge should practice civility, by being patient, dignified, respectful, and courteous, in dealings with court personnel, including chambers staff. A judge should not engage in any form of harassment of court personnel. A judge should not retaliate against those who report misconduct. A judge should hold court personnel under the judge's direction to similar standards.
- (5) A judge with supervisory authority over other judges should take reasonable measures to ensure that they perform their duties timely and effectively.
- (6) A judge should take appropriate action upon receipt of reliable information indicating the likelihood that a judge's conduct contravened this Code, that a judicial employee's conduct contravened the Code of Conduct for Judicial Employees, or that a lawyer violated applicable rules of professional conduct.



C. Disqualification.

- (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances in which:
  - (a) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
  - (b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge or lawyer has been a material witness;
  - (c) the judge knows that the judge, individually or as a fiduciary, or the judge's spouse or minor child residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be affected substantially by the outcome of the proceeding;
  - (d) the judge or the judge's spouse, or a person related to either within the third degree of relationship, or the spouse of such a person is:
    - (i) a party to the proceeding, or an officer, director, or trustee of a party;
    - (ii) acting as a lawyer in the proceeding;
    - (iii) known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; or
    - (iv) to the judge's knowledge likely to be a material witness in the proceeding;
  - (e) the judge has served in governmental employment and in that capacity participated as a judge (in a previous judicial position), counsel, advisor, or material witness concerning the proceeding or has expressed an opinion concerning the merits of the particular case in controversy.
- (2) A judge should keep informed about the judge's personal and fiduciary financial interests and make a reasonable effort to keep informed about the personal financial interests of the judge's spouse and minor children residing in the judge's household.

- (3) For the purposes of this section:
- (a) the degree of relationship is calculated according to the civil law system; the following relatives are within the third degree of relationship: parent, child, grandparent, grandchild, great grandparent, great grandchild, sister, brother, aunt, uncle, niece, and nephew; the listed relatives include whole and half blood relatives and most step relatives;
  - (b) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;
  - (c) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:
    - (i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;
    - (ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;
    - (iii) the proprietary interest of a policyholder in a mutual insurance company, or a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;
    - (iv) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities;
  - (d) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation.
- (4) Notwithstanding the preceding provisions of this Canon, if a judge would be disqualified because of a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the judge (or the judge's spouse or minor child) divests the interest that provides the grounds for disqualification.



- D. *Remittal of Disqualification.* Instead of withdrawing from the proceeding, a judge disqualified by Canon 3C(1) may, except in the circumstances specifically set out in subsections (a) through (e), disclose on the record the basis of disqualification. The judge may participate in the proceeding if, after that disclosure, the parties and their lawyers have an opportunity to confer outside the presence of the judge, all agree in writing or on the record that the judge should not be disqualified, and the judge is then willing to participate. The agreement should be incorporated in the record of the proceeding.

#### COMMENTARY

**Canon 3A(3).** The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Courts can be efficient and businesslike while being patient and deliberate.

The duty under Canon 2 to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary applies to all the judge's activities, including the discharge of the judge's adjudicative and administrative responsibilities. The duty to be respectful includes the responsibility to avoid comment or behavior that could reasonably be interpreted as harassment, prejudice or bias.

**Canon 3A(4).** The restriction on ex parte communications concerning a proceeding includes communications from lawyers, law teachers, and others who are not participants in the proceeding. A judge may consult with other judges or with court personnel whose function is to aid the judge in carrying out adjudicative responsibilities. A judge should make reasonable efforts to ensure that law clerks and other court personnel comply with this provision.

A judge may encourage and seek to facilitate settlement but should not act in a manner that coerces any party into surrendering the right to have the controversy resolved by the courts.

**Canon 3A(5).** In disposing of matters promptly, efficiently, and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases to reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to take reasonable measures to ensure that court personnel, litigants, and their lawyers cooperate with the judge to that end.

**Canon 3A(6).** The admonition against public comment about the merits of a pending or impending matter continues until the appellate process is complete. If the



public comment involves a case from the judge's own court, the judge should take particular care so that the comment does not denigrate public confidence in the judiciary's integrity and impartiality, which would violate Canon 2A. A judge may comment publicly on proceedings in which the judge is a litigant in a personal capacity, but not on mandamus proceedings when the judge is a litigant in an official capacity (but the judge may respond in accordance with Fed. R. App. P. 21(b)).

**Canon 3B(3).** A judge's appointees include assigned counsel, officials such as referees, commissioners, special masters, receivers, guardians, and personnel such as law clerks, secretaries, and judicial assistants. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by this subsection.

**Canon 3B(4).** A judge should neither engage in, nor tolerate, workplace conduct that is reasonably interpreted as harassment, abusive behavior, or retaliation for reporting such conduct. The duty to refrain from retaliation includes retaliation against former as well as current judiciary personnel.

Under this Canon, harassment encompasses a range of conduct having no legitimate role in the workplace, including harassment that constitutes discrimination on impermissible grounds and other abusive, oppressive, or inappropriate conduct directed at judicial employees or others. See Rules for Judicial-Conduct and Judicial-Disability Proceedings, Rule 4(a)(2) (providing that "cognizable misconduct includes: (A) engaging in unwanted, offensive, or abusive sexual conduct, including sexual harassment or assault; (B) treating litigants, attorneys, judicial employees, or others in a demonstrably egregious and hostile manner; or (C) creating a hostile work environment for judicial employees") and Rule 4(a)(3) (providing that "cognizable misconduct includes intentional discrimination on the basis of race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age, or disability").

**Canon 3B(6).** Public confidence in the integrity and impartiality of the judiciary is promoted when judges take appropriate action based on reliable information of likely misconduct. Appropriate action depends on the circumstances, but the overarching goal of such action should be to prevent harm to those affected by the misconduct and to prevent recurrence. A judge, in deciding what action is appropriate, may take into account any request for confidentiality made by a person complaining of or reporting misconduct. See Rules for Judicial-Conduct and Judicial-Disability Proceedings, Rule 4(a)(6) (providing that "cognizable misconduct includes failing to call to the attention of the relevant chief district judge or chief circuit judge any reliable information reasonably likely to constitute judicial misconduct or disability. A judge who receives such reliable information shall respect a request for confidentiality but shall nonetheless disclose the information to the chief district judge or chief circuit judge, who shall also treat the information as confidential. Certain reliable information may be protected from disclosure by statute or rule. A judge's assurance of confidentiality must yield when there is reliable information of misconduct or disability that threatens the safety or security of any person or that is serious or egregious such that it threatens the integrity



and proper functioning of the judiciary. A person reporting information of misconduct or disability must be informed at the outset of a judge's responsibility to disclose such information to the relevant chief district judge or chief circuit judge. Reliable information reasonably likely to constitute judicial misconduct or disability related to a chief circuit judge should be called to the attention of the next most-senior active circuit judge. Such information related to a chief district judge should be called to the attention of the chief circuit judge.").

Appropriate action may include direct communication with the judge or lawyer, other direct action if available, reporting the conduct to the appropriate authorities, or, when the judge believes that a judge's or lawyer's conduct is caused by drugs, alcohol, or a medical condition, making a confidential referral to an assistance program. Appropriate action may also include responding to a subpoena to testify or otherwise cooperating with or participating in judicial or lawyer disciplinary proceedings; a judge should be candid and honest with disciplinary authorities.

**Canon 3C.** Recusal considerations applicable to a judge's spouse should also be considered with respect to a person other than a spouse with whom the judge maintains both a household and an intimate relationship.

**Canon 3C(1)(c).** In a criminal proceeding, a victim entitled to restitution is not, within the meaning of this Canon, a party to the proceeding or the subject matter in controversy. A judge who has a financial interest in the victim of a crime is not required by Canon 3C(1)(c) to disqualify from the criminal proceeding, but the judge must do so if the judge's impartiality might reasonably be questioned under Canon 3C(1) or if the judge has an interest that could be substantially affected by the outcome of the proceeding under Canon 3C(1)(d)(iii).

**Canon 3C(1)(d)(ii).** The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not of itself disqualify the judge. However, if "the judge's impartiality might reasonably be questioned" under Canon 3C(1), or the relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Canon 3C(1)(d)(iii), the judge's disqualification is required.

#### **Canon 4: A Judge May Engage in Extrajudicial Activities That Are Consistent With the Obligations of Judicial Office**

A judge may engage in extrajudicial activities, including law-related pursuits and civic, charitable, educational, religious, social, financial, fiduciary, and governmental activities, and may speak, write, lecture, and teach on both law-related and nonlegal subjects. However, a judge should not participate in extrajudicial activities that detract from the dignity of the judge's office, interfere with the performance of the judge's official duties, reflect adversely on the judge's impartiality, lead to frequent disqualification, or violate the limitations set forth below.



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Appropriate action may include direct communication with the judge or lawyer, other direct action if available, reporting the conduct to the appropriate authorities, or, when the judge believes that a judge's or lawyer's conduct is caused by drugs, alcohol, or a medical condition, making a confidential referral to an assistance program. Appropriate action may also include responding to a subpoena to testify or otherwise cooperating with or participating in judicial or lawyer disciplinary proceedings; a judge should be candid and honest with disciplinary authorities.

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**Canon 3C(1)(d)(ii).** The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not of itself disqualify the judge. However, if "the judge's impartiality might reasonably be questioned" under Canon 3C(1), or the relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Canon 3C(1)(d)(iii), the judge's disqualification is required.

#### **Canon 4: A Judge May Engage in Extrajudicial Activities That Are Consistent With the Obligations of Judicial Office**

A judge may engage in extrajudicial activities, including law-related pursuits and civic, charitable, educational, religious, social, financial, fiduciary, and governmental activities, and may speak, write, lecture, and teach on both law-related and nonlegal subjects. However, a judge should not participate in extrajudicial activities that detract from the dignity of the judge's office, interfere with the performance of the judge's official duties, reflect adversely on the judge's impartiality, lead to frequent disqualification, or violate the limitations set forth below.



A. Law-related Activities.

- (1) *Speaking, Writing, and Teaching.* A judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.
- (2) *Consultation.* A judge may consult with or appear at a public hearing before an executive or legislative body or official:
  - (a) on matters concerning the law, the legal system, or the administration of justice;
  - (b) to the extent that it would generally be perceived that a judge's judicial experience provides special expertise in the area; or
  - (c) when the judge is acting pro se in a matter involving the judge or the judge's interest.
- (3) *Organizations.* A judge may participate in and serve as a member, officer, director, trustee, or nonlegal advisor of a nonprofit organization devoted to the law, the legal system, or the administration of justice and may assist such an organization in the management and investment of funds. A judge may make recommendations to public and private fund-granting agencies about projects and programs concerning the law, the legal system, and the administration of justice.
- (4) *Arbitration and Mediation.* A judge should not act as an arbitrator or mediator or otherwise perform judicial functions apart from the judge's official duties unless expressly authorized by law.
- (5) *Practice of Law.* A judge should not practice law and should not serve as a family member's lawyer in any forum. A judge may, however, act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.

B. *Civic and Charitable Activities.* A judge may participate in and serve as an officer, director, trustee, or nonlegal advisor of a nonprofit civic, charitable, educational, religious, or social organization, subject to the following limitations:

- (1) A judge should not serve if it is likely that the organization will either be engaged in proceedings that would ordinarily come before the



judge or be regularly engaged in adversary proceedings in any court.

- (2) A judge should not give investment advice to such an organization but may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

C. *Fund Raising.* A judge may assist nonprofit law-related, civic, charitable, educational, religious, or social organizations in planning fund-raising activities and may be listed as an officer, director, or trustee. A judge may solicit funds for such an organization from judges over whom the judge does not exercise supervisory or appellate authority and from members of the judge's family. Otherwise, a judge should not personally participate in fund-raising activities, solicit funds for any organization, or use or permit the use of the prestige of judicial office for that purpose. A judge should not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or is essentially a fund-raising mechanism.

D. Financial Activities.

- (1) A judge may hold and manage investments, including real estate, and engage in other remunerative activity, but should refrain from financial and business dealings that exploit the judicial position or involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves.
- (2) A judge may serve as an officer, director, active partner, manager, advisor, or employee of a business only if the business is closely held and controlled by members of the judge's family. For this purpose, "members of the judge's family" means persons related to the judge or the judge's spouse within the third degree of relationship as defined in Canon 3C(3)(a), any other relative with whom the judge or the judge's spouse maintains a close familial relationship, and the spouse of any of the foregoing.
- (3) As soon as the judge can do so without serious financial detriment, the judge should divest investments and other financial interests that might require frequent disqualification.
- (4) 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 judge should endeavor to prevent any member of the judge's family residing in the household from soliciting or accepting a gift except to the extent that a judge would



be permitted to do so by the Judicial Conference Gift Regulations. A "member of the judge's family" means any relative of a judge by blood, adoption, or marriage, or any person treated by a judge as a member of the judge's family.

- (5) A judge should not disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to the judge's official duties.
- E. *Fiduciary Activities.* A judge may serve as the executor, administrator, trustee, guardian, or other fiduciary only for the estate, trust, or person of a member of the judge's family as defined in Canon 4D(4). As a family fiduciary a judge is subject to the following restrictions:
- (1) The judge should not serve if it is likely that as a fiduciary the judge would be engaged in proceedings that would ordinarily come before the judge or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.
  - (2) While acting as a fiduciary, a judge is subject to the same restrictions on financial activities that apply to the judge in a personal capacity.
- F. *Governmental Appointments.* A judge may accept appointment to a governmental committee, commission, or other position only if it is one that concerns the law, the legal system, or the administration of justice, or if appointment of a judge is required by federal statute. A judge should not, in any event, accept such an appointment if the judge's governmental duties would tend to undermine the public confidence in the integrity, impartiality, or independence of the judiciary. A judge may represent the judge's country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.
- G. *Chambers, Resources, and Staff.* A judge should not to any substantial degree use judicial chambers, resources, or staff to engage in extrajudicial activities permitted by this Canon.
- H. *Compensation, Reimbursement, and Financial Reporting.* A judge may accept compensation and reimbursement of expenses for the law-related and extrajudicial activities permitted by this Code if the source of the payments does not give the appearance of influencing the judge in the judge's judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:



- (1) Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.
- (2) Expense reimbursement should be limited to the actual costs of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or relative. Any additional payment is compensation.
- (3) A judge should make required financial disclosures, including disclosures of gifts and other things of value, in compliance with applicable statutes and Judicial Conference regulations and directives.

#### COMMENTARY

**Canon 4.** Complete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not become isolated from the society in which the judge lives. As a judicial officer and a person specially learned in the law, a judge is in a unique position to contribute to the law, the legal system, and the administration of justice, including revising substantive and procedural law and improving criminal and juvenile justice. To the extent that the judge's time permits and impartiality is not compromised, the judge is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the law. Subject to the same limitations, judges may also engage in a wide range of non-law-related activities.

Within the boundaries of applicable law (see, e.g., 18 U.S.C. § 953) a judge may express opposition to the persecution of lawyers and judges anywhere in the world if the judge has ascertained, after reasonable inquiry, that the persecution is occasioned by conflict between the professional responsibilities of the persecuted judge or lawyer and the policies or practices of the relevant government.

A person other than a spouse with whom the judge maintains both a household and an intimate relationship should be considered a member of the judge's family for purposes of legal assistance under Canon 4A(5), fund raising under Canon 4C, and family business activities under Canon 4D(2).

**Canon 4A.** Teaching and serving on the board of a law school are permissible, but in the case of a for-profit law school, board service is limited to a nongoverning advisory board.

Consistent with this Canon, a judge may encourage lawyers to provide pro bono legal services.



**Canon 4A(4).** This Canon generally prohibits a judge from mediating a state court matter, except in unusual circumstances (e.g., when a judge is mediating a federal matter that cannot be resolved effectively without addressing the related state court matter).

**Canon 4A(5).** A judge may act pro se in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. In so doing, a judge must not abuse the prestige of office to advance the interests of the judge or the judge's family.

**Canon 4B.** The changing nature of some organizations and their exposure to litigation make it necessary for a judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine if the judge's continued association is appropriate. For example, in many jurisdictions, charitable hospitals are in court more often now than in the past.

**Canon 4C.** A judge may attend fund-raising events of law-related and other organizations although the judge may not be a speaker, a guest of honor, or featured on the program of such an event. Use of a judge's name, position in the organization, and judicial designation on an organization's letterhead, including when used for fund raising or soliciting members, does not violate Canon 4C if comparable information and designations are listed for others.

**Canon 4D(1), (2), and (3).** Canon 3 requires disqualification of a judge in any proceeding in which the judge has a financial interest, however small. Canon 4D requires a judge to refrain from engaging in business and from financial activities that might interfere with the impartial performance of the judge's judicial duties. Canon 4H requires a judge to report compensation received for activities outside the judicial office. A judge has the rights of an ordinary citizen with respect to financial affairs, except for limitations required to safeguard the proper performance of the judge's duties. A judge's participation in a closely held family business, while generally permissible, may be prohibited if it takes too much time or involves misuse of judicial prestige or if the business is likely to come before the court on which the judge serves. Owning and receiving income from investments do not as such affect the performance of a judge's duties.

**Canon 4D(5).** The restriction on using nonpublic information is not intended to affect a judge's ability to act on information as necessary to protect the health or safety of the judge or a member of a judge's family, court personnel, or other judicial officers if consistent with other provisions of this Code.

**Canon 4E.** Mere residence in the judge's household does not by itself make a person a member of the judge's family for purposes of this Canon. The person must be treated by the judge as a member of the judge's family.



The Applicable Date of Compliance provision of this Code addresses continued service as a fiduciary.

A judge's obligation under this Code and the judge's obligation as a fiduciary may come into conflict. For example, a judge should resign as a trustee if it would result in detriment to the trust to divest holdings whose retention would require frequent disqualification of the judge in violation of Canon 4D(3).

**Canon 4F.** The appropriateness of accepting extrajudicial assignments must be assessed in light of the demands on judicial resources and the need to protect the courts from involvement in matters that may prove to be controversial. Judges should not accept governmental appointments that could interfere with the effectiveness and independence of the judiciary, interfere with the performance of the judge's judicial responsibilities, or tend to undermine public confidence in the judiciary.

**Canon 4H.** A judge is not required by this Code to disclose income, debts, or investments, except as provided in this Canon. The Ethics Reform Act of 1989 and implementing regulations promulgated by the Judicial Conference impose additional restrictions on judges' receipt of compensation. That Act and those regulations should be consulted before a judge enters into any arrangement involving the receipt of compensation. The restrictions so imposed include but are not limited to: (1) a prohibition against receiving "honoraria" (defined as anything of value received for a speech, appearance, or article), (2) a prohibition against receiving compensation for service as a director, trustee, or officer of a profit or nonprofit organization, (3) a requirement that compensated teaching activities receive prior approval, and (4) a limitation on the receipt of "outside earned income."

## **Canon 5: A Judge Should Refrain From Political Activity**

- A. *General Prohibitions.* A judge should not:
- (1) act as a leader or hold any office in a political organization;
  - (2) make speeches for a political organization or candidate, or publicly endorse or oppose a candidate for public office; or
  - (3) solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate, or attend or purchase a ticket for a dinner or other event sponsored by a political organization or candidate.
- B. *Resignation upon Candidacy.* A judge should resign the judicial office if the judge becomes a candidate in a primary or general election for any office.



- C. *Other Political Activity.* A judge should not engage in any other political activity. This provision does not prevent a judge from engaging in activities described in Canon 4.

## COMMENTARY

The term "political organization" refers to a political party, a group affiliated with a political party or candidate for public office, or an entity whose principal purpose is to advocate for or against political candidates or parties in connection with elections for public office.

## Compliance with the Code of Conduct

Anyone who is an officer of the federal judicial system authorized to perform judicial functions is a judge for the purpose of this Code. All judges should comply with this Code except as provided below.

### A. Part-time Judge

A part-time judge is a judge who serves part-time, whether continuously or periodically, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge. A part-time judge:

- (1) is not required to comply with Canons 4A(4), 4A(5), 4D(2), 4E, 4F, or 4H(3);
- (2) except as provided in the Conflict-of-Interest Rules for Part-time Magistrate Judges, should not practice law in the court on which the judge serves or in any court subject to that court's appellate jurisdiction, or act as a lawyer in a proceeding in which the judge has served as a judge or in any related proceeding.

### B. Judge Pro Tempore

A judge pro tempore is a person who is appointed to act temporarily as a judge or as a special master.

- (1) While acting in this capacity, a judge pro tempore is not required to comply with Canons 4A(4), 4A(5), 4D(2), 4D(3), 4E, 4F, or 4H(3); further, one who acts solely as a special master is not required to comply with Canons 4A(3), 4B, 4C, 4D(4), or 5.
- (2) A person who has been a judge pro tempore should not act as a lawyer in a proceeding in which the judge has served as a judge or in any related proceeding.

### C. Retired Judge

A judge who is retired under 28 U.S.C. § 371(b) or § 372(a) (applicable to Article III judges), or who is subject to recall under § 178(d) (applicable to judges on the Court of Federal Claims), or who is recalled to judicial service, should comply with all the provisions of this Code except Canon 4F, but the judge should refrain from judicial service during the period of extrajudicial appointment not sanctioned by Canon 4F. All other retired judges who are eligible for recall to judicial service (except those in U.S. territories and possessions) should comply with the provisions of this Code governing part-time judges. However, bankruptcy judges and magistrate judges who are eligible for recall but who have notified the Administrative Office of the United States Courts that they will not consent to recall are not obligated to comply with the provisions of this Code governing part-time judges. Such notification may be made at any time after retirement, and is irrevocable. A senior judge in the territories and possessions must comply with this Code as prescribed by 28 U.S.C. § 373(c)(5) and (d).

#### COMMENTARY

The 2014 amendment to the Compliance section, regarding retired bankruptcy judges and magistrate judges and exempting those judges from compliance with the Code as part-time judges if they notify the Administrative Office of the United States Courts that they will not consent to recall, was not intended to alter those judges' statutory entitlements to annuities, cost-of-living adjustments, or any other retirement benefits.

#### Applicable Date of Compliance

Persons to whom this Code applies should arrange their financial and fiduciary affairs as soon as reasonably possible to comply with it and should do so in any event within one year after appointment. If, however, the demands on the person's time and the possibility of conflicts of interest are not substantial, such a person may continue to act, without compensation, as an executor, administrator, trustee, or other fiduciary for the estate or person of one who is not a member of the person's family if terminating the relationship would unnecessarily jeopardize any substantial interest of the estate or person and if the judicial council of the circuit approves.



Chief Justice Roberts' Letter to  
Sen. Richard Durbin  
April 25, 2023

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

April 25, 2023

Honorable Richard J. Durbin  
Chair  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

Thank you for your letter of April 20, 2023, inviting me to appear at a Senate Judiciary Committee hearing on May 2. I must respectfully decline your invitation.

Testimony before the Senate Judiciary Committee by the Chief Justice of the United States is exceedingly rare, as one might expect in light of separation of powers concerns and the importance of preserving judicial independence. The Supreme Court Library compilation of "Justices Testifying Before Congress in Matters Other Than Appropriations or Nominations" has identified only two prior instances – Chief Justice Taft in 1921 and Chief Justice Hughes in 1935. Both hearings involved routine matters of judicial administration relating to additional judgeships in the lower courts and jurisdiction over appeals from lower court injunctions. My predecessor, Chief Justice Rehnquist, appeared before House committees twice, also on mundane topics. In his first appearance, in 1989, before the House Committee on Post Office and Civil Service, he offered views on improvements to the federal civil service system. In 2004, he discussed the John Marshall Commemorative Coin Act at a hearing of the House Financial Services Committee. Neither Chief Justice Burger nor Chief Justice Warren nor Chief Justice Vinson ever appeared before a Congressional committee, though Chief Justice Warren did submit a prepared statement on federal employee salary increases to the Senate Post Office and Civil Service Committee in 1964. Congressional testimony from the head of the Executive Branch is likewise infrequent. According to the United States Senate website, no President has ever testified before the Senate Judiciary Committee, and only three Presidents (in 1862, 1919, and 1974) have testified before any Congressional committee.

In regard to the Court's approach to ethics matters, I attach a Statement of Ethics Principles and Practices to which all of the current Members of the Supreme Court subscribe.

Respectfully,



Senator Lindsey Graham, Ranking Member



1 Statement on Ethics Principles and Practices

2 The undersigned Justices today reaffirm and restate foundational ethics principles and  
3 practices to which they subscribe in carrying out their responsibilities as Members of the Supreme  
4 Court of the United States. This statement aims to provide new clarity to the bar and to the public  
5 on how the Justices address certain recurring issues, and also seeks to dispel some common  
6 misconceptions.

7 The Justices, like other federal judges, consult a wide variety of authorities to address  
8 specific ethical issues. They may turn to judicial opinions, treatises, scholarly articles, disciplinary  
9 decisions, and the historical practice of the Court and the federal judiciary. They may also seek  
10 advice from the Court's Legal Office and from their colleagues.

11 In 1922, Congress instituted the Judicial Conference of the United States as an instrument  
12 to manage the lower federal courts. The Judicial Conference, which binds lower courts, does not  
13 supervise the Supreme Court. Nevertheless, for a century, the Conference has contributed to the  
14 development of a body of ethical rules and practices—including through the lower court Code of  
15 Conduct—which are of significant importance to the Justices.

16 As the Commentary to Canon 1 of the lower court code states, its provisions are "designed  
17 to provide guidance to judges and nominees for judicial office." Many of its aspirational  
18 provisions "are necessarily cast in general terms, and judges may reasonably differ in their  
19 interpretation." The canons themselves are broadly worded principles that inform ethical conduct  
20 and practices. But they are not themselves rules. They are far too general to be used in that  
21 manner. Still, the canons and the Judicial Conference's Code of Conduct as a whole provide  
22 guidance to the federal judiciary.

23 In 1991, Members of the Court voluntarily adopted a resolution to follow the substance of  
24 the Judicial Conference Regulations. Since then Justices have followed the financial disclosure  
25 requirements and limitations on gifts, outside earned income, outside employment, and honoraria.  
26 They file the same annual financial disclosure reports as other federal judges. Those reports  
27 disclose, among other things, the Justices' non-governmental income, investments, gifts, and  
28 reimbursements from third parties. For purposes of sound administration, the Justices, like lower  
29 court judges, file those reports through the Judicial Conference's Committee on Financial  
30 Disclosure. That Committee reviews the information contained in these reports and either finds  
31 them to be in compliance with applicable laws and regulations or sends a letter of inquiry if  
32 additional information is needed to make that determination. More generally, the Committee  
33 provides guidance on the sometimes complex reporting requirements. Just last month, for  
34 example, it provided clarification on the scope of the "personal hospitality" exemption to the  
35 disclosure rules. Allegations of errors or omissions in the filing of financial disclosure reports are  
36 referred by the Secretary of the Judicial Conference to the Committee on Financial Disclosure.  
37 The Committee may send the filer a letter of inquiry, providing an opportunity for the filer to  
38 respond as appropriate.

39 In regard to the financial disclosure requirements relating to teaching and outside earned  
40 income, the Justices may not accept compensation for an appearance or a speech, but may be paid  
41 for "teaching a course of study at an accredited educational institution or participating in an  
42 educational program of any duration that is sponsored by such an institution and is part of its  
43 educational offering." Outside Earned Income Regs. § 1020.35(b). As the Commentary to Canon  
44 4 of the lower court code observes, "As a judicial officer and a person specially learned in the law,



1 a judge is in a unique position to contribute to the law, the legal system, and the administration of  
2 justice,” including through teaching. Associate Justices must receive prior approval from the Chief  
3 Justice to receive compensation for teaching; the Chief Justice must receive prior approval from  
4 the Court. See Resolution ¶ 3 (Jan. 18, 1991). Justices may not have outside earned income—  
5 including income from teaching—in excess of an annual cap established by statute and regulation.  
6 In calendar year 2023, that cap works out to less than 12 percent of a Justice’s pay. Compensation  
7 for writing a book is not subject to the cap.

8 Like lower court judges, Justices also engage in extrajudicial activities other than teaching,  
9 including speaking, writing, and lecturing on both law-related and non-legal subjects. In fact, the  
10 lower court canons encourage public engagement by judicial officers to avoid isolation from the  
11 society in which they live and to contribute to the public’s understanding of the law. But in  
12 deciding whether to speak before any group, a Justice should consider whether doing so would  
13 create an appearance of impropriety in the minds of reasonable members of the public. There is  
14 an appearance of impropriety when an unbiased and reasonable person who is aware of all relevant  
15 facts would doubt that the Justice could fairly discharge his or her duties. Except in unusual  
16 circumstances, no such appearance will be created when a Justice speaks before a group associated  
17 with an educational institution, a bar group, or a nonprofit group that does not regularly engage in  
18 advocacy or lobbying about issues that may be implicated in cases that come before the Court.

19 In regard to recusal, the Justices follow the same general principles and statutory standards  
20 as other federal judges, but the application of those principles can differ due to the unique  
21 institutional setting of the Court. In some instances the Justices’ recusal standards are more  
22 restrictive than those in the lower court Code or the statute—for example, concluding that recusal  
23 is appropriate where family members served as lead counsel below. A recusal consideration  
24 uniquely present for Justices is the impairment of a full court in the event that one or more members  
25 withdraws from a case. Lower courts can freely substitute one district or circuit judge for another.  
26 The Supreme Court consists of nine Members who always sit together. Thus, Justices have a duty  
27 to sit that precludes withdrawal from a case as a matter of convenience or simply to avoid  
28 controversy. See *United States v. Will*, 449 U.S. 200, 217 (1980) (28 U.S.C. § 455 does not alter  
29 the rule of necessity); ABA, Model Code of Judicial Conduct § 2.11 cmt. (“The rule of necessity  
30 may override the rule of disqualification.”). Individual Justices, rather than the Court, decide  
31 recusal issues. If the full Court or any subset of the Court were to review the recusal decisions of  
32 individual Justices, it would create an undesirable situation in which the Court could affect the  
33 outcome of a case by selecting who among its Members may participate.

34 Recusals are noted in the Court’s decisions, both at the certiorari and merits stages. In  
35 recent years, there have been approximately 200 recusals per year at the certiorari stage and a few  
36 at the merits stage as well. In many instances, the grounds for recusal will be obvious—for  
37 example, when recusal is due to a Justice’s prior employment as a circuit judge or in the Office of  
38 the Solicitor General. In some cases, public disclosure of the basis for recusal would be ill-advised.  
39 Examples include circumstances that might encourage strategic behavior by lawyers who may seek  
40 to prompt recusals in future cases. Where these concerns are not present, a Justice may provide a  
41 summary explanation of a recusal decision, e.g., “Justice X took no part in the consideration or  
42 decision of this petition. See Code of Conduct, Canon 3C(1)(c) (financial interest)” or “Justice Y  
43 took no part in the consideration or decision of this petition. See Code of Conduct, Canon 3C(1)(e)  
44 (prior government employment)”. A Justice also may provide an extended explanation for any



1 decision to recuse or not recuse. *See, e.g., Microsoft Corp. v. United States*, 530 U.S. 1301 (2000)  
2 (Rehnquist, C.J.).

3 A word is necessary concerning security. Judges at all levels face increased threats to  
4 personal safety. These threats are magnified with respect to Members of the Supreme Court, given  
5 the higher profile of the matters they address. Recent episodes confirm that such dangers are not  
6 merely hypothetical. Security issues are addressed by the Supreme Court Police, United States  
7 Marshals, state and local law enforcement, and other authorities. Matters considered here  
8 concerning issues such as travel, accommodations, and disclosure may at times have to take into  
9 account security guidance.

John G. Roberts, Jr.

Clarence Thomas

Samuel A. Alito, Jr.

Sonia Sotomayor

Elena Kagan

Neil M. Gorsuch

Brett M. Kavanaugh

Amy Coney Barrett

Ketanji Brown Jackson

## Appendix – List of Judicial Ethics Authorities

- **Ethics in Government Act.** The Ethics in Government Act (EIGA) requires “judicial officers” to file financial disclosure reports listing outside positions, agreements, non-investment income, reimbursements, gifts, liabilities, and investments. *See* 5 U.S.C. § 13103(d), (f)(11). “Judicial officer” means “the Chief Justice of the United States, the Associate Justices of the Supreme Court, and the judges of the United States courts of appeals [and] United States district courts.” 5 U.S.C. § 13101(10). The Judicial Conference administers the statute in the case of judicial officers, and has delegated that authority to the Committee on Financial Disclosure. *See* 5 U.S.C. § 13102(a)(3); Guide to Judiciary Policy, Vol. 2D § 120. The Courthouse Ethics and Transparency Act, Pub. L. 117-125, 136 Stat. 1205 (May 13, 2022), requires judicial officers to file periodic transaction reports reflecting transactions in stocks, bonds, commodities futures, and other forms of securities, in addition to annual financial disclosures, and that the Administrative Office of the U.S. Courts make such reports publicly available. The EIGA also places limits on outside earned income, honoraria and employment. *See* 5 U.S.C. §§ 13143-44. The Judicial Conference has adopted regulations for lower court federal judges relating to outside earned income, honoraria, and employment. *See* Guide to Judiciary Policy, Vol. 2C § 1020.20(a)(10). The Justices comply with the substance of those regulations. *See* S.Ct. Resolution (Jan. 18, 1991).
  
- **Federal Gift Statute.** “[N]o . . . officer . . . of the . . . judicial branch shall solicit or accept anything of value from a person . . . seeking official action from [or] doing business with . . . the individual’s employing entity; or . . . whose interests may be substantially affected by the performance or nonperformance of the individual’s official duties.” 5 U.S.C. § 7353(a). *See also* 5 U.S.C. § 7351 (gifts to supervisors). The Judicial Conference has promulgated gift regulations that govern lower court federal judges. *See* Guide to Judiciary Policy, vol. 2C § 620.20. The Justices resolved to comply with the substance of the regulations. *See* S.Ct. Resolution (Jan. 18, 1991).
  
- **The Foreign Gifts and Decorations Act.** The Foreign Gifts and Decorations Act prohibits an employee from accepting gifts of more than minimal value from foreign governments and imposes reporting requirements on the acceptance of such gifts. An “employee” includes an individual who is engaged in the performance of a federal function under authority of law. *See* 5 U.S.C. §§ 7342(a)(1)(A); 2105(a)(2); U.S. Const., art. I, § 9, cl. 8. The Judicial Conference has adopted foreign gift regulations that apply to officers of the judicial branch. *See* Guide to Judiciary Policy, vol. 2C § 710. The Justices resolved to comply with the statute. *See* S.Ct. Resolution (Jan. 15, 1993).
  
- **Honorary Club Memberships.** Judicial officers may not accept a gift of an honorary club membership valued at over \$50 per calendar year. *See* Pub. L. 110-



1 402, § 2(b), 122 Stat. 4254 (Oct. 13, 2008). “Judicial officer” means the Justices  
2 and lower federal court judges. *Id.* § 2(a)(2); 5 U.S.C. § 13101(10). The Justices  
3 comply with the statute.  
4

- 5 • Federal Recusal Statute. 28 U.S.C. § 455 provides recusal standards for  
6 “justice[s] [and] judge[s] . . . of the United States.” The Chief Justice has stated  
7 that “the limits of Congress’s power to require recusal have never been tested.  
8 The Justices follow the same general principles as other federal judges, but the  
9 application of those principles can differ due to the unique circumstances of the  
10 Supreme Court.” C.J. Roberts 2011 Year-End Rpt. at 7. First, there is no higher  
11 court to review the Justices’ recusal decisions. Second, because recused Justices  
12 cannot be replaced, a Justice cannot withdraw from a case as a matter of  
13 convenience or simply to avoid controversy. In 1993, a Statement of Recusal  
14 Policy addressed recusal issues where members of a Justice’s family were  
15 practicing attorneys. *See* Statement of Recusal Policy (Nov. 1, 1993).  
16
  
- 17 • Code of Conduct for U.S. Judges. The Code of Conduct for U.S. Judges applies  
18 by its terms only to lower court federal judges. *See* Code of Conduct for U.S.  
19 Judges, Introduction. The Court nonetheless takes guidance from the Code.  
20
  
- 21 • IPO Purchases and Discussions with Prospective Private Employers. The Stop  
22 Trading On Congressional Knowledge Act of 2012, Pub. L. 112-105 §§ 12, 17,  
23 126 Stat. 291 (Apr. 4, 2012), provides that Justices and lower court federal judges  
24 may not “purchase securities that are the subject of an initial public offering . . . in  
25 any manner other than is available to members of the public generally.” Pub. L.  
26 112-105 § 12. The Act also provides that Justices and lower court judges who are  
27 negotiating agreements with private entities for post-judicial employment or  
28 compensation, or who have made such agreements, must file statements with the  
29 individual’s supervising ethics office within three days that include “the name of  
30 the private entity or entities involved in such negotiations or agreement, and the  
31 date such negotiations or agreement commenced.” *Id.* § 17. The Justices follow  
32 the statute.

S 359  
(Whitehouse)  
*“Supreme Court Ethics, Recusal, and Transparency Act of  
2023”*

As reported with amendment  
September, 5, 2023

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## Calendar No. 199

118TH CONGRESS  
1ST SESSION

# S. 359

To amend title 28, United States Code, to provide for a code of conduct for justices of the Supreme Court of the United States, and for other purposes.

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### IN THE SENATE OF THE UNITED STATES

FEBRUARY 9, 2023

Mr. WHITEHOUSE (for himself, Mr. BLUMENTHAL, Mr. MERKLEY, Mr. BOOKER, Mrs. GILLIBRAND, Mr. REED, Mrs. FEINSTEIN, Mr. WARNER, Mr. SANDERS, Mr. MARKEY, Mr. DURBIN, Ms. HIRONO, Mr. VAN HOLLEN, Mr. WELCH, Mr. SCHATZ, Mr. PADILLA, Mr. WYDEN, Ms. BALDWIN, Ms. KLOBUCHAR, Mr. CARDIN, Ms. HASSAN, Mr. WARNOCK, Mr. COONS, Mr. FETTERMAN, Mr. OSSOFF, Mr. SCHUMER, Mr. CARPER, and Mr. HICKENLOOPER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

SEPTEMBER 5, 2023

Reported by Mr. DURBIN, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

---

## A BILL

To amend title 28, United States Code, to provide for a code of conduct for justices of the Supreme Court of the United States, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*

1 assigned to a case due to potential or actual  
2 conflicts; and

3 (B) a justice, judge, magistrate judge, or  
4 bankruptcy judge of the United States disquali-  
5 fies themselves after a case assignment is made.

6 (b) **REPORTS TO CONGRESS.**—Not later than April  
7 1 of each year following the completion of the study re-  
8 quired under subsection (a), the Director of the Federal  
9 Judicial Center shall submit to Congress a report con-  
10 taining the findings of the study and any recommenda-  
11 tions to improve compliance with sections 144 and 455  
12 of title 28, United States Code.

13 (c) **GAO REVIEW.**—Not later than 1 year after the  
14 date on which the report is submitted under subsection  
15 (b), and every 5 years thereafter, the Comptroller General  
16 of the United States shall submit to Congress a report  
17 containing—

18 (1) an evaluation of the methodology and find-  
19 ings of the study required under subsection (a); and

20 (2) the audit required under section 1661 of  
21 title 28, United States Code; as added by section 7  
22 of this Act.

23 **SECTION 1. SHORT TITLE.**

24 *This Act may be cited as the “Supreme Court Ethics,*  
25 *Recusal, and Transparency Act of 2023”.*



1 **SEC. 2. CODE OF CONDUCT FOR THE SUPREME COURT OF**  
2 **THE UNITED STATES.**

3 (a) *IN GENERAL.*—Chapter 16 of title 28, United  
4 States Code, is amended by adding at the end the following:

5 **“§365. Codes of conduct**

6 “(a) *JUSTICES.*—Not later than 180 days after the  
7 date of enactment of this section, the Supreme Court of the  
8 United States shall, after appropriate public notice and op-  
9 portunity for comment in accordance with section 2071,  
10 issue a code of conduct for the justices of the Supreme Court.

11 “(b) *OTHER JUDGES.*—Not later than 180 days after  
12 the date of enactment of this section, the Judicial Conference  
13 of the United States shall, after appropriate public notice  
14 and opportunity for comment in accordance with section  
15 2071, issue a code of conduct for the judges of the courts  
16 of appeals, the district courts (including bankruptcy judges  
17 and magistrate judges), and the Court of International  
18 Trade.

19 “(c) *MODIFICATION.*—The Supreme Court of the  
20 United States and the Judicial Conference may modify the  
21 applicable codes of conduct under this section after giving  
22 appropriate public notice and opportunity for comment in  
23 accordance with section 2071.

24 **“§366. Public access to ethics rules**

25 “The Supreme Court of the United States shall make  
26 available on its internet website, in a full-text, searchable,

1 *sortable, and downloadable format, copies of the code of con-*  
2 *duct issued under section 365(a), any rules established by*  
3 *the Counselor to the Chief Justice of the United States under*  
4 *section 677 and any other related rules or resolutions, as*  
5 *determined by the Chief Justice of the United States, issued*  
6 *by the Counselor to the Chief Justice of the United States*  
7 *or agreed to by the justices of the Supreme Court.*

8 **“§367. Complaints against justices**

9       “(a) RECEIPT OF COMPLAINTS.—Not later than 180  
10 *days after the date of enactment of this section, the Supreme*  
11 *Court of the United States shall establish procedures, mod-*  
12 *eled after the procedures set forth in sections 351 through*  
13 *364, under which individuals may file with the Court, or*  
14 *the Court may identify, complaints alleging that a justice*  
15 *of the Supreme Court—*

16           “(1) *has violated—*

17               “(A) *the code of conduct issued pursuant to*  
18               *section 365(a);*

19               “(B) *section 455; or*

20               “(C) *any other applicable provision of Fed-*  
21               *eral law; or*

22           “(2) *has otherwise engaged in conduct that un-*  
23           *dermines the integrity of the Supreme Court.*

24       “(b) JUDICIAL INVESTIGATION PANEL.—



1           “(1) *IN GENERAL.*—Upon receipt or identifica-  
2           tion of a complaint under subsection (a), the Supreme  
3           Court of the United States shall refer such complaint  
4           to a judicial investigation panel, which shall be com-  
5           posed of a panel of 5 judges selected randomly from  
6           among the chief judge of each circuit of the United  
7           States.

8           “(2) *DUTIES.*—The judicial investigation  
9           panel—

10           “(A) shall review and, if appropriate as de-  
11           termined by the panel, investigate all complaints  
12           submitted to the panel using procedures estab-  
13           lished by the panel and modeled after the proce-  
14           dures set forth in sections 351 through 364;

15           “(B) shall present to the Supreme Court of  
16           the United States any findings and rec-  
17           ommendations for necessary and appropriate ac-  
18           tion by the Supreme Court, including dismissal  
19           of the complaint, disciplinary actions, or changes  
20           to Supreme Court rules or procedures;

21           “(C) if the panel does not recommend dis-  
22           missal of the complaint, not later than 30 days  
23           following the presentation of any findings and  
24           recommendations under this paragraph, shall

1       *publish a report containing such findings and*  
2       *recommendations; and*

3             *“(D) if the panel recommends dismissal of*  
4       *the complaint, may publish any findings and*  
5       *recommendations if the panel determines that*  
6       *such publication would be in furtherance of the*  
7       *public interest.*

8             *“(3) POWERS.—In conducting any investigation*  
9       *under this section, the judicial investigation panel*  
10       *may hold hearings, take sworn testimony, issue sub-*  
11       *poenas ad testificandum and subpoenas duces tecum,*  
12       *and make necessary and appropriate orders in the ex-*  
13       *ercise of its authority.*

14            *“(4) ACCESS.—If the judicial investigation panel*  
15       *determines that a substantially similar complaint*  
16       *was previously submitted under section 351, but that*  
17       *such substantially similar complaint was dismissed*  
18       *for lack of authority to review or act upon such com-*  
19       *plaint, the panel shall have access to any information*  
20       *gathered pursuant to this chapter in relation to such*  
21       *substantially similar complaint.*

22            *“(5) COMPENSATION.—The judicial investigation*  
23       *panel may appoint and fix the compensation of such*  
24       *staff as it deems necessary.”*



1       (b) *TECHNICAL AND CONFORMING AMENDMENT.*—The  
 2 *table of sections for chapter 16 of title 28, United States*  
 3 *Code, is amended by adding at the end the following:*

“365. *Codes of conduct.*

“366. *Public access to ethics rules.*

“367. *Complaints against justices.*”

4 **SEC. 3. MINIMUM GIFT, TRAVEL, AND INCOME DISCLOSURE**  
 5                   **STANDARDS FOR JUSTICES OF THE SUPREME**  
 6                   **COURT.**

7       Section 677 of title 28, *United States Code, is amended*  
 8 *by adding at the end the following:*

9       “(e) *The Counselor, with the approval of the Chief Jus-*  
 10 *tice, shall establish rules governing the disclosure of all gifts,*  
 11 *income, or reimbursements, as those terms are defined in*  
 12 *section 13101 of title 5, received by any justice and any*  
 13 *law clerk to a justice. Such rules shall, at minimum, require*  
 14 *disclosure of any information concerning gifts, income, and*  
 15 *reimbursements required to be disclosed under the Standing*  
 16 *Rules of the Senate and the Rules of the House of Represent-*  
 17 *atives.”.*

18 **SEC. 4. CIRCUMSTANCES REQUIRING DISQUALIFICATION.**

19       (a) *ANTICORRUPTION PROTECTIONS.*—Subsection (b)  
 20 *of section 455 of title 28, United States Code, is amended*  
 21 *by adding at the end the following:*

22       “(6) *Where the justice or judge knows that a*  
 23 *party to the proceeding or an affiliate of a party to*  
 24 *the proceeding made any lobbying contact, as defined*

1     *in section 3 of the Lobbying Disclosure Act of 1995*  
 2     *(2 U.S.C. 1602), or spent substantial funds in sup-*  
 3     *port of the nomination, confirmation, or appointment*  
 4     *of the justice or judge.*

5             *“(7) Where the justice or judge, their spouse,*  
 6     *their minor child, or a privately held entity owned by*  
 7     *any such person received income, a gift, or reimburse-*  
 8     *ment, as those terms are defined in section 13101 of*  
 9     *title 5—*

10             *“(A) from a party to the proceeding or an*  
 11     *affiliate of a party to the proceeding; and*

12             *“(B) during the period beginning on the*  
 13     *date that is 6 years before the date on which the*  
 14     *justice or judge was assigned to the proceeding*  
 15     *and ending on the date of final disposition of the*  
 16     *proceeding.”.*

17     **(b) DUTY TO KNOW.**—*Subsection (c) of section 455 of*  
 18     *title 28, United States Code, is amended to read as follows:*

19             *“(c) A justice, judge, magistrate judge, or bankruptcy*  
 20     *judge of the United States shall ascertain—*

21             *“(1) the personal and fiduciary financial inter-*  
 22     *ests of the justice or judge;*

23             *“(2) the personal financial interests of the spouse*  
 24     *and minor children residing in the household of the*  
 25     *justice or judge; and*



1           “(3) any interest of the persons described in  
2       paragraph (2) that could be substantially affected by  
3       the outcome of the proceeding.”.

4       (c) *DIVESTMENT*.—Subsection (f) of section 455 of title  
5 28, United States Code, is amended by inserting “under  
6 subsection (b)(4)” after “disqualified”.

7       (d) *DUTY TO NOTIFY*.—Section 455 of title 28, United  
8 States Code, is amended by adding at the end the following:

9           “(g) If at any time a justice, judge, magistrate judge,  
10 or bankruptcy judge of the United States learns of a condi-  
11 tion that could reasonably require disqualification under  
12 this section, the justice or judge shall immediately notify  
13 all parties to the proceeding.”.

14       (e) *TECHNICAL AND CONFORMING AMENDMENTS*.—  
15 Section 455 of title 28, United States Code, as amended  
16 by this section, is amended—

17           (1) in the section heading, by striking “**judge,**  
18       **or magistrate judge**” and inserting “**judge,**  
19       **magistrate judge, or bankruptcy judge**”;

20           (2) in subsection (a), by striking “judge, or mag-  
21       istrate judge” and inserting “judge, magistrate judge,  
22       or bankruptcy judge”;

23           (3) in subsection (b)—

1           (A) in paragraph (2), by striking “the judge  
2           or such lawyer” and inserting “the justice, the  
3           judge, or such lawyer”;

4           (B) in paragraph (5)(iii), by inserting “jus-  
5           tice or” before “judge”; and

6           (C) in paragraph (5)(iv), by inserting “jus-  
7           tice’s or” before “judge’s”;

8           (4) in subsection (d)(4)(i), by inserting “justice  
9           or” before “judge”; and

10          (5) in subsection (e), by striking “judge, or mag-  
11          istrate judge” and inserting “judge, magistrate judge,  
12          or bankruptcy judge of the United States”.

13          (f) *PUBLIC NOTICE.*—The rules of each court subject  
14          to section 455 of title 28, United States Code, as amended  
15          by this section, shall be amended to require that the clerk  
16          shall publish timely notice on the website of the court of—

17               (1) any matter in which a justice, judge, mag-  
18               istrate judge, or bankruptcy judge of the United  
19               States is disqualified under such section;

20               (2) any matter in which the reviewing panel  
21               under section 1660 of title 28, United States Code, as  
22               added by section 5 of this Act, rules on a motion to  
23               disqualify; and

24               (3) an explanation of each reason for the dis-  
25               qualification or ruling, which shall include a specific



1     *identification of each circumstance that resulted in*  
2     *such disqualification or ruling, but which shall not*  
3     *include any private or sensitive information deemed*  
4     *by a majority of the reviewing panel under section*  
5     *1660 of title 28, United States Code, as added by sec-*  
6     *tion 5 of this Act, to be appropriate for redaction and*  
7     *unnecessary in order to provide the litigants and pub-*  
8     *lic a full understanding of the reasons for the dis-*  
9     *qualification or ruling.*

10 **SEC. 5. REVIEW OF CERTIFIED DISQUALIFICATION MO-**  
11                   **TIONS.**

12     *(a) IN GENERAL.—Chapter 111 of title 28, United*  
13     *States Code, is amended by adding at the end the following:*

14     **“§ 1660. Review of certified motions to disqualify**

15         *“(a) MOTION FOR DISQUALIFICATION.—If a justice,*  
16     *judge, magistrate judge, or bankruptcy judge of the United*  
17     *States is required to be disqualified from a proceeding*  
18     *under any provision of Federal law, a party to the pro-*  
19     *ceeding may file a timely motion for disqualification, ac-*  
20     *companied by a certificate of good faith and an affidavit*  
21     *alleging facts sufficient to show that disqualification of the*  
22     *justice, judge, magistrate judge, or bankruptcy judge is so*  
23     *required.*

24         *“(b) CONSIDERATION OF MOTION.—A justice, judge,*  
25     *magistrate judge, or bankruptcy judge of the United States*

1 *shall either grant or certify to a reviewing panel a timely*  
2 *motion filed pursuant to subsection (a) and stay the pro-*  
3 *ceeding until a final determination is made with respect*  
4 *to the motion.*

5       “(c) *REVIEWING PANEL.*—

6               “(1) *IN GENERAL.*—A reviewing panel to which  
7 a motion is certified under subsection (b) with respect  
8 to a judge, magistrate judge, or bankruptcy judge of  
9 the United States shall be composed of 3 judges se-  
10 lected at random from judges of the United States  
11 who do not sit on the same court—

12                       “(A) as the judge, magistrate judge, or  
13 bankruptcy judge who is the subject of the mo-  
14 tion; or

15                       “(B) as the other members of the reviewing  
16 panel.

17               “(2) *CIRCUIT LIMITATION.*—Not more than 1  
18 member of the reviewing panel may be a judge of the  
19 same judicial circuit as the judge, magistrate judge,  
20 or bankruptcy judge who is the subject of the motion.

21               “(3) *PARTICIPATION.*—The reviewing panel,  
22 prior to its final determination with respect to a mo-  
23 tion filed under subsection (a), shall provide the  
24 judge, magistrate judge, or bankruptcy judge of the  
25 United States who is the subject of such motion an



1 opportunity to provide in writing the views of the  
 2 judge on the motion, including the explanation of the  
 3 judge for not granting the motion.

4 “(d) *SUPREME COURT REVIEW.*—The Supreme Court  
 5 of the United States, not including the justice who is the  
 6 subject of a motion seeking to disqualify a justice under  
 7 subsection (a), shall be the reviewing panel for such mo-  
 8 tions.”.

9 (b) *TECHNICAL AND CONFORMING AMENDMENT.*—The  
 10 table of sections for chapter 111 of title 28, United States  
 11 Code, is amended by adding at the end the following:

“1660. Review of certified motions to disqualify.”.

12 **SEC. 6. DISCLOSURE BY PARTIES AND AMICI.**

13 Not later than 1 year after the date of enactment of  
 14 this Act, the Supreme Court of the United States shall pre-  
 15 scribe rules of procedure in accordance with sections 2072  
 16 through 2074 of title 28, United States Code, requiring each  
 17 party or amicus to list in the petition or brief of the party  
 18 or amicus, as applicable, a description and value of—

19 (1) any gift, income, or reimbursement, as those  
 20 terms are defined in section 13101 of title 5, United  
 21 States Code, provided to any justice, during the pe-  
 22 riod beginning 2 years prior to the commencement of  
 23 the proceeding and ending on the date of final dis-  
 24 position of the proceeding, by—

1           (A) each such party, amicus, or affiliate of  
2 each such party or amicus;

3           (B) the lawyers or law firms in the pro-  
4 ceeding of each such party or amicus; and

5           (C) the officers, directors, or employees of  
6 each such party or amicus; and

7           (2) any lobbying contact or expenditure of sub-  
8 stantial funds by any person described in subpara-  
9 graphs (A), (B), and (C) of paragraph (1) in support  
10 of the nomination, confirmation, or appointment of a  
11 justice.

12 **SEC. 7. AMICUS DISCLOSURE.**

13           (a) *IN GENERAL.*—Chapter 111 of title 28, United  
14 States Code, as amended by section 5, is amended by adding  
15 at the end the following:

16 **“§ 1661. Disclosures related to amicus activities**

17           “(a) *DISCLOSURE.*—

18           “(1) *IN GENERAL.*—Any person that files an  
19 amicus brief in a court of the United States shall list  
20 in the amicus brief the name of any person who—

21           “(A) contributed to the preparation or sub-  
22 mission of the amicus brief;

23           “(B) contributed not less than 3 percent of  
24 the gross annual revenue of the amicus, or an af-



1        *filiate of the amicus, for the previous calendar*  
2        *year if the amicus is not an individual; or*

3                *“(C) contributed more than \$100,000 to the*  
4        *amicus, or an affiliate of the amicus, in the pre-*  
5        *vious calendar year.*

6                *“(2) EXCEPTIONS.—The requirements of this*  
7        *subsection shall not apply to amounts received in*  
8        *commercial transactions in the ordinary course of*  
9        *any trade or business by the amicus, or an affiliate*  
10       *of the amicus, or in the form of investments (other*  
11       *than investments by the principal shareholder in a*  
12       *limited liability corporation) in an organization if*  
13       *the amounts are unrelated to the amicus filing activi-*  
14       *ties of the amicus.*

15               *“(b) AUDIT.—The Director of the Administrative Of-*  
16       *fice of the United States Courts shall conduct an annual*  
17       *audit to ensure compliance with this section.”.*

18               *(b) TECHNICAL AND CONFORMING AMENDMENT.—The*  
19       *table of sections for chapter 111 of title 28, United States*  
20       *Code, as amended by section 5, is amended by adding at*  
21       *the end the following:*

*“1661. Disclosures related to amicus activities.”.*

22        **SEC. 8. CONFLICTS RELATED TO AMICI CURIAE.**

23               *(a) IN GENERAL.—Except as provided in subsection*  
24       *(b), the Supreme Court of the United States and the Judi-*  
25       *cial Conference of the United States shall prescribe rules*

1 of procedure in accordance with sections 2072 through 2074  
2 of title 28, United States Code, for prohibiting the filing  
3 of or striking an amicus brief that would result in the dis-  
4 qualification of a justice, judge, or magistrate judge.

5 (b) *INITIAL TRANSMITTAL.*—The Supreme Court of the  
6 United States shall transmit to Congress—

7 (1) the proposed rules required under subsection  
8 (a) not later than 180 days after the date of enact-  
9 ment of this Act; and

10 (2) any rules in addition to those transmitted  
11 under paragraph (1) pursuant to section 2074 of title  
12 28, United States Code.

13 **SEC. 9. STUDIES AND REPORTS.**

14 (a) *STUDIES.*—

15 (1) *IN GENERAL.*—Beginning on the date that is  
16 180 days after the date of enactment of this Act, and  
17 every other year thereafter, the Director of the Federal  
18 Judicial Center shall conduct a study on the extent  
19 of compliance or noncompliance with the require-  
20 ments of sections 144 and 455 of title 28, United  
21 States Code.

22 (2) *ADDITIONAL TIME.*—With respect to the first  
23 such study required to be submitted under paragraph  
24 (1), the requirements of that paragraph may be im-  
25 plemented after the date described in that paragraph



1 if the Director of the Federal Judicial Center identi-  
2 fies in writing to the relevant committees of Congress  
3 the additional time needed for submission of the  
4 study.

5 (3) *FACILITATION OF STUDIES.*—The Director of  
6 the Federal Judicial Center shall maintain a record  
7 of each instance in which—

8 (A) a justice, judge, magistrate judge, or  
9 bankruptcy judge of the United States was not  
10 assigned to a case due to potential or actual con-  
11 flicts; and

12 (B) a justice, judge, magistrate judge, or  
13 bankruptcy judge of the United States disquali-  
14 fies themselves after a case assignment is made.

15 (b) *REPORTS TO CONGRESS.*—Not later than April 1  
16 of each year following the completion of the study required  
17 under subsection (a), the Director of the Federal Judicial  
18 Center shall submit to Congress a report containing the  
19 findings of the study and any recommendations to improve  
20 compliance with sections 144 and 455 of title 28, United  
21 States Code.

22 (c) *GAO REVIEW.*—Not later than 1 year after the  
23 date on which the report is submitted under subsection (b),  
24 and every 5 years thereafter, the Comptroller General of the

1 *United States shall submit to Congress a report con-*  
2 *taining—*

3       (1) *an evaluation of the methodology and find-*  
4 *ings of the study required under subsection (a); and*

5       (2) *the audit required under section 1661 of title*  
6 *28, United States Code, as added by section 7 of this*  
7 *Act.*

8 **SEC. 10. SENSE OF CONGRESS.**

9 (a) *FINDINGS.—Congress finds the following:*

10       (1) *Since Justice Clarence Thomas's nomination*  
11 *to the Supreme Court on July 1, 1991, he has been*  
12 *wrongfully subject to multiple racially inflammatory*  
13 *insults.*

14       (2) *Racially charged and offensive remarks have*  
15 *been made by several public figures with little to no*  
16 *consequence or attention.*

17       (3) *Justice Thomas has been subject to multiple*  
18 *racial attacks merely for expressing a viewpoint that*  
19 *does not comport with offensive stereotypes about Af-*  
20 *rican Americans.*

21       (4) *On July 13, 2023, Minnesota Attorney Gen-*  
22 *eral Keith Ellison offensively likened Justice Thomas*  
23 *to a house slave from the film Django Unchained.*

24       (5) *On April 27, 2014, Representative Bennie*  
25 *Thompson of Mississippi, used racially charged lan-*



1 *guage to characterize Justice Thomas, including by*  
2 *calling him an “Uncle Tom” and refused to rescind*  
3 *his remarks or issue an apology during an interview*  
4 *on April 30, 2014.*

5 (6) *On February 14, 2023, Georgia State Sen-*  
6 *ator Emanuel Jones also used racially charged lan-*  
7 *guage to characterize Justice Thomas, including by*  
8 *calling him an “Uncle Tom” figure.*

9 (7) *MSNBC host Joy Reid has cast aspersions on*  
10 *Justice Thomas in a racially offensive manner for*  
11 *several years, in light of her disagreement with his ju-*  
12 *risprudence.*

13 (8) *Justice Thomas has been subject to numerous*  
14 *other racially charged comments and slurs from those*  
15 *who disagree with his jurisprudence.*

16 (9) *On July 13, 2022, more than 100 African*  
17 *American academics and community leaders signed*  
18 *an open letter condemning the “barrage of racist, vi-*  
19 *cious, and ugly personal attacks” on Justice Thomas.*

20 (10) *Racially charged insults and defamatory*  
21 *comments have surged in the wake of recent Supreme*  
22 *Court decisions, in an attempt to humiliate, punish,*  
23 *and demean Justice Thomas.*

24 (b) *SENSE OF CONGRESS.—It is the sense of Congress*  
25 *that Congress—*

1           (1) condemns all racial attacks and comments  
2 leveled against any current or former justice of the  
3 Supreme Court of the United States, including Jus-  
4 tice Thomas, including those likening him to an  
5 "Uncle Tom" figure or any other repugnant stereo-  
6 type;

7           (2) condemns racial attacks on any government  
8 official or person merely for expressing a view that  
9 some deem "conservative";

10          (3) recognizes the importance of judging a person  
11 on the basis of the merits of his ideas and the content  
12 of his character, rather than on the basis of offensive  
13 and derogatory racial stereotypes; and

14          (4) recognizes that Justice Thomas's jurispru-  
15 dence does not excuse racial aggression against him.



Calendar No. 199

119<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION  
**S. 359**

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**A BILL**

To amend title 28, United States Code, to provide for a code of conduct for justices of the Supreme Court of the United States, and for other purposes.

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SEPTEMBER 5, 2023  
Reported with an amendment

**“Supreme Court Tenure Establishment and Retirement  
Modernization Act”  
(Reps. Johnson & Schiff)**

**As Introduced September 15, 2023**



.....  
(Original Signature of Member)

118<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

**H. R.** \_\_\_\_\_

To amend title 28, United States Code, to provide for the duration of active service of justices of the Supreme Court, and for other purposes.

\_\_\_\_\_  
IN THE HOUSE OF REPRESENTATIVES

M. \_\_\_\_\_ introduced the following bill; which was referred to the Committee on \_\_\_\_\_

**A BILL**

To amend title 28, United States Code, to provide for the duration of active service of justices of the Supreme Court, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Supreme Court Tenure  
5 Establishment and Retirement Modernization Act of  
6 2023".

1 **SEC. 2. SUPREME COURT TERMS OF OFFICE.**

2 (a) IN GENERAL.—Chapter 1 of title 28, United  
3 States Code, is amended by adding at the end the fol-  
4 lowing:

5 **“§ 7. Appointment**

6 “(a) REGULAR APPOINTMENT OF JUSTICES.—The  
7 President shall, during the first and third years after a  
8 year in which there is a Presidential election, nominate,  
9 and by and with the advice and consent of the Senate,  
10 appoint one justice of the Supreme Court.

11 “(b) EXCLUSIVE METHOD OF APPOINTMENT.—The  
12 President shall not appoint any justice of the Supreme  
13 Court except as provided in this section.

14 “(c) LIMITATION ON REPEAT APPOINTMENTS.—An  
15 individual, once confirmed by the Senate, may only serve  
16 one 18-year term as a Supreme Court Justice.

17 “(d) SENATE CONFIRMATION.—

18 “(1) IN GENERAL.—The Senate shall exercise  
19 its authority to provide advice and consent on nomi-  
20 nations made under subsection (a) not later than 90  
21 days after the date on which the individual is nomi-  
22 nated by the President.

23 “(2) WITHDRAWAL OR DISAPPROVAL.—If the  
24 President withdraws a nomination under subsection  
25 (a) or the Senate disapproves such a nomination, the  
26 President shall make another nomination under sub-



1 section (a). The Senate shall exercise its authority to  
2 provide advice and consent on such a subsequent  
3 nomination not later than 120 days after the date  
4 on which the individual is nominated by the Presi-  
5 dent.

6 **“§ 8. Duration of active service**

7 “(a) NEW JUSTICES.—Each justice shall serve in  
8 regular active service for 18 years beginning on the date  
9 on which the justice is sworn in, after which the justice  
10 shall be deemed to have retired from regular active service  
11 under section 371.

12 “(b) CURRENT JUSTICES.—Each justice who was ap-  
13 pointed before the date of enactment of this section and  
14 who is serving as a justice on the date of enactment of  
15 this section shall, notwithstanding the period of service of  
16 the justice, in order of duration of service beginning with  
17 the justice who has served on the Supreme Court for the  
18 longest period of time, be deemed to have retired from reg-  
19 ular active service under section 371(b) upon the date of  
20 commission of each new justice as they are appointed  
21 under section 7.”

22 (b) CLERICAL AMENDMENT.—The table of sections  
23 for chapter 1 of title 28, United States Code, is amended  
24 by adding at the end the following:

“7. Appointment.

“8. Duration of active service.”

1 **SEC. 3. SENIOR JUSTICES.**

2 Section 294 of title 28, United States Code, is  
3 amended—

4 (1) in subsection (d), by striking the period at  
5 the end and inserting “except as provided by sub-  
6 section (e).”;

7 (2) by redesignating subsection (e) as sub-  
8 section (f); and

9 (3) by inserting after subsection (d) the fol-  
10 lowing:

11 “(e) In the event that the number of justices of the  
12 Supreme Court falls below that provided in section 1 due  
13 to vacancy, disability, or disqualification, a justice of the  
14 Supreme Court who has retired from regular active service  
15 under section 371 but retained their office shall be chosen  
16 by the Chief Justice through a publicly transparent and  
17 randomized process to serve as an associate justice until  
18 the number of justices who have not retired from regular  
19 active service equals that provided in section 1.”



## Federal Judicial Ethics Selected Bibliography

Chief Justice's 2011 Year End Report on the Federal Judiciary

<https://www.supremecourt.gov/publicinfo/year-end/2011year-endreport.pdf>

United States Judicial Conference Advisory Ethics Opinions

<https://www.uscourts.gov/sites/default/files/vol02b-ch02.pdf>

United States Judicial Conference Gift Regulations

<https://www.uscourts.gov/rules-policies/judiciary-policies/code-conduct/judicial-conference-regulations-gifts>

United States Judicial Conference Regulations on Outside Earned Income, Honoraria and Employment

<https://www.uscourts.gov/rules-policies/judiciary-policies/code-conduct/outside-earned-income-honoraria-and-employment>

Judiciary Financial Disclosure Regulations

<https://www.uscourts.gov/rules-policies/judiciary-policies/ethics-policies/financial-disclosure-report-regulations>