



Memorandum

TO: All Interested Persons

FROM: Anthony R. Perri

SUBJECT: Proposal to amend Rule 100.4 (D) (5) (h) and 100.4 (H) (2) of the Rules of the Chief Administrative Judge regarding the obligation to report gifts, bequests, favors or loans if the value exceeds \$150.00

DATE: October 12, 2022

Currently, there are two distinct sets of judicial financial reporting requirements—a reporting requirement under Section 100.4 of the Rules of the Chief Administrative Judge and the financial disclosure requirements of Part 40 of the Rules of the Chief Judge. The Rule 100.4 disclosure obligations have different thresholds than and are not satisfied by submission of the Rule 40 annual financial disclosure forms. Thus, the present system—two separate financial disclosure mechanisms located in different court rules—is not only inefficient but also creates an unnecessary pitfall for judges.

The Administrative Board of the Courts seeks public comment on a proposal to eliminate this overlap and redundancy. The proposal would remove from the Rules of the Chief Administrative Judge the reporting requirement language found in Sections 100.4(D)(5)(h) and 100.4(H)(2). In the alternative, both the substance and spirit of these rules—ensuring transparency to minimize judicial conflicts linked to extra-judicial financial enrichment—will be covered through updating financial disclosure requirements promulgated under Part 40. Two additional questions specifically for judicial officers—new Questions 20 and 21—will provide to the Ethics Commission for the New York State Unified Court System information previously covered by Section 100.4.

Separately, it is further proposed that the threshold amount for reporting be increased from \$150 to \$500 per year for any cumulative contribution from an individual or entity or for any outside employment or reimbursement. As the current disclosure threshold has not been raised in over two decades, this increase would adjust the dollar amount to better reflect inflation and other increases in costs of living.

The proposed amendment to Sections 100.4(D)(5)(h) and 100.4(H)(2) of the Rules of the Chief Administrative Judge is annexed as Exhibit A below. The proposed additional Question 20 and Question 21 to the Part 40 financial disclosure statement is annexed as Exhibit B below.

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Persons wishing to comment on the proposal should e-mail their submissions to rulecomments@nycourts.gov or write to: Anthony R. Perri, Esq., Acting Counsel, Office of Court Administration, 25 Beaver Street, 11th Fl., New York, New York, 10004. Comments must be received no later than November 28, 2022.

All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration. Issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the Unified Court System or the Office of Court Administration.

Exhibit A

Section 100.4 A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations- Amendment to Section 100.4(D)(5)(h)

(D) Financial Activities.

(5) A judge shall not accept, and shall urge members of the judge's family residing in the judge's household not to accept, a gift, bequest, favor or loan from anyone except:

(a) a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system or the administration of justice;

(b) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

(c) ordinary social hospitality;

(d) a gift from a relative or friend, for a special occasion such as a wedding, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship;

(e) a gift, bequest, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under section 100.3(E);

(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;

(g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or

(h) any other gift, bequest, favor or loan, only if: the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge.]; and if its value exceeds \$150.00, the judge reports it in the same manner as the judge reports compensation in Section 100.4(H).]

Section 100.4 A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations- Amendment to Section 100.4(H)(2)

(H) Compensation, Reimbursement and Reporting.

(1) *Compensation and Reimbursement.* A full-time judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Part, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

(a) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.

(b) Expense reimbursement shall be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or guest. Any payment in excess of such an amount is compensation.

(c) No full-time judge shall solicit or receive compensation for extra-judicial activities performed for or on behalf of: (1) New York State, its political subdivisions or any office or agency thereof; (2) a school, college or university that is financially supported primarily by New York State or any of its political subdivisions, or any officially recognized body of students thereof, except that a judge may receive the ordinary compensation for a lecture or for teaching a regular course of study at any college or university if the teaching does not conflict with the proper performance of judicial duties; or (3) any private legal aid bureau or society designated to represent indigents in accordance with article 18-B of the County Law.

~~[(2) *Public Reports.* A full-time judge shall report the date, place and nature of any activity for which the judge received compensation in excess of \$150, and the name of the payor and the amount of compensation so received. Compensation or income of a spouse attributed to the judge by operation of a community property law is not extra-judicial compensation to the judge. The judge's report shall be made at least annually and shall be filed as a public document in the office of the clerk of the court on which the judge serves or other office designated by law.]~~

Exhibit B

PART 40 ANNUAL FINANCIAL DISCLOSURE STATEMENT

New Question 20 and Question 21 Proposal

For Calendar Year 2023

Pursuant to 22 NYCRR 40

20. FOR JUDICIAL OFFICERS ONLY: List below the date, place, name of payor, amount received and description of any other monetary or non-monetary gift, bequest or loan from any person who is not a party or any other person who has come or whose interests have come or are likely to come before the judge in EXCESS VALUE of \$500, cumulatively from EACH SOURCE for the reporting individual and members of such individuals household for the previous calendar year.

21. FOR JUDICIAL OFFICERS ONLY: List below the date, place, name of payor, amount received and a description of services for any outside employment or reimbursement in EXCESS VALUE of \$500, cumulatively from EACH SOURCE for the reporting individual for the previous calendar year.