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2022 -2023 Officers

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November 21, 2022

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Dear President Wallach and General Counsel Miranda:

HON. BRIAN D. BURNS

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The Judicial Section has read and considered the proposed amendments to Rule 100.4 of the Rules of the Chief Administrative Judge together with the accompanying memorandum provided by Anthony R. Perri, Esq., Acting Counsel/Deputy Counsel for Criminal Justice for the Unified Court System. As set forth in Mr. Perri's memorandum, "[c]urrently, there are two distinct sets of judicial financing 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." Further, "[t]he Rule 100.4 disclosure obligations have different thresholds than and are not satisfied by the submission of the Rule 40 annual financial disclosure forms." The proposal would remove the reporting requirement language contained in sections 100.4(d)(5)(h) and 100.4(H)(2) from Part 100 to Part 40. The proposal suggests deleting that language in sections 100.4(d)(5)(h) and 100.4(H)(2) which require a judge to report gifts, bequest, favors, loans and compensation in excess of \$150, and alternatively adding two new questions to the annual financial disclosure form (Questions 20 and 21), which would address the information previously required under section 100.4. The proposal further recommends increasing the threshold reporting amount, currently \$150 under Part 100, "to \$500 per year for any cumulative contribution from an individual or entity or for any outside employment or reimbursement."

The Judicial Section applauds and supports the proposal's effort "to eliminate [the] overlap and redundancy" in the present system, which Mr. Perri refers to as "inefficient" and "an unnecessary pitfall for judges." Our concern, however, lies in the fact that the two new questions recommended for inclusion in the annual financial disclosure form appear to already

be addressed in the financial disclosure form. And more significantly, the annual financial disclosure form provides for a threshold reporting amount of \$1,000, which is twice that of the increase threshold amount suggested in the proposal.

Specifically, the information required under proposed Question 20 appears to be addressed in current Question 9 on the annual financial disclosure form. The text of both questions is copied below for comparison:

PROPOSED QUESTION 20

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.

FINANCIAL DISCLOSURE FORM QUESTION 9

(9) List each source of **gifts**, EXCLUDING campaign contributions, in **EXCESS of \$1,000**, received during the reporting period for which this statement is filed by the reporting individual or such individual's spouse or unemancipated child from the same donor, EXCLUDING gifts from a relative. INCLUDE the name and address of the donor. The term "gifts" does not include reimbursements, which term is defined in Item 10. Indicate the value and nature of each such gift

Similarly, the information requested under proposed Question 21 appears to be addressed under current Questions 10 (as it pertains to reimbursement) and 13 (as it pertains to outside compensation) of the annual financial disclosure form. The text of these questions is copied below for comparison:

PROPOSED QUESTION 21

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.

FINANCIAL DISCLOSURE FORM QUESTION 10

(10) Identify and briefly describe the source of **any reimbursements** for expenditures, EXCLUDING campaign expenditures and expenditures in connection with official duties reimbursed by the state, in **EXCESS of \$1,000** from each such source. For purposes of this item, the term "reimbursements" shall

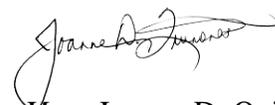
mean any travel-related expenses provided by nongovernmental sources and for activities related to the reporting individual's official duties such as, speaking engagements, conferences, or factfinding events. The term "reimbursement" does NOT include gifts reported under Item 9.

FINANCIAL DISCLOSURE FORM QUESTION 13

(13) List below the nature and amount of **any income in EXCESS of \$1,000** from EACH SOURCE for the reporting individual and such individual's spouse for the taxable year last occurring prior to the date of filing. Nature of income includes, but is not limited to, all income EARNED BY YOU AND YOUR SPOUSE (other than that received by you from the employment listed under item 2 above) from compensated employment whether public or private, directorships and other fiduciary positions, contractual arrangements, teaching income, partnerships, honorariums, lecture fees, consultant fees, bank and bond interest, dividends, income derived from a trust, real estate rents, and recognized gains from the sale or exchange of real or other property. Income from a business or profession and real estate rents shall be reported with the source identified by the building address in case of real estate rents and otherwise by the name of the entity and not by the name of the individual customers, clients or tenants, with the aggregate net income before taxes for each building address or entity. The receipt of maintenance received in connection with a matrimonial action, alimony and child support payments shall not be listed.

As such, the existing questions on the annual financial disclosure form already address and cover the information required to be reported under Part 100. Moreover, the proposal's recommendation that the threshold amount for reporting "be increased" to \$500 per year is actually a decrease from the \$1,000 threshold reporting amount set forth in the financial disclosure form. Accordingly, it is our position that the reporting requirement language found in sections 100.4(D)(5)(h) and 100.4(H)(2) should be deleted from Part 100 and that there should be no additional questions added to the Part 40 annual financial disclosure form.

Very Truly Yours,



Hon. Joanne D. Quiñones
Presiding Member
NYSBA Judicial Section