

FINANCIAL DISCLOSURE RULE FOR JUDGES

BACKGROUND

The Legislature recently promulgated a new financial disclosure law applicable to the other two branches of government. (2008 La. Acts 1 (1st Ex. Sess.)).

- Judges were originally included in the financial disclosure bills.
- The Court wrote to the executive and legislative branches, advising that it intended to adopt financial disclosure provisions “consistent with and comparable to” what would be made applicable to other public officials. As a result, judges were removed from the financial disclosure provisions of the new financial disclosure law.

OVERVIEW OF FINANCIAL DISCLOSURE RULE

- Applies to judges and justices of the peace.
- Financial disclosure provisions applicable to judges are very similar to the provisions of the new law applicable to legislators.
- The procedure for handling complaints and noncompliance is somewhat different, in recognition of the judiciary's status as an independent branch of state government.
- The effective dates of the Rule are the same as the legislation.

SECTION 1 - APPLICABILITY

- Judges are to file financial disclosure statements, the contents of which are very similar to that required of legislators.
- Justices of the Peace are to file more limited financial disclosure statements, in a fashion similar to the disclosure requirements applicable to public officers elected from voting districts having a population of less than 5,000.

SECTION 2A & B - TIME FOR FILING

- Financial statements to be filed by May 15th of each year during which the judge holds an office or position, and by May 15th of the year following termination of the holding of such office.
- A provision applicable to judges allows for the filing of a financial disclosure statement within 30 days after the filing of a federal tax return, taking into consideration any extensions for filing, provided the judge notifies the Office of the Judicial Administrator of the extension prior to the May 15th deadline.

SECTION 2C - (PLACE OF FILING PRELIMINARY INFORMATION)

Financial disclosure statements are to be filed with the Office of the Judicial Administrator. Statements must include the:

- Name and office address of the judge
- Name of the judge's spouse and the spouse's occupation and principal business address

SECTION 2C - (PLACE OF FILING PRELIMINARY INFORMATION) (Cont)

- Name of the judge or spouse's employer, and the appropriate job title(s) and job description(s)
- Name, address, description and nature of association in businesses in which the judge or spouse is a director, officer, owner, partner, member or trustee and owns more than ten percent of the business
- Name, address, description and nature of association with nonprofit organizations in which the judge or spouse is a director or officer

SECTION 2C(5) - DISCLOSURE OF EMPLOYMENT AND BUSINESS INCOME

The judge must disclose:

- Income received by the judge or spouse, or by any business in which the judge or spouse owns at least ten percent, that is received from:
- the state or any political subdivision, or
- services performed for or in connection with a gaming interest.
- (Income in this category must be reported by specific amount rather than by category of value).

SECTION 2C(5) - DISCLOSURE OF EMPLOYMENT AND BUSINESS INCOME (Cont)

- The name and address of employers and businesses that provide income to the judge or spouse, and the amount of income provided to the judge or spouse from those sources.
- A description of any other types of income exceeding \$1,000 received by the judge or spouse, including a description of the nature of the services rendered for the income, the reason the income was received, and the amount of income.

SECTION 2C(6) - (DISCLOSURE OF VALUE OF IMMOVABLE PROPERTY)

- Judges must disclose a description, fair market or use value as determined by the assessor, and the location of, immovable property in which the judge or spouse has an interest, provided the fair market value or use value exceeds \$2,000.

SECTION 2C(7)

INVESTMENT SECURITIES

- The judge must disclose the name and a description of each investment security having a value exceeding \$5,000 held by the judge or spouse.

Exclusions:

- Variable annuities
- Variable life insurance
- Variable universal life insurance
- Whole life insurance
- Mutual funds

SECTION 2C(7)

INVESTMENT SECURITIES (Cont)

Exclusions:

- Education investment accounts
- Retirement accounts (including state retirement plans, DROP accounts, 401K retirement accounts, IRAs and deferred compensation)
- Government bonds
- Cash or cash equivalent investments
- Property held and administered for any person other than the individual or spouse under a trust, tutorship, curatorship or other custodial instrument

SECTION 2C(8) - OTHER TYPES OF PROPERTY/INVESTMENTS TO BE DISCLOSED

- A description, amount and date of purchase or sale, in excess of \$5,000, of any immovable property, and of any personally owned tax credit certificates, stocks, bonds, or commodities futures.
- Required disclosure includes any option to acquire or dispose of any immovable property, or of any personally owned tax credit certificates, stocks, bonds or commodities futures.
- This subpart also excludes from mandatory disclosure life insurance products, mutual funds, education investment accounts, retirement investment accounts, government bonds and cash or cash equivalents.

SECTION 2C(9)

DISCLOSURE OF LIABILITIES

Judges are to disclose the name and address of each creditor and guarantor to whom the judge or spouse owes any liability exceeding \$10,000 on the last day of the reporting period.

Exclusions:

- Loans secured by movable property, if the loan does not exceed the purchase price of the property.
- Liability guaranteed by the judge or the spouse for a business in which the judge or spouse owns any interest, provided the liability is in the name of the business, and if the liability is a loan, the judge/spouse does not use the loan proceeds for personal use unrelated to the business.

SECTION 2C(9)

DISCLOSURE OF LIABILITIES (Cont)

Exclusions:

- Loans by licensed financial institutions.
- Liabilities resulting from consumer credit transactions.
- Loans from an immediate family member, unless the family member is a registered lobbyist, or his or her principal or employer is a registered lobbyist, or he or she employs or is a principal of a registered lobbyist, or unless the family member has a contract with the state.

SECTION 2D - DISCLOSURE OF AMOUNTS BY CATEGORIES

Generally, amounts may be reported by the following categories:

- Category I, less than \$5,000
- Category II, \$5,000 - \$24,999
- Category III, \$25,000-\$100,000
- Category IV, more than \$100,000

SECTION 2H

OTHER EXCEPTIONS TO DISCLOSURE

- Income derived from child support and alimony payments contained in a court order, or income derived from disability payments.

SECTION 3

JUSTICES OF THE PEACE

- Financial disclosure statements are to be filed by May 15th of each year during which the justice of the peace holds office, and by May 15th of the year following termination of the holding of such office.
- Required disclosure:
- Income exceeding \$250 received by the justice of the peace or spouse, or from any business in which the justice of the peace or spouse owns at least ten percent, which is received from
 - the state or any political subdivision
 - services performed for or in connection with a gaming interest

SECTION 4

ENFORCEMENT AND PENALTIES

- If a judge fails to file a statement, omits information required to be filed, or files an inaccurate statement, the Judicial Administrator's Office will send the judge a notice of delinquency by certified mail.
- The notice is to inform the judge that the statement must be filed or corrected within 14 business days.
- If the judge files the statement or provides the omitted or inaccurate statement, no penalties are to be assessed.

INADEQUATE RESPONSE TO NOTICE; RECEIPT OF COMPLAINTS

- If the judge fails to respond to the notice, or the response to the notice is inadequate, the matter is to be referred to the Judiciary Commission.
- If the judge contests the allegations contained in the notice of delinquency, or if a complaint is filed that is directed to the accuracy or completeness of a statement, the matter is to be referred to the Judiciary Commission.
- The Commission is to mail complaints to the judge by certified mail. The judge will be asked to respond within 14 business days.
- If the Commission finds no violation, no penalties are to be assessed.

INADEQUATE RESPONSE TO NOTICE; RECEIPT OF COMPLAINTS (Cont)

- If the Commission determines the judge may have failed to file, or failed to disclose or accurately disclose the required information, the matter will be the subject of a hearing to be convened by a hearing officer chosen from a list of designees of the Court.
- The hearing is limited to three issues:
 - (1) whether or not the judge failed to file a financial statement;
 - (2) whether or not the judge failed to disclose or accurately disclose the required information; and
 - (3) whether the failure was willful and knowing.

PROCEDURES FOLLOWING THE HEARING

The hearing officer submits a report to the Commission containing proposed findings of fact and conclusions of law.

- The hearing officer is not to make a recommendation as to the issues to be considered by the Commission and/or the Court.
- If the Commission decides no violation has occurred, a written decision to that effect is authored, no penalties are assessed, and no recommendation is made to the Court.

PROCEDURES FOLLOWING THE HEARING (Cont)

- If the Commission determines the judge failed to file a statement, or failed to disclose or accurately disclose the required information, the Commission files the record and a recommendation with the Court.
 - In this event, the Commission is to recommend the imposition of civil penalties and also make a recommendation as to whether the violation was willful and knowing.

SUPREME COURT DETERMINATION

- The matter will be assigned for argument summarily.
- If the Court determines no violation has occurred, no penalty will be assessed.
- In the event the Court determines a violation has occurred, civil penalties will be assessed in the following amounts:
 - (1) \$100 per day for statements required by judges;
 - (2) \$50 per day for statements required by justices of the peace.
- (The civil penalty amounts are the same as those applicable to legislators and other officials).

SUPREME COURT DETERMINATION

(Cont)

- If the judge files an answer contesting the allegations, penalties are to be assessed only from the date the Commission recommended the imposition of civil penalties.
- If the Court determines a judge has willfully and knowingly:
 - failed to file or timely file a statement;
 - omitted information from a statement; or
 - provided inaccurate information,
- the Court is to forward its findings to the appropriate district attorney.

WEBSITE POSTING

The Office of the Judicial Administrator is to post on its website a list of judges who have failed to file, failed to timely file, failed to provide omitted information, or failed to provide accurate information.

- A judge will not be included on the list if he or she has filed an answer contesting the allegations included in the notice of delinquency.
- Judges will be removed from the list within two business days after filing a financial disclosure statement or accurately disclosing the required information.

SECTION 5 - PUBLIC NATURE OF FINANCIAL DISCLOSURE RULE

The following are matters of public record.

- Financial disclosure statements.
- Notices of delinquency and referrals by the Office of the Judicial Administrator to the Judiciary Commission.
- Pleadings that are filed following a referral to the Judiciary Commission.
- Hearings.
- Findings of fact, conclusions of law and reports authored by hearing officers.
- Any recommendation or determination made by the Commission following a referral from the Office of the Judicial Administrator.

SECTION 6 -FORMS

- The Office of the Judicial Administrator is to promulgate appropriate forms.
- (Presumably, the forms to be created by the Board of Ethics pursuant to 2008 La. Acts No. 1 can be used as a guide).

SECTION 7

DUE DATE OF FIRST REPORTS

- Judges are to file their first reports in 2009, for calendar year 2008.
- Justices of the Peace are to file their first reports in 2010, for calendar year 2009.

EFFECTIVE DATE

- The rule becomes effective as to judges on January 1, 2009.
- The rule becomes effective as to justices of the peace on January 1, 2010. (The staggered effective dates are consistent with 2008 La. Acts No. 1).

CANON 6

B. GIFTS, LOANS, BEQUESTS, BENEFITS, FAVORS OR OTHER THINGS OF VALUE

- (1) A judge shall not accept, directly or indirectly, any gifts, loans, bequests, benefits, favors or other things of value which might reasonably appear as designed to affect the judgment of the judge or influence the judge's official conduct.

B. GIFTS, LOANS, BEQUESTS, BENEFITS, FAVORS OR OTHER THINGS OF VALUE

(2) Except as provided in Canon 6B(3) and B(4) below, a judge shall not accept, directly or indirectly, any gifts, loans, bequests, benefits, favors or other things of value if the source is a party or other person, including a lawyer, who has come or is likely to come before the judge, or whose interests have come or are likely to come before the judge.

Non-Reportable Gifts, Canon 6B(3)

(a) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;

(b) gifts, loans, bequests, benefits, favors or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending or impending before the judge would in any event require disqualification of the judge, or if the gift, bequest, benefit, favor or other thing of value is made in connection with a special occasion such as a wedding, anniversary or birthday and the gift is commensurate with the occasion and the relationship;

(c) ordinary social hospitality provided the total value of the food, drink, or refreshment given to a judge at any single event shall not exceed fifty dollars regardless of the number of persons giving food, drink or refreshment to the judge at a single event. The value of the food, drink or refreshment provided to the judge shall be determined by dividing the total cost of the food, drink and refreshment provided at the event by the total number of persons invited. On July first of each year the food, drink or refreshment limit shall be adjusted if required (based on Consumer Price Index) and shall be promulgated to judges annually by the Supreme Court.

- (d) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges;
- (e) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges;

(f) scholarships, fellowships, and similar benefits or awards, if they are available to similarly situated persons who are not judges, based upon the same terms and criteria;

(g) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use;

- (h) gifts, awards or benefits associated with the business, profession, or other separate activity of a spouse or immediate family member residing in the judge's household, but that incidentally benefit the judge; or
- (i) complimentary admission to a political event if in compliance with this Code of Judicial Conduct, Canon 7.

Reportable Gifts Canon 6B(4)

(a) gifts incidental to a public testimonial;

(b) invitations to the judge and the judge's spouse or guest to attend without charge:

(i) an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or

(ii) an event associated with any of the judge's educational, religious, charitable, fraternal or civic activities permitted by this Code of Judicial Conduct, if the same invitation is offered to non-judges who are engaged in similar ways in the activity as is the judge;

(c) complimentary admission to a civic, non-profit or educational event when the judge is a program honoree, is a speech presenter, or is a panel member; or

(d) any fishing trip, hunting trip, or golf outing only if such trip or outing is associated with a candidate's, elected official's or organization's fundraising event open to the general public.

Canon 6B(5)

(5) The provisions of Canon 6B(3)(c), i.e., ordinary social hospitality limitations, shall not apply to a gathering held in conjunction with an event or meeting related to a local, regional, or national organization concerning the law, the legal system or the administration of justice, or a meeting of an organization of governmental officials or employees.

Canon 6B(6)

(6) A contribution to a judge's campaign committee organized pursuant to Canon 7D is not a gift for purposes of Canon 6.

Reporting Thresholds

- * Quasi-judicial Compensation and Expenses, when the amount exceeds \$500.00.
- * If a Judge derives any thing of economic value which exceeds \$2,500 from a contract or subcontract related to a disaster or emergency declared by the Governor.
- * Gifts, loans, bequest, benefits, favors, or other things of value, when the amount exceeds \$250.00.

ANNUAL REPORTING REQUIREMENTS

Canon 6C

All reporting deadlines are now May 15th, for the proceeding calendar year.

Effective Date: January 1, 2009.

GIFTS, LOANS, BEQUESTS, BENEFITS, FAVORS OR OTHER THINGS OF VALUE

