Judges fail to fully comply with financial disclosure rules

Dozens of federal judges have failed to comply with financial disclosure requirements, hampering review of their activities for possible conflicts of interest or other improprieties.

These findings came from a Star Tribune review of the two primary mechanisms that provide public checks on judicial behavior: the financial disclosure forms and ethics complaints that are filed against judges.

One in six of the 222 judges' disclosure forms reviewed was incomplete or inaccurate in reporting outside income, trips, club memberships and teaching fees.

The ethics complaint system is designed to give the public an opportunity to register concerns about judicial behavior and to see what happens when judges abuse their power. But hundreds of ethics complaints about judges have been withheld from public files in Washington, D.C., in violation of judicial rules.

The review did not disclose evidence of serious conflicts of interest or corruption -- such problems remain rare in the federal judiciary. But the disclosure omissions can make it difficult for the public to see whether judges have business or political relationships that might raise questions about their impartiality.

The issue of judicial accountability was highlighted last month when the U.S. Senate recommended that the judiciary tighten its ethics rules, in part because of recent disclosures by the Star Tribune that judges had accepted lavish trips from a court contractor and litigant.

In proposing the tightening, Sen. Robert Byrd, D-W.Va., argued that appearances of impropriety in the judiciary created a more serious problem than in any other branch of government.

"Federal judges hold their positions for life, health permitting," he said. "Their behaviors and their moral authority as adjudicators of great issues are not subject to a public vote of confidence. . . . Because of that authority and extraordinary power, the judicial branch more so than even the other two branches of government must hold and retain the utmost confidence of the American people."

A leading legal ethicist, Prof. Steven Lubet of the Northwestern University Law School, said in an interview: "Federal judges are given by the Constitution enormous amounts of discretion and independence and virtually the only accountability that they have comes in the form of financial restrictions and disclosure requirements."

Inaccurate disclosure

The Star Tribune reviewed the disclosure reports filed this year by the nine Supreme Court justices and the judges in three of the 12 U.S. judicial circuits. Thirty-three of the judges filed incomplete or inaccurate disclosure forms. To be sure, the forms can be complicated for some -- an 87-page instruction book on disclosure is sent to each judge. But judges in the Star Tribune sample made obvious errors and sometimes failed to list such basic details as the value of gifts they accepted or the destination and dates of subsidized trips. Others neglected to identify the source of travel and gifts they had accepted.

For example, Justice Clarence Thomas listed "testimonial dinner" as the "source" of reimbursement he accepted for a trip he made to deliver a speech Oct. 14. And he gave no destination.

More than a half-dozen federal judges from the Eighth Circuit, which includes Minnesota, did not fully answer disclosure form questions regarding gifts (such as club membership value) or, in some cases, travel itineraries and

dates.

For example, the chief judge of the circuit, Richard Arnold, did not reveal the destination for his trip to the International Council of Sports Arbitration (Lausanne, Switzerland) or the dates of a trip (two weeks) to India sponsored by the Indo-United States Legal Forum. He provided the information promptly when asked by the newspaper.

Several judges in Minnesota did not list the value for honorary memberships they accepted in two elite clubs, the Minneapolis Club and the Minnesota Club in St. Paul.

The disclosure rules require listing an actual or at least an estimated value for gifts. And other judges did list values, suggesting the memberships are worth $1,200 to $3,122 a year. Both clubs offer fancy dining facilities, lodging and meeting rooms. But they are much more than that. The Minneapolis Club, particularly, serves as a kind of fraternity for the rich and powerful of Minnesota. It has a library and a limited athletic facilities as well.

U.S. Appeals Court Judge Diana Murphy of Minneapolis said she didn't list a value for membership in the Minneapolis Club because "it does not have a reasonably ascertainable value . . . an honorary member is not able to hold office, vote in elections or participate in the committee work of the club."

Why didn't Murphy explain her view on the form as she had in the past? "The new computer program distributed [by the judicial branch] . . . does not provide for insertion of explanations but only numbers."

But many other judges continue to elaborate on their forms or attach detailed explanations of travel and gifts they accepted.

Murphy also didn't list the destinations of her trips to Washington, Kansas City, the Virgin Islands and Chicago, for bar association meetings or other events sponsored by nonprofit legal organizations. When asked by the Star Tribune, she disclosed them promptly.

Under federal law, judges could be subject to criminal and civil penalties for failing to file the required information. But judges rarely are reprimanded for violating disclosure requirements. Public interest advocate Ralph Nader said: "They don't take the rules seriously and they don't fear sanctions if they get sloppy."

What's more, Lubet said, "if judges don't obey the law, who's going to?" He and other ethicists suggest that judges should devote the same attention to details on the forms as they expect from litigants in complying with federal rules.

Indeed, an important function of the disclosure process is to focus the attention of judges on activities and financial dealings that may raise ethical concerns, said the 1993 report of a national commission that reviewed judicial discipline.

Even when the reports are filed properly, the judicial branch has made the information difficult to get. While they may be ordered by mail, they can be reviewed only in one Washington office and only between 1 p.m. and 3 p.m.

And judges are informed of the names of those who look at their forms. That notification could be intimidating to those who have the most compelling reasons to scrutinize a judge's ethics: lawyers and litigants who expect to appear before the judge.

Complaint and discipline

Federal law provides a mechanism for anyone to file an ethics complaint against a federal judge. And rules adopted by the judicial circuits say that there is to be a public record of the resolved complaints in Washington as well as in local courthouses.

But the records of hundreds of complaints were missing from the files in Washington until last month. In June, the Star Tribune reported that the Eighth Circuit, which includes Minnesota, had submitted only two files in 11 years even

though it had received up to 450 complaints against judges during that time.

On July 24, the Eighth Circuit's clerk of court, Michael Gans, submitted 107 complaints received since July 22, 1992. "Although we have been remiss in sending copies of orders in the past, we will keep your file up to date in the future," Gans said in a cover letter.

Even when the records are available, they reveal almost nothing that could allow anyone to evaluate the quality of the complaint process, the behavior of judges or the decision in a particular complaint.

For example, one complaint decided last year in the Fifth Circuit shows how little is revealed even in significant and complex cases. The allegations are summarized in one paragraph: "This complaint against a senior United States district judge complains of the judge's membership in three private clubs which have restrictive membership, and that the judge improperly practiced law and misused his office, stationery and secretary by his involvement in a domestic-relations case involving his daughter."

The only other paragraph gives a terse explanation for the dismissal of the complaint: "There is no showing that the private clubs have other than a social and nonbusiness purpose and history. . . . Further, although the judge's actions involving his daughter's domestic-relations action may have bordered on the imprudent, the undersigned recognizes that the judge is also a father and grandfather and sometimes the roles conflict."

Teaching

About one-fifth of the judges checked by the Star Tribune reported being reimbursed or receiving fees for teaching. On one end of the scale is Senior Judge Donald Lay of the Eighth Circuit, who reported a $58,000 two-year contract from the University of Minnesota. On the other end is Chief Judge Morey Sear of the Eastern District of Louisiana, who has taught at Tulane University for 20 years but accepts no compensation.

Legal ethicists interviewed by the Star Tribune have no complaints about judges earning income from teaching. In fact, they encourage it. But questions arise when the teaching fees are underwritten by parties that may have an interest in litigation or in cases where the teaching is really just a speech for which the sponsors pay honoraria.

Honoraria were banned for federal officials by the Federal Ethics Reform Act of 1989. For senior legislative and executive branch officials, that meant turning down speaking fees except for those earned from teaching multiple classes at an accredited academic institution. But a few judges, including Supreme Court Justice Antonin Scalia, still receive fees for giving a speech and answering questions from students in one day.

At Baylor University in 1992, Scalia addressed a symposium on church and state relations. He arrived at the university the night before the address, met briefly with law students the morning of the speech and collected a $2,000 "teaching fee" from the sponsor, Baylor's J.M. Dawson Institute for Church-State Studies.

Last year, Scalia accepted $20,500 in teaching fees. He declined to comment on his teaching.

Ethics experts disagreed about reporting speaking fees as "teaching fees." While some experts saw public speaking as a form of teaching, others wondered whether it was an end run around the law.

"It looks too convenient," said New York University Prof. Stephen Gillers. "Is this really teaching? When Congress banned honoraria but not teaching income, I doubt it expected that a single speech could qualify as teaching simply because it was delivered to law students."

The Star Tribune study also revealed that some justices and judges accepted reimbursement for attending events that are sponsored by groups with clear political points of view.

Justice Thomas reported accepting reimbursements for speaking engagements to private groups that generally had a conservative orientation: The Jesse Helms Center, the Acton Foundation and the New Coalition for Economic and Social Change. Thomas' close association with conservative causes has been controversial since he joined the court.

The Star Tribune found that some federal judges also were accepting speaking engagements exclusively from groups on one end of the ideological spectrum.

"Routinely going to conservative symposia as a speaker comprises the perception of a judge's independence," Gillers said. " . . . A judge perceived as liberal ought not to go to the ACLU routinely. And a judge perceived as conservative ought not to go routinely to economically or socially conservative organizations. It is especially important not to reinforce the public's perception of your judicial philosophy with a monolithic choice of symposia."

Closed systems

The influence of conservative and corporate foundations has alarmed some consumer advocates and public interest lawyers in Washington. One organization, the Alliance for Justice, claimed to have found a pattern of conservative groups and corporations trying to influence the judiciary by underwriting educational seminars and other events for judges.

Yet when the alliance, which represents dozens of public interest law firms, asked the judiciary to review its concern over ideological bias in teaching programs for federal judges, it received only a vague response, with no indication that action would be taken.

"The system doesn't invite or respond to public participation. We have been raising serious and legitimate questions. But our concerns have been ignored," said Nan Aron, the alliance's director.

That view was echoed by Mississippi lawyer Benjamin Toledano, who recently was notified that he had lost an appeal in an ethics complaint against a federal judge in New Orleans who accepted a $15,000 award from Minnesota-based West Publishing Co. while assigned to a case involving the company. After being told he has no other route of appeal, Toledano said he plans to work to improve safeguards against potential corruption in the judiciary.

"This is a secretive system where . . . a complainant can't even find out what the rules are or who the persons are who are going to consider the complaint," he said. "Members of the judiciary sit on judgment on themselves. That is an extraordinary situation. And it is very upsetting."

Last month, the Senate joined legal scholars and others who say the judiciary needs to tighten its ethics rules in order to bolster public confidence. The Senate overwhelmingly passed Sen. Byrd's resolution calling for tighter limits on the gifts judicial employees accept.

"No branch of government can ignore the challenge to look inward and re-evaluate its rules of conduct," Byrd said. "We must all accept the responsibility for addressing public perception by strengthening our internal rules in an effort to put very valid concerns about improper conduct to rest."

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