

## Q & A on Revised and Expanded Judicial Financial Disclosure Report

### General

*When did the new reporting requirement become effective?* January 1, 2002, for the calendar year January 1 through December 31, 2002, with the first annual report to be filed on or before April 15, 2003.

*What prompted this significant change in the financial reporting requirements for Kansas judges?* A number of factors contributed to the change. Federal judges in Kansas are required to file a detailed financial disclosure report, and questions from the media about that requirement initiated a dialogue within the State system. Certain State officers and employees are also required to file a detailed financial disclosure report with the Kansas Governmental Ethics Commission. Question was raised as to why judges were held to a less stringent standard.

*What process led to the development of the newly-promulgated financial disclosure form?* The Commission on Judicial Qualifications appointed a four-person subcommittee in August 1998 to review then-current financial disclosure requirements and to propose change if warranted. Two lay members, one judge, and one attorney served on that subcommittee which reported periodically to the full Commission. After more than a year of study and discussion, the Commission on Judicial Qualifications approved a draft for submission to the Supreme Court. Following a comment period by judges, the Commission again reviewed and amended the form. Final Commission approval occurred in January 2001.

*Did individual judges have input? If so, when?* Among the fourteen members of the Commission on Judicial Qualifications, six are judges and were involved in continuing discussions. One judge served on the subcommittee which drafted the proposal. After the proposal was submitted to the Supreme Court, Chief Justice McFarland solicited comment from the bench through an individual mailing to all judges in June 2000. In March 2001, a second request for comment was sent to chief judges, presidents of judicial organizations, and to all who had commented in 2000. Numerous revisions were made as a result of judicial comment.

*Is the Financial Disclosure Report form part of a Supreme Court Rule?* No, the form is embodied in an order approved by the Court and signed by Chief Justice McFarland. The authority for promulgation of the form can be found in the Code of Judicial Conduct, Canon 4H(7) (2008 Kan. Ct. R. Annot. 668).

*Must the report be typed or can it be handwritten?* The report must be typed for legibility, but it is available online at [www.kscourts.org](http://www.kscourts.org). Once completed online, the report can be printed, signed, and mailed.

*Can I use a prior report form?* The report should be completed on the current report form that has either been sent to you or is available online at [www.kscourts.org](http://www.kscourts.org). Only Judicial Qualifications report forms will be accepted for consistency in reporting. The current form is marked “CY 2008” on each page.

*What if, after the filing deadline, the judge discovers an error on a previously filed financial disclosure report?* The judge can file an amended report which will be substituted for the previously filed report.

*What if a judge’s spouse refuses to disclose information required on the financial disclosure report?* Because filing a financial disclosure report is an obligation under the judicial canons, the Commission will review any failure to disclose under appropriate canons. See, e.g., Canon 3E(2) (2008 Kan. Ct. R. Annot. 658) which provides “A judge shall keep informed about the judge’s personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge’s spouse and minor children residing in the judge’s household.” Each specific situation would be individually reviewed.

### **Kansas Open Records Act**

*How difficult will it be for a member of the general public to obtain a copy of a judge’s financial disclosure report?* Because Canon 4H(7) (2008 Kan. Ct. R. Annot. 668) identifies this report as a public document, a written request would be made to the Clerk of the Appellate Courts under the Kansas Open Records Act. K.S.A. 45-216, *et seq.* The requesting party would complete a one-page form which includes that person’s name and address. The request would then be honored within three business days under the Act.

*If an open records request is made from an inmate in an penal institution, what discretion, if any, does the Clerk of the Appellate Courts have in honoring the request?* The Open Records Act does not require any reason to be given for access to the information nor does it vest general discretion in the record holder to withhold information. K.S.A. 45-221(a)(30) provides: “Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose: . . . (30) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” Because, by definition, the judicial financial disclosure report requires disclosure of information of a personal nature, this exception would not be generally applicable. It might, however, be argued in specific circumstances. In any event, the Clerk of the Appellate Courts would notify any judge of a request for this information from an inmate in a penal institution prior to complying with the request.

*If an open records request is made from a newspaper reporter and it appears some publicity is likely to follow, will the judge(s) be notified?* Yes. The Open Records Act does not preclude such notification.

## Compensation

*If a judge has no reportable compensation but his or her spouse does, should the judge check “None” on the form and report the spouse’s compensation?* No. The judge should check “None” only if there is no reportable compensation for the judge or the judge’s spouse.

*What if a judge’s spouse objects to his or her annual income being reported on the form?* Specific dollar amounts are not required. If the spouse’s income exceeded \$3,000 from a single source during the reporting period, that payor would be noted, but the total amount of compensation would not be reported. No monetary amounts are reported anywhere on the form.

*What if a judge or a judge’s spouse owns a business and draws a salary?* These interests might be reported twice on the financial disclosure report, depending on values. If the salary exceeded the minimum required for reporting, the salary would be reported as compensation, and the business would be listed as the payor. If the value of the business itself exceeded \$5,000, the business would also be listed under “Ownership Interests.”

*Should the judge report fees from marriage ceremonies as compensation?* Although K.S.A. 20-360 refers to those fees as honoraria, they will continue to be reported as compensation.

*If a judge’s dependent child or step child has a part-time job from which that child earned more than \$500, must that compensation be reported?* No. Only the judge and the judge’s spouse are required to report compensation.

*If a judge serves on a board or commission by virtue of Supreme Court appointment and receives a per diem stipend and expense reimbursement rather than a salary, should that stipend be reported as compensation?* No. Judges are not required to report their judicial compensation or stipends received for service on boards or commissions as a result of appointment by the Supreme Court.

*If a judge serves on a corporate or community board or commission and receives a per diem stipend rather than a salary, should that stipend be reported as compensation?* Yes, if the compensation exceeds the monetary limits of \$500 from a single payor or \$3,000 from all payors during the reporting period. When the aggregate compensation exceeds \$3,000, all payors are to be listed regardless of the amount of compensation paid.

*Why does a spouse’s compensation which exceeds \$3,000 from a single source during the reporting period have to be reported, but the judge must report compensation in an amount in excess of \$500 from any single payor or in excess of \$3,000 from all payors during the reporting period?* Canon 4H(1) has been amended to make a distinction between the reporting requirements for a judge and for a judge’s spouse.

*Must one report dividends earned from stock?* If dividends are reinvested, they would become part of the stock ownership which has already been reported if the threshold monetary limits were met. If dividends are paid out and exceed the limits for compensation, they would be reported under “Compensation.”

*How are mineral interests to be reported?* Royalties would be reported under “Compensation” if the monetary threshold is met. The ownership interest would be reported separately if it exceeds \$5,000.

*Must a judge report a monetary award in a class action lawsuit when injury was not an issue?* No. This damage award is not encompassed within the definition of “compensation” in Canon 4H(1).

### **Fees and Commissions**

*How does a judge’s spouse report income when the spouse receives a base salary, enhanced by commissions beyond a specified base?* If the base salary exceeds \$3,000, it would be reported as compensation. If the commissions exceed \$3,000, reporting would also be required under “Fees and Commissions.” Note that the payor of the compensation would be the business which employs the spouse. The clients or customers listed under “Fees and Commissions” would be those businesses or combination of businesses paying the spouse’s employer.

*What if a judge’s spouse objects to the names of his or her individual clients or customers being listed on the financial disclosure report?* Individual names of clients or customers are not to be listed. List only the business from which payment was made.

*If a spouse is an attorney and shares in fees from business clients, must the names of those business clients be reported if the aggregate received exceeds \$3,000?* Yes. KRPC 1.6 provides in relevant part:

- (a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b).
- (b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:
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  - (2) to comply with requirements of law or orders of any tribunal....

### **Ownership Interests**

*Since certificates of deposit are not required to be disclosed, how does a judge handle the reporting of an individual retirement account which consists of a certificate of deposit?* In that instance, the certificate of deposit would be reported as the description of the retirement account.

*If a judge owns a primary residence and a vacation home, must the vacation home be reported?* If both are personal residences, they would not be reported. If the vacation home is also “held for rental,” it would be reported.

*If a judge owns a rental property which produces no income during the reporting period, must the ownership of that property be included?* The property is “held for rental” even though it may not have produced any income during that reporting period, and it should be included.

*Should the judge list the street address of rental property?* No. A general geographic location is sufficient to identify any interest in real estate.

*If a judge and/or spouse creates a trust which consists of otherwise non-reportable assets, must the existence of the trust be disclosed?* If the legal or equitable interest in the trust did not exceed \$5,000 during the reporting period, the trust would not be reported. If the legal or equitable interest exceeded \$5,000, the trust would be listed. The holdings of the trust would be reported only if the individual holdings exceeded \$5,000 and the individual had control over those assets.

*Must a judge report sales of grain and cattle which occur incident to a farming operation?* Sales of grain and cattle would not be reported unless a fee or commission arrangement were involved. Individual circumstances might then require reporting. Generally, disclosure of a “family farm” under “Ownership Interests” would be sufficient for reporting purposes.

*How does a judge report the ownership of ranch land?* The general geographic location is sufficient, that is, county and state. If more than one tract is owned in a county, identify as Parcel 1, 2, and 3.

*Must an ownership interest in property owned in another country or an interest in a foreign-based corporation be reported?* Yes, if the \$5,000 threshold is met. There are no geographic limitations on ownership interests.

*Must a spouse report 401(k) matching compensation paid by the spouse’s employer?* The retirement plan would be reported under “Ownership Interest” if the value exceeded \$5,000. The annual contributions, however, would not be reported as compensation.

*Must a spouse report ownership of a deferred compensation plan offered through the spouse’s employment?* Yes, if the ownership interest exceeds \$5,000.

*If a judge opens a Learning Quest Account, the 529 college savings plan offered by the state, must that Learning Quest account be reported?* Yes, it would be reported under “Ownership Interests” once the value exceeds \$5,000. Because the Learning Quest accounts are structured as a unit investment trust over which the account owner has no individual investment control, the individual holdings of the trust would not be listed on the financial disclosure report.

*If funds are traded by an independent money manager who has definitive strategies that are registered through the Association of Investment Management and Research, can investments be listed by account style similar to a mutual fund rather than listing every transaction over \$5,000?* No. If the investments exceed \$5,000, these funds would be listed individually because the trades occur in the owner's name rather than in the name of the fund, even though the investor does not approve the individual trades.

*When a judge owns multiple mutual funds within one company, e.g. The American Funds or Aetna, is it permissible to list only the company or must each fund be listed which is held within the company?* Listing the company is sufficient because the allocation of funds within that company reveals nothing more than the judge's individual investment strategies. If a conflict were suspected, additional inquiry could be made.

*If a judge is the sole owner of rental property but that property is held in a corporate name, must the corporate name and address be listed on the financial disclosure report form?* Yes. If a corporate structure exists, it must be reported.

### **Gifts, Bequests, or Favors**

*If a judge attends the National Judicial College at the expense of the judicial branch, should that educational expense be reported as a gift?* No. Continuing education program expenses paid by the judge's employer are specifically not reportable.

*If a judge attends a seminar at no cost or reduced cost and the remaining expenses are paid by a non-profit foundation, must the judge report the value as a gift?* Yes. If the value exceeds \$150, the seminar should be reported as a gift.

*If a judge attends a barbecue as a guest of the local bar association, must that event be reported as a gift?* No. The value of the gift would not exceed \$150.

*If a judge's dependent child or step child receives a scholarship from his or her college, must that scholarship be reported?* No. Scholarships received from an educational institution are specifically excluded from reporting.

*Must the use of frequent flier miles be reported?* No. Frequent flier miles are not a gift, but rather part of the legal consideration for past business transacted with the airline.

*Must one report a rebate from a credit card, e.g., the reduction in price of an automobile as a benefit from a General Motors credit card?* No. Again, this is not a gift, but rather part of the legal consideration for past use of the credit card. It is further a benefit accorded all users of the credit card.

*If the Kansas District Judges Association pays a judge's expenses for a trip and those expenses exceed \$150, must that payment be disclosed as a gift? Yes. The payment does not fall within any of the exclusions from reporting.*

*If the county pays a judge's expenses for a trip and those expenses exceed \$150, must that payment be disclosed as a gift? This is an instance in which caution suggests that disclosure would be appropriate. If the trip were for educational purposes, one might argue an exclusion, but the county is not strictly speaking the judge's employer. If the trip were for other than educational purposes, it would not even arguably qualify for exclusion.*

## **Positions**

*If a judge served on the board of directors of a corporation five years ago but is no longer on the board, must that position be reported? No. A judge reports only positions which were held during the reporting period or at the time of filing the report.*

*If a judge served on the board of a non-profit corporation during the reporting period, must that position be reported? Yes. Both profit and non-profit positions are to be reported.*

*If a judge served on the board of a non-profit corporation during the reporting period and received compensation for that service which exceeded \$500, must the judge report that affiliation twice on the financial disclosure report? Yes. The judge would report under both "Compensation" and "Positions."*

*Would a judge report his or her position as trustee of the judge's own trust? No. That is not the type of position contemplated by this section.*

*If the judge's spouse served on the board of a non-profit corporation during the reporting period, must that position be reported? No. Only the judge is required to report positions under Section V.*

*Must the judge's position on a church board be reported? Yes. The reporting requirement for the judge personally is broadly stated in Canon 4H(5) to include an "institution or entity" in which the judge holds a position as officer or director.*

*Must the judge's position on the board of the Knights of Columbus be disclosed? Yes. Again, the reporting requirement for the judge personally is broadly stated.*

## **Liabilities**

*If a judge has a real estate mortgage on a personal residence, should that mortgage be reported?* No. A mortgage on a personal residence is not reportable.

*If the balance on a judge's VISA account exceeded \$10,000 at one point during the reporting period but did not exceed \$10,000 on December 31 of the reporting period, does the judge need to report that liability?* No. The balance on revolving charge accounts is measured only at the close of the reporting period, December 31.

*Must a judge report short terms loans used to finance business transactions when a number of such loans occur during the year?* The duration of the loan is not relevant to the reporting requirement. Liabilities to any creditor which exceeded \$10,000 at any time during the reporting period must be reported unless a Canon 4H(6) exception is applicable.

CY 2008