Judges' Financial Disclosures Missing In Big Business Courts

By Cara Bayles · Listen to article

Law360 (November 29, 2023, 4:56 PM EST) -- By mid-November, a public database should have cataloged the 2022 financial disclosure reports for the country's federal judges, offering a glimpse at the gifts jurists have received, properties they've bought or sold, and stocks they've traded.

But more than half of last year's reports for district and circuit judges were still missing two weeks ago, in violation of a recent federal law meant to help litigants identify when a judge has a conflict of interest.

As of mid-November, 13% of the 2021 annual reports, which were due to be posted over a year ago, were still unavailable online, and 51% of the 2022 annual reports were missing, according to a Law360 Pulse review of more than 1,300 judges' disclosure statements.

More reports have been added since the final deadline for posting them online, according to information provided by the Administrative Office of the U.S. Courts in response to questions from Law360 Pulse. It estimates that 7% of 2021 reports and 42% of 2022 reports were missing as of Monday, and Its analysis included bankruptcy and magistrate judges.

Some of the courts with the greatest number of missing reports are venues that draw major commercial cases by consumers or between companies, where conflicts due to a judge's stock ownership could be particularly relevant.

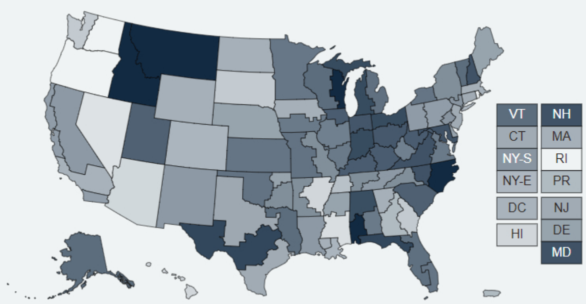
For example, fewer than half of last year's reports were available online for judges who were eligible to file in 2022 in the Northern District of California, which is home to Silicon Valley, and was dubbed the "food court" for the frequency of food false advertising suits filed there. A mere 10% of the Ninth Circuit's 50-member bench had its reports up.

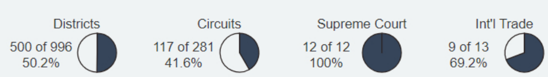
Missing Reports Are All Over the Map

About half of judges' 2022 financial disclosure reports were missing from an online database by mid-November. But reporting rates varied. For example, while all Supreme Court Justices had their reports up before the final deadline to post them, the reports of most Ninth Circuit judges were unavailable.

District courts / Circuit courts

0% 100%
of reports posted





Note: Judges who had jurisdiction over several districts and those who ascended to appellate courts during the 2022 calendar year were counted in all the relevant courts for the purposes of this graphic. Districts and circuits where this applied are noted in the roll-over boxes.

Source: Administrative Office for the U.S. Courts and the Federal Judicial Center

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The database offers annual 2022 reports of only nine of the 25 district judges in New Jersey, a hub for pharmaceutical litigation, and three of the five district judges in Delaware, a frequent venue for corporate lawsuits because the state's business-friendly tax code draws companies to incorporate there.

All the judges in that district have filed, according to Chief U.S. District Judge Colm Connolly, whose own 2021 and 2022 reports are not available on the database, though he says he filed on time. He was unconcerned by the missing reports.

"The conflict rules would apply regardless of whether or not the disclosure forms are public," he said. "My understanding is that the disclosures will be forthcoming, and I would expect that to happen. So given that, right now, I don't have concerns."

The law that created the database also added a requirement that judges fill out so-called periodic transaction reports for large securities purchases or sales within 45 days of the transaction. These reports are supposed to be posted within 90 days of the filing deadline. But Law360 found several instances of these reports being uploaded to the database a year after they were filed, and of reports filed several months apart being uploaded online in batches.

Legal ethics experts say such delays defeat the whole purpose of the database.

"Litigants and the public generally have a right to know that judges are acting impartially in their decision-making, especially if you're a litigant and the decision is going to directly affect you," said Danielle Caputo, legal counsel for ethics at the Campaign Legal Center, a campaign finance watchdog group. "You want to be sure that they are not influenced in any way by the judges' own financial interests."

The low numbers cast a poor light across the judiciary, said Gabe Roth, executive director of the judicial watchdog group Fix the Court.

"It looks bad for the entire branch when these numbers are not closer to 100%," he said. "There's no good reason for [the judiciary] to hide things. ... But I feel like that's their default: obfuscation and obstruction. And that just shouldn't fly in the 21st century."

Rep. Deborah Ross, D-N.C., who sponsored the database in the House, said that while implementing a law of this scale took time, she was disappointed in the judiciary's pace.

"It is concerning that it has been slow to get to full compliance," she told Law360. "We have been asking a lot of questions, prodding [the Administrative Office] to move along."

The Administrative Office of the U.S. Courts has scrambled to catch up with a sudden glut of additional work created by the law. Since its passage, the judiciary has repeatedly and successfully asked for more money to build up its staff. It insists that the problem remains one of resources.

"The delay in posting judges' reports to the internet database is entirely due to delays in the review and certification of those reports and in processing them for release to the database," an Administrative Office spokesperson said in an email.

'Reasonable Speed'

The Courthouse Ethics and Transparency Act, which required the judiciary to create a database where it would post financial disclosures by specific deadlines, enjoyed bipartisan and bicameral support. It was signed into law in May 2022.

It was inspired by a Wall Street Journal investigation finding that 131 federal judges had presided over cases from 2010 to 2018 in which they had a conflict of interest because the judges or their family members held stock in companies that were parties in the litigation. Some judges told the Journal that they didn't know which stocks they owned, or that they weren't aware that owning stock in a litigant flouted a 1974 law that barred judges from presiding over cases in which they had "a legal or equitable interest, however small."

By posting judges' financial disclosure reports online, lawmakers hoped to make it easier for litigants to check whether their judges had a **conflict of interest.**

"This will allow them to ask judges to recuse themselves," Ross told Law360. "It will also give them the lay of the land. Under the former regime, it was very, very difficult to get that information."

Mike Lissner, executive director of the Free Law Project, knows this firsthand.

For years, the judiciary provided financial disclosure reports to the public only after a paper form was submitted, and the requester paid 20 cents per page. Then, in 2017, the Judicial Conference of the United States decided to allow requesters to email their forms, and offered to send reports electronically for free.

When that change was implemented, Lissner's group requested all disclosures for federal judges going back six years. His request was made in October 2017. The judiciary responded eight months later, with the disclosures for 2011. It took years for his request to be fulfilled, according to letters from the Administrative Office that Lissner shared with Law360.

"They were failing to do it at a reasonable speed before," he said, "and they continue to do it at an unreasonably slow speed."

The new process "created a significant increase in the workload," according to the Administrative Office spokesperson, who said the new periodic transaction reports and the three-month deadline to get 4,000 annual reports up on the database added significant strain.

Before the 2022 law, judiciary staff reviewed each report, preparing a packet with recommendations for a member of the Judicial Conference's Committee on Financial Disclosure, a group of federal judges appointed by the chief justice. That reviewing judge either certified the report or requested additional information when necessary.

Chief U.S. District Judge Beth Phillips of the Western District of Missouri and U.S. District Judge David Bunning of the Eastern District of Kentucky, the current and former chairs of the Committee on Financial Disclosure, declined to comment on the process.

Jeremy Fogel, executive director of the Berkeley Judicial Institute and a former Northern District of California judge, sat on the committee for seven years. He said he was responsible for reviewing about 150 reports for the filers in the circuit he was assigned to review.

"Depending on how complicated the staff recommendations were, and how deeply I wanted to look at various things, it could take me some time to work through all of those. I certainly didn't do them all in a day. It took time," he said.

But he added that he thought it was possible to complete the review process for the federal judiciary within the 90-day timeline created by the new law.

"The practicalities are: Do you have enough staff? How complex are the reports and how quickly does the human review process take?" he said.

The reviews are extremely detailed. Judiciary staffers compare prior years' reports to check for discrepancies, and will require a report to be amended so a box on the form says "none" instead of being left blank. Fogel said he was once responsible for reviewing the report of a judge who was married to a day trader, and the disclosure report came with an appendix listing every trade.

Judges know this, and the process for filing reports is painstaking, even when there isn't much to report.

Fogel said his reports were fairly straightforward — he didn't own any individual stocks — and yet filling out the forms was like "doing your taxes."

"It was something that almost every judge I ever interacted with kind of dreaded doing, because, for most people, it's quite tedious," he said.

Judge Connolly, of the District of Delaware, said filling out the forms was a chore.

"The forms are very cumbersome, especially for someone like myself who has children and college funds," he said. "It's certainly not an experience I enjoy. I typically spend about three full days diving through all the various forms to make sure that I am accurately summarizing my finances. But I also think it's important that as public figures we make these disclosures so that the people have confidence in the integrity of the judiciary."

Under the old system, if someone requested a judge's report, the judge would be notified and could seek redactions for security reasons. Those would be reviewed by the Committee on Financial Disclosure and the U.S. Marshals Service to assess threats before the reports were revised and released.

Judges always had this review process open to them, according to Fogel, but are more likely to take advantage of it now before reports go up on the database, where anyone can view them.

Lissner, of the Free Law Project, called the security reviews "overly slow and complicated."

"If you had to do that with one person, you could get that done, but multiply that times thousands of judges, and, yeah, it's going to take you years to do this process and your backlog is going to grow instead of shrink," he said.

'Chicken and Egg'

The Administrative Office met the first deadline set out by the Courthouse Ethics and Transparency Act — one requiring that the database be created in November 2022. It launched the new searchable site on time last year, but it has struggled to keep up with the law's other timetables.

Even the 2022 reports of judges who received filing extensions should have been posted online by Nov. 13, according to the language of the law and the judiciary's regulations. Annual filings are due by May 15 of the following year and must be posted online within 90 days. The longest extension judges are granted is 90 days.

But more than 650 of the 2022 disclosures were still missing as of that date, as were nearly 170 of the 2021 disclosures.

Though magistrate and bankruptcy judges are also required to file, Law360's analysis focused on district and circuit court judges, who are compiled on a list maintained by the Federal Judicial Center, the research agency for the federal courts, making it possible to determine whose reports are missing. Judges were not counted in Law360's analysis unless they were required by regulation to file that year — inactive senior judges and judges who worked less than 60 days in a calendar year were not counted, nor were judges who died before the due date for filing reports.

Among the missing judges are big names. Many of those mentioned as having conflicts in the Wall Street Journal story still don't have their 2022 reports up, including Judge Janis L. Sammartino of the Southern District of California, Southern District of New York Judge Edgardo Ramos, and District of Colorado Judge Lewis Babcock. There is also no 2022 report up for Chief Judge J. Rodney Gilstrap of the Eastern District of Texas, who was noted in the Wall Street Journal's reporting for presiding over 138 lawsuits in which he had a conflict of interest.

A spokesperson for the Southern District of California said Judge Sammartino filed her report in July 2023 after being granted an extension, and Judge Gilstrap's judicial assistant also said he filed on time. Those judges declined to comment further. Judge Ramos did not respond to Law360's requests for comment, and Judge Babcock declined to comment.

Fifty-four courts were missing 2022 reports for more than half of their bench as of Nov. 13. Those included the Eastern and Southern Districts of New York, and 10 circuit courts.

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But it is likely that these numbers have improved since mid-November.

"We continuously add judges' reports to the database as they are ready for release," the Administrative Office spokesperson said.

The judiciary added more than 500 reports to the database between September, when Law360 began its research, and mid-November. The number of 2022 reports on the database has nearly doubled since mid-October, when approximately 26% of the 2022 reports and 82% of the 2021 reports were up. According to metadata on the reports, they appear to be posted weekly in large batches.

Most of those reports appear to have been filed by judges on time. That would suggest that the Administrative Office is responsible for the reports being posted beyond the Aug. 14 deadline prescribed by law. But about a quarter of the late-posted 2022 annual reports were filed by judges after the May 15 deadline, according to the "date of report" box on the forms themselves.

"We don't know yet whether this is the judges not complying or it is simply a staffing problem, which is what AO tells us," Rep. Ross said.

She added that she had no cause to doubt the judiciary's insistence that the problem was a lack of resources, adding, "The only reason why I can't be sure is, until it gets uploaded, you don't know who has it done. It's really a chicken-and-egg situation."

Most of the late reports were filed within the 90-day extension window, except for the 2022 reports of Southern District of Ohio Judge James Graham and the 2021 reports of U.S. District Judge William Martinez of Colorado and Tenth Circuit Judge Veronica Rossman, whose reports were filed in late August or mid-September. Those judges did not respond to requests for comment.

Those who file late are subject to a $200 fee. Judges who fail to file their reports may also be subject to sanctions, according to judiciary regulations.

The Administrative Office declined to answer Law360's questions about how many judges were granted filing extensions, and how many had been subject to late fees or other sanctions.

"Judges not filing is not the cause of the delay," said the spokesperson, who added that late filings account for less than 1.5% of all filings "and do not meaningfully contribute to the lag time."

The requirement that judges file periodic transaction reports within 45 days of a large securities purchase or sale also seems to trip up the Administrative Office. The office is required to post those reports within four and a half months of such transactions. But Law360 found nearly 50 instances of reports being posted online more than nine months after the transaction.

These periodic transaction reports also appear to be uploaded onto the database in batches.

For example, Judge Naomi Reice Buchwald, of the Southern District of New York, filed nine reports between October 2022 and April 2023. The first of those should have been posted by February, the last by September. But all of them were posted on the same day in October. Eleven periodic transaction reports filed by Second Circuit Judge Pierre Leval, which were filed in a 10-month span from August 2022 through June 2023, were also all uploaded to the database in October.

Perhaps the most striking example is that of Judge Charles Simpson of the Western District of Kentucky. From November 2022 to March 2023, he filed 19 periodic transaction reports. All of them were uploaded to the database on Oct. 30.

These delays defeat the purpose of such reports, which are meant to give the public a timely picture of a judge's investment portfolio, Caputo said.

"You want it to be as current as possible," Caputo said. "To not have that, when it's law now that that must be published, is concerning. It definitely takes away people's rights to see what these judges are up to."

'Just One Piece of It'

The Administrative Office says that the delay in posting reports is fueled by a lack of resources, and that it is diligently working on the problem.

The 2022 law "created a significant increase in the workload for processing financial disclosure reports and periodic transaction reports," the spokesperson said. "In anticipation of that, the AO requested and received, in December 2022, supplemental funding to significantly increase the existing financial disclosure staff. Since then, the AO has been steadily adding and training the personnel it needs."

The Judiciary received $410,000 in appropriations for new positions in the 2023 fiscal year, and its 2024 budget request includes five more full-time employees and $297,000 "to support the annualization of 10 financial disclosure Courthouse Ethics and Transparency Act positions."

The funding the Administrative Office has received allowed it to staff nine new positions, eight of which have been filled, according to a spokesperson for Ross' office, but there are several vacancies in preexisting staff positions.

Ross said staffing shortages were a common complaint among federal agencies, noting the wait times for veterans to receive their military records and processing delays at the Internal Revenue Service.

Service.

"It's one thing to pass a law; it's another thing to implement a law," she said.

"I understand that it's going to take them a little while to be at 100%, and so we want to give them a little space for that," Ross added. "But I also want AO to know that we are monitoring this. We are obviously sending them questions, and we want full compliance in short order."

A spokesperson for Sen. John Cornyn, R-Texas, who sponsored the Senate version of the bill, told Law360 in an email that the senator "is pushing for the Administrative Office of the United States Courts to comply with the law."

While deterrents exist for judges who don't file, there is no consequence for the judiciary if it doesn't post the reports on time.

Ross said lawmakers had considered adding more teeth to the legislation, but ultimately decided on a version that covered more judges, because several key lawmakers — Sen. Chris Coons, D-Del., and Rep. Darrell Issa, R-Calif. — were committed to drumming up appropriations, which were considered the biggest stumbling block to compliance. Neither Coons nor Issa responded to requests for comment.

"If you don't have staff, you're not going to be able to comply," Ross said, "and if you don't have the funding, it's going to be hard to comply."

Others were more skeptical.

Roth, of Fix the Court, said it shouldn't be hard for the judiciary to hire people to do the review work required, pointing to the Administrative Office's large discretionary budget last fiscal year.

"These excuses just don't hold water," he said. "I know that the judiciary has requested more money for staff to do this work, but ... I don't understand why the Administrative Office can't take some of the $100-plus million it gets from taxpayers and hire a couple folks without asking for additional money. Move some money around. Anytime that there's a threat of a government shutdown, the judiciary is always like, 'We're good.'"

Some lawmakers, like Rep. Pramila Jayapal, D-Wash, say the database puts too much emphasis on transparency rather than on the conflicts themselves.

She has sponsored a bill that would bar judges from owning individual stocks, which she called "critically important, because that personal financial interest is often where we see conflicts of interest."

She says she was not a sponsor of the bill creating the database, because "it just didn't go far enough," and she hopes that the failures of the database, as well as the ongoing conflict-of-interest scandals involving Supreme Court justices, will prompt more support for her bill.

"Obviously, transparency is important. We want there to be enforcement. We want there to be oversight. And we think there are other elements as well that are critical," she told Law360. "Disclosure is just one piece of it, and even that has to be policed in order to make sure that people are doing what they're supposed to be doing."

Fogel, the former Northern District of California judge, called the law "good policy." When he became a judge, he said, he got rid of any individual stocks he owned because he didn't want to have to recuse himself due to a conflict. He worried that even if he never presided over a case involving a company he'd invested in, if he owned its competitor, it could give the appearance of impropriety.

Fogel expects that some judges will resist Jayapal's bill, in part because "Article III judges don't like being told what to do." But they could still invest in mutual funds, which mask the individual stocks an investor owns, he said.

"Think it's a best practice," he said, "because that way you don't ever have to worry about, 'Do I own something that's going to cause me to recuse from a case?'"

--Additional reporting by Emily Sawicki. Editing by Karin Roberts and Alex Hubbard. Graphics by Ben Jay.

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