



THE COURTHOUSE ETHICS AND TRANSPARENCY ACT: NEW OBLIGATIONS FOR FEDERAL JUDGES

BY ALBERT DIAZ & STEVEN J. ALAGNA

The debate over an ethics code for Supreme Court justices has made headlines recently. But the justices — along with the rest of the federal judiciary — have long been subject to financial-disclosure obligations. Those obligations were strengthened and expanded by the recently enacted Courthouse Ethics and Transparency Act (CETA or the Act).¹ The Act established new, periodic financial-disclosure obligations for federal judges and ordered the creation of a national online database to facilitate easy access to judges' disclosures.

What Are the Act's Origins?

The judicial-disqualification statute has long required judges to recuse when-

ever they (individually or as a fiduciary), their spouse, or their minor child residing in the same household has a "financial interest" — no matter the size — in a party appearing before the judge.²

But a 2021 investigation by *The Wall Street Journal* found that, since 2010, more than 130 federal judges failed to recuse from 685 matters involving parties in which the judges held a financial interest. The *Journal* reported that some judges believed they did not have to recuse if their financial interest was small or involved a stock held in an account run by a money manager, or if they played only a nominal role in the case.³ But the statute does not allow for such exceptions.

The *Journal* article spurred Congress to pass the Courthouse Ethics and

Transparency Act. Legislators supporting the Act invoked the *Journal's* findings in a House Report and on the floor.⁴

Chief Justice John Roberts also cited the *Journal* article when calling for "more rigorous" ethics training.⁵ While there may be "isolated violations" involving "unintentional oversights," he said it's "a more serious problem" for judges with "multiple violations, or professed ignorance of the ethics rule" requiring recusal based on a financial interest.⁶

What Does the Act Do?

President Biden signed CETA into law in May 2022. CETA amends the Ethics in Government Act of 1978, which already required judges to submit

annual financial-disclosure reports, in two key ways. First, CETA requires judges to submit, in addition to annual disclosures, a new kind of report — Periodic Transaction Reports (PTRs) — for a subset of qualifying transactions that are already reportable annually. Specifically, there are certain securities transactions that must be reported within 30 or 45 days.⁷ Second, the Act mandates the creation of a publicly available online database to house judges' financial-disclosure reports (including the newly required PTRs).

Judges must file periodic transaction reports. Under CETA's older relative, the Ethics in Government Act, legislators and certain executive-branch officials already had to submit PTRs, but judges did not. CETA adds each "judicial officer," "bankruptcy judge," and "United States magistrate judge" to the list of officials who now must submit PTRs.⁸

PTRs are required for any transaction in "stocks, bonds, commodities futures, and other forms of securities" that "exceeds \$1,000."⁹ The Act excepts certain transactions from periodic reporting, such as those involving publicly traded mutual funds, exchange traded funds, or real estate investment trusts registered with the Securities and Exchange Commission.¹⁰ But those transactions still must be disclosed annually (or by new or retiring judges).

And a PTR isn't required if the amount of the transaction is \$1,000 or less, or if it is "solely by and between the reporting individual, his spouse, or dependent children."¹¹ But a PTR is required for qualifying transactions in assets held by the judge's spouse or dependent child — even if the judge doesn't own the asset.¹²

Since August 2022,¹³ judges must submit a PTR within 30 days of learn-

WHAT FEDERAL JUDGES NEED TO KNOW

- Judges must file periodic transaction reports.
- Reports are available on an online database.
- Annual reporting is still required.
- Judges may still redact certain information in their annual reports — and in their PTRs, too.
- Judges must still recuse when they have a financial interest — even if it is not reportable.

ing about a qualifying transaction, or within 45 days of the transaction — whichever comes first.¹⁴ Late submission could result in a \$200 late-filing fee.¹⁵

Reports are available on an online database. Before CETA, the Ethics in Government Act already required judges to submit annual financial-disclosure reports to the Administrative Office (AO) of the U.S. Courts. But those reports weren't automatically available to the public; rather, a requester would first have to contact the AO, which would in turn notify the judge of the request and the requester's identity. The judge could then propose redactions of their report to the Judiciary Conference's Committee on Financial Disclosure, which would approve or reject them before delivering the report to the requester.

To promote transparency and accountability in the judiciary, CETA displaced this process by ordering the creation of an online database where judges' reports (including the new PTRs) are readily available to the public.¹⁶

The database launched in November 2022 and is available at <https://pub.jefs.uscourts.gov>.

To access the database, users must enter their name, occupation, and mailing address and complete a "Requesting on Behalf of" field — and certify upon penalty of perjury that the information is correct. The database is searchable by name or keyword; users can also browse by year, report type (annual, PTRs, and reports for new or retiring judges), court, and type of judge.

A word of caution about redactions: Judges should note the implications of reports being freely available on the database. Whereas before judges could object to a request and work with the Committee on Financial Disclosure to propose any redactions before the report would issue, judges now must seek to make any necessary redactions *before* filing.

The Ethics in Government Act provides that reports can be redacted "to the extent necessary to protect" the filer or the filer's family member, "for as long as the danger to such individual exists."¹⁷ And reports won't be uploaded to the database until redaction requests are resolved with the committee.

What Doesn't the Act Do?

CETA adds to — but does not displace — judges' obligations under the Ethics in Government Act (requiring annual financial-disclosure reporting) and the judicial-disqualification statute (requiring recusal if the judge has any disqualifying financial interest, no matter the size).

Annual reporting is still required. CETA leaves in place judges' annual-reporting obligations, including the requirement to disclose on the annual report "any single purchase, ▶

sale or exchange during the reporting period that exceeds \$1,000.”¹⁸ The annual report requires disclosure of all such transactions in “[e]ach asset held,” including “individual stocks, mutual funds, money market funds, bonds, and cash-equivalent accounts.”¹⁹ The Act does not change any of this.

But as explained above, the Act does require additional, contemporaneous reports, called PTRs, for a subset of qualifying transactions that are already reportable annually. While the annual report and the new PTRs share a \$1,000 materiality threshold, PTRs are just for transactions in “stocks, bonds, commodities futures, and other securities.”²⁰ So material transactions in mutual funds, for example, are reportable on annual reports but not on PTRs.²¹

Judges may still redact certain information in their annual reports — and in their PTRs, too. As noted above, the public availability of reports on the database means that judges must now propose any redactions at the time of filing, rather than waiting for a report to be requested. But the Act does not change the criteria (described above) governing what kind of information can be redacted.

Indeed, the Act provides that “[a]ny report made available on the database,” which includes both annual reports and PTRs, “shall not contain any information” that has been properly redacted under these criteria.²²

Judges must still recuse when they have a financial interest — even if it is not reportable. Importantly, CETA, like the Ethics in Government Act before it, does not alter a judge’s statutory recusal obligations. A judge must recuse if the judge, the judge’s spouse, or the judge’s minor child residing in

the same household “has a financial interest” in a party before the judge, or in the case’s “subject matter.”²³ And a “financial interest” includes “ownership of a legal or equitable interest, *however small.*”²⁴ So, unlike a judge’s reporting obligation, which might not kick in before an asset or a transaction’s value exceeds \$1,000,²⁵ even the smallest financial interest requires a judge’s recusal.

POP QUIZ!

To test your understanding of CETA’s obligations, try your hand at these hypothetical examples.

QUESTIONS

1. You have a brokerage account with various stock holdings. You have learned that, over the course of the past week, your broker (who has trading discretion) bought and sold a particular stock in your account, in a series of transactions. No single transaction exceeded \$1,000. But at the end of the week, you ended up with more than \$1,000 worth of that stock. Must you report the transactions on one or more PTRs?
2. Your husband recently sold a mutual-fund position for \$2,000, deposited \$3,000 in a bank account you share, and reinvested \$4,000 in dividends from a stock he solely owns. Which transactions must you report on a PTR?
3. In a single transaction, you have invested \$1,500 into the Thrift Savings Plan (a retirement savings and investment plan for federal employees). Is that reportable on a PTR?
4. On January 1, your broker (who has trading discretion) sold shares of a single stock for \$2,000. You found out about the transaction on February 1. When is your PTR due?
5. You are preparing to submit a PTR for a material transaction in a bond issued by a corporation that has come into public disrepute. The name of the bond discloses the unpopular corporation. You would like to redact the bond’s name on the PTR and on your annual report. May you?
6. Your 10-year-old daughter owns \$50 worth of a single stock, which she was given as a birthday gift. Is the transaction or the asset reportable?

ANSWERS

1. No. The materiality threshold for each transaction is \$1,000, so if no transaction exceeds that amount, those transactions need not be reported in PTRs under CETA. The stock holding itself might be reportable in an annual report, but since each transaction was under \$1,000, none are reportable. Under different facts, if any single transaction exceeded \$1,000, that transaction would require a PTR.²⁶
2. None of them. While all three transactions exceed the \$1,000 materiality threshold and transactions involving judges’ spouses’ assets are reportable, these transactions do not trigger PTRs for other reasons. The mutual-fund sale and the bank deposit are not reportable on a PTR because they are not transactions in “stocks, bonds, commodities futures, and other securities.”²⁷ And the dividend reinvestment does not qualify as a “purchase, sale or exchange.”²⁸ But note: While the dividend reinvestment itself is not reportable, “the amount of the reinvested dividends should be listed as income in Column B” of the annual report.²⁹
3. No. Like the annual reports, investments in the Thrift Savings Plan are also exempt from periodic reporting.³⁰

4. February 15, which is 45 days after the transaction. CETA requires a PTR within 30 days of a judge learning of a transaction, or within 45 days of the transaction — whichever comes first.³¹ You will also need to disclose the transaction in your annual report.
5. Not likely. Redaction of information that must be reported is permissible only “to the extent necessary to protect” the filer or the filer’s family member.³² So you should be prepared to explain how disclosing the bond’s name would endanger you or your family. And note that you must request such redactions at the time of filing — for both the PTR and the annual report.
6. No, the \$50 holding isn’t reportable on a PTR or annual report because it falls short of the \$1,000 materiality threshold. But note that even this relatively small holding still presents a financial interest that triggers your recusal obligations.

It is critical that federal judges heed their new obligations under CETA — and their continuing obligations under the Ethics in Government Act and the judicial-disqualification statute. As Chief Justice Roberts pointed out, the *Journal’s* findings revealed only “a very small fraction” of noncompliance.³³ But it was enough to spur Congress to act. And the advent of CETA serves as a reminder that judges “are duty-bound to strive for 100 percent compliance because public trust is essential, not incidental” to the judiciary’s function.³⁴ Compliance begins with awareness, and we hope this article aids in that endeavor. Happy reporting.



ALBERT DIAZ is chief judge of the U.S. Court of Appeals for the Fourth Circuit. Before his appointment to the federal bench, he served as a North Carolina

Superior Court Judge and on North Carolina’s Business Court. He earned his law degree from New York University’s School of Law.



STEVEN J. ALAGNA is a lecturer in law at Washington University in St. Louis, where he directs the Appellate Clinic. He is a former law clerk to Chief Judge Diaz.

licly traded or has “widely diversified” assets, when the reporter doesn’t and can’t “exercise control over the financial interests held by the fund.” Pub. L. No. 112-105 § 14, 126 Stat. 300. When CETA was enacted, it extended to judges the same periodic-reporting requirements that already applied to legislators and executives — including this uncodified exception for mutual funds and the like. Pub. L. No. 117-125, § 2(A), 136 Stat. 1205 (2022) (codified at 5 U.S.C. § 13105(l)(11)–(13)). For a complete list of nonreportable transactions, see the Financial Disclosure Transactions and Recusal List Chart for Selected Assets prepared by the Committee on Financial Disclosure, which is available to federal judges on the JNet.

¹¹ 5 U.S.C. § 13104(a)(5).
¹² *Id.* § 13104(e)(1). If a judge’s spouse is “living separate and apart,” “with the intention of terminating the marriage or providing for permanent separation,” then a judge need not report that spouse’s transactions. *Id.* § 13104(e)(2).
¹³ While CETA was signed into law in May 2022, the PTR requirement did not kick in until August 2022.
¹⁴ 5 U.S.C. § 13105(l).
¹⁵ *Id.* § 13106(d).
¹⁶ *Id.* § 13107(c)(1).
¹⁷ *Id.* § 13107(b)(3)(B).
¹⁸ Committee on Financial Disclosure, *Filing Instructions for Judicial Officers and Employees* (rev. Feb. 2022), at 48 (providing instructions for annual reporting), available at <https://www.uscourts.gov/file/42970/download>.
¹⁹ *Id.* at 37.
²⁰ This tracks the language of 5 U.S.C. § 13104(a)(5)(B).
²¹ See Pub. L. No. 112-105, § 14, Apr. 4, 2012, 126 Stat. 300.
²² 5 U.S.C. § 13107(c)(3).
²³ 28 U.S.C. § 455(b)(4). The statute more specifically requires recusal when a judge “knows” of such a financial interest. *Id.* But the same statute requires judges to “make a reasonable effort” to stay informed about their own and their family’s financial interests. *Id.* § 455(c). And since such interests remain subject to annual reporting requirements — and now even more contemporaneous reporting for certain transactions — ignorance is now less excusable than ever.
²⁴ *Id.* § 455(d)(4) (emphasis added).
²⁵ An asset is reportable on the annual report if its “fair market value ... exceeds \$1,000” or if income from the asset during the calendar year “exceeds \$200.” 5 U.S.C. § 13104(a)(1)(B), (a)(3).
²⁶ *Id.* § 13104(a)(5).
²⁷ *Id.* § 13104(a)(5)(B).
²⁸ *Id.* § 13104(a)(5).
²⁹ *Filing Instructions*, *supra* note 18, at 44.
³⁰ See 5 U.S.C. § 13104(i)(1)(A).
³¹ *Id.* § 13105(l).
³² 5 U.S.C. § 13107(b)(3)(B).
³³ Roberts, *supra* note 5, at 3.
³⁴ *Id.*

¹ Pub. L. No. 117-125, 136 Stat. 1205 (2022) (subsequently replaced by Pub. L. No. 117-286, 136 Stat. 4360 (2022)) (codified as amended at 5 U.S.C. §§ 13105, 13107, 13109).
² See 28 U.S.C. § 455.
³ See, e.g., James V. Grimaldi, Coulter Jones & Joe Palazzolo, *131 Federal Judges Broke the Law by Hearing Cases Where They Had a Financial Interest*, WALL ST. J. (Sept. 28, 2021, 9:07 a.m.), https://www.wsj.com/articles/131-federal-judges-broke-the-law-by-hearing-cases-where-they-had-a-financial-interest-11632834421?mod=Searchresults_pos20&page=1.
⁴ See H.R. REP. NO. 117-199, at 3 (2022), available at <https://www.congress.gov/congressional-report/117th-congress/house-report/199/1>; 168 CONG. REC. H4522 (daily ed. Apr. 27, 2022) (statement of Rep. Jeffries).
⁵ John G. Roberts, Jr., *2021 Year-End Report on the Federal Judiciary*, 3-4 (Dec. 31, 2021), <https://www.supremecourt.gov/publicinfo/year-end/2021year-endreport.pdf>.
⁶ *Id.* at 3.
⁷ The 2012 STOCK Act required legislators and senior executive officials to submit Periodic Transaction Reports within 30 or 45 days of qualifying transactions. See Pub. L. No. 112-105 § 6(a), 126 Stat. 291 (2012) (codified as amended at 5 U.S.C. § 13105). But no such requirement existed for judges.
⁸ 5 U.S.C. § 13105(l)(11)–(13).
⁹ *Id.* §§ 13104(a)(5), 13105(l).
¹⁰ This exception tracks an uncodified section of the 2012 STOCK Act, which at the time applied only to legislators and senior executive officials. That section provides that periodic reporting isn’t required for transactions in “a widely held investment fund” (including “a mutual fund, regulated investment company, pension or deferred compensation plan”) that’s either pub-