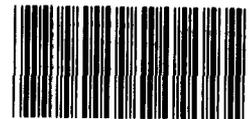


April 1993

# FINANCIAL DISCLOSURE

## Implementation of Statute Governing Judicial Branch Personnel



149022

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United States  
General Accounting Office  
Washington, D.C. 20548

Comptroller General  
of the United States

B-249134

April 27, 1993

The President of the Senate and the  
Speaker of the House of Representatives

This report complies with Section 108, Title I, of the Ethics in Government Act of 1978, as amended, which requires GAO to study regularly the implementation of the statutory provisions governing financial disclosure of executive, legislative, and judicial branch personnel. The report makes recommendations to the Chairman, Judicial Conference Committee on Financial Disclosure, to improve the administration of the statutory provisions governing judicial personnel.

We are sending copies of this report to the Chairmen, House and Senate Judiciary Committees; the Chief Justice of the United States; the Chairman, Judicial Conference Committee on Financial Disclosure; and the Director, Administrative Office of the United States Courts. We will also send copies of this report to the supervising ethics offices in the executive and legislative branches and to other interested parties. Copies will also be made available to others upon request.

This work was done under the direction of Bernard L. Ungar, Director for Quality Management, who may be reached on (202) 512-5862. Other major contributors are listed in appendix V.

Sincerely yours,

Charles A. Bowsher  
Comptroller General  
of the United States

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# Executive Summary

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## Purpose

As part of a trend toward uniform ethics rules governing all federal officials, the Ethics Reform Act of 1989 consolidated the statutory provisions governing the filing and review of public financial disclosure reports of certain high-level and other covered officials in the three branches of the federal government. This report focuses on the judicial branch's implementation of the statutory financial disclosure provisions and was prepared under the act's mandate for the Comptroller General to determine whether these provisions are being carried out effectively.

GAO sought to determine the adequacy of the judicial branch's procedures for implementing the statutory provisions related to the filing and review of financial disclosure reports in 1991 by judicial personnel. The 17 provisions GAO examined were applicable to financial disclosure reports filed after January 1991. GAO reviewed the processing of 114 reports as part of an internal control test.

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## Background

The statutory provisions governing the filing and review of financial disclosure reports that were previously applicable solely to the executive branch were extended in many instances to the judicial branch by the Ethics Reform Act of 1989. For example, the act requires compliance reviews of disclosure reports be completed within 60 days of filing and that a person be designated to sign the report when a positive assurance opinion can be given that the filer is in compliance with all applicable laws and regulations.

The Judicial Ethics Committee<sup>1</sup> is responsible for implementation of these provisions in the judicial branch. In 1991, the Committee consisted of 15 federal judges who were located in various district and appellate courts throughout the United States. The Chairman was the Chief Judge for the Eastern District of Michigan. The staff consisted of three full-time employees and two part-time managers, including the Committee counsel, all located in Washington, D.C. Generally, the staff was responsible for performing an initial review of reports filed in 1991 and then forwarding the reports to the 15 judges or the counsel for final review and certification. As a record of completion of final review, the final reviewer would initial a postcard that was transmitted to the Washington, D.C., staff office and maintained with the filer's disclosure report.

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<sup>1</sup>In September 1992, the Committee's name was changed to the Judicial Conference Committee on Financial Disclosure to more appropriately reflect the duties of the Committee.

As of June 1992, 2,239 judicial personnel filed public financial disclosure reports for calendar year 1991. Federal district and appellate court judges accounted for 46 percent of the filings, followed by bankruptcy and magistrate judges who accounted for 28 percent. Judicial employees paid at or above a rate of \$72,298 a year accounted for about 26 percent of the filings.

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## Results in Brief

The Committee's procedures for the filing and review of financial disclosure reports in 1991 by judicial personnel did not adequately comply with the governing statute or sound management practices in three areas. First, the implementing procedures did not ensure that all persons who were required to file a report were identified and timely notified and had filed reports covering the proper time period. Second, the procedures did not provide for the completion of disclosure report certifications within 60 days when no additional information was requested of filers. And thirdly, the procedures did not provide for persons who are designated to perform compliance reviews to sign the disclosure report when they could give a positive assurance opinion.

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## Principal Findings

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### Insufficient Controls Over Report Filings

Committee procedures were insufficient to ensure that all persons who were required to file public financial disclosure reports in 1991 were identified and timely notified and had filed required reports covering the proper period. For example, 7 of 16 initial and final reports in GAO's sample were filed several months after the due date because the Committee notified the individuals of the filing requirement either weeks after or shortly before the due date for their reports. No explicit time extensions or waivers of the late filing fee were granted to six of these filers, but no late fee was imposed because the Committee had not timely notified them of the filing requirement. GAO also found seven reports that were incomplete because they did not cover the correct reporting period for the type of report required to be filed. (See pp. 19 to 23.)

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### Untimely Report Reviews

The Committee did not sufficiently provide for timely initial or final reviews of 1991 reports. GAO could determine that only 18 reports (16 percent of 114 reports in GAO's sample) had been initially reviewed

within 60 days of filing. At least 88 reports (77 percent of GAO's sample) took longer than 60 days to complete the initial review, and 33 of those reports (29 percent) took more than 240 days to complete the initial review. The Committee had not set any time limits for completing final reviews and certifications. As of April 30, 1992, more than 75 percent of the sampled reports were awaiting final review and certification. Because of the insufficient available documentation, GAO was unable to determine the review times for seven reports. (See pp. 36 to 37.)

While the Committee Chairman and program managers recognized the need to improve review timeliness, they did not view any options GAO explored with them as desirable alternatives to the current review approach. Because the act requires the completion of disclosure report certifications within 60 days when no additional information is requested of filers, GAO believes the Committee should further consider ways to meet this requirement. If it is not viable to use personnel other than judges to complete the final review and certification, GAO believes consideration should be given to assigning more judges to perform these reviews. (See pp. 45 to 46.)

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**Lack of Reviewer Certification on the Disclosure Report Form**

Committee procedures did not sufficiently provide for the final reviewing official to (1) give a positive assurance opinion of the filer's compliance with applicable laws and regulations and (2) sign the report, as required by section 106 of the act. (See pp. 37 to 38.) The Committee's 1991 practice of signing a postcard, which was not part of the financial disclosure report form and did not include a certification statement, failed to comply with the statute. Moreover, GAO viewed the requirement for signing the report when a positive assurance opinion can be given as an important means to provide the public assurance that a reasonable effort was made to determine that the information disclosed in the reports complies with applicable laws and regulations. The Committee agreed and said that beginning in 1993 it would start to require a positive assurance opinion and signature on the report. (See pp. 46 to 47.)

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**Major Statutory and Administrative Differences Between the Executive and Judicial Branches**

In examining the judiciary's implementation of statutory financial disclosure during the 1991 filing and review cycle, GAO observed major differences in procedures and practices between the judicial and executive branches in performing the following six administrative functions: (1) processing of presidential nominee financial disclosure reports, (2) requiring certifications of internal government reviewers and public

filers on the reporting form, (3) performing reviews of the reports for compliance with applicable laws and regulations, (4) treating report corrections, (5) requiring confidential financial disclosure, and (6) issuing regulations on the late filing fee. GAO presents this information to provide additional insight into how the supervising ethics offices in the two branches operate. It has not yet done sufficient work to draw any conclusions on which branch had the stronger or weaker internal controls. (See app. II.)

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## Recommendations

To improve the Committee's compliance with and implementation of the statutory financial disclosure requirements governing judicial personnel, GAO recommends that the Chairman of the Judicial Conference Committee on Financial Disclosure

- place greater emphasis on ensuring that all persons who are required to file a report are identified and timely notified and file reports covering the proper period; and
- further consider ways to complete disclosure report review and certification within 60 days when no additional information is requested of filers.

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## Agency Comments

While the Committee has begun actions to implement GAO's recommendations, it will take some time to determine whether the actions taken and planned will effectively improve compliance with filing and report review requirements. Regarding filing compliance, the Committee said, among other things, that the administrators responsible for the identification of individuals required to file disclosure reports would be reminded at regular intervals of the need to timely inform the Committee of such individuals. And regarding report reviews, the Committee said that the Committee counsel has been instructed to review its report review procedures and available equipment to improve report review timeliness. However, the Committee also expressed the view that the better response would be a statutory amendment to double or triple the 60 days currently allowed.

The Committee's planned administrative improvements do not include addressing the role of the reviewing judges. GAO remains concerned that meeting the 60-day review requirement may not be practical as long as the Committee continues to have judges perform the final review and certification, a situation that the Committee's comments reaffirm should

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continue. However, the idea of people other than judges reviewing judges' reports should not be dismissed without considering the fact that none of the supervising ethics offices in the other branches require "peer review" of disclosure reports; each has designated staff attorneys or ethics officials perform the final reviews and certifications. With the proper guidance and experience or training, perhaps effective and timely reviews of judges' reports could be accomplished by persons other than judges.



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**Figure II.1: Certification by Reporting Individual on OGE's Form**

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**Abbreviations**

DAEO	Designated Agency Ethics Official
JEC	Judicial Ethics Committee
OGE	Office of Government Ethics

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# Introduction

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Before enactment of the Ethics Reform Act on November 30, 1989, public financial disclosure requirements for legislative, executive, and judicial personnel were contained in titles I, II, and III, respectively, of the Ethics in Government Act of 1978, as amended. The Ethics Reform Act, among other things, combined the financial disclosure requirements for all three branches in Title I of the Ethics in Government Act, as amended. Further legislative amendments in May 1990 made these disclosure requirements effective with financial disclosure reports filed after January 1, 1991. These requirements are codified at 5 U.S.C. Appendix 6, sections 101 through 111.

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## Structure of the Judiciary

Article III, section 1, of the U.S. Constitution provides that “(t)he judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may . . . establish.” Currently, the judicial branch consists primarily of the Supreme Court, lower courts, the Judicial Conference and the administrative support agencies that it oversees, and the Federal Judicial Center. The federal court system is divided into 94 judicial districts, which are, in turn, grouped into 12 geographic circuits, including the District of Columbia. The district courts are the federal trial courts in which the district judges of each court formulate local rules and orders and generally determine court activities.

Table 1.1 lists the 10 courts or court systems within the judicial branch that employ federal judges and the length of the judges’ appointments. Under the U.S. Constitution, the president nominates and, subject to confirmation by the Senate, appoints justices to the Supreme Court as well as judges to most lower federal courts. Supreme Court justices and judges on other courts established by Congress under Article III of the Constitution receive lifetime appointments. Courts that were created by Congress in which federal judges do not receive lifetime appointments are referred to as “legislative courts.” The president, however, does not nominate federal bankruptcy judges (who are appointed by the courts of appeals) or U.S. magistrate judges (who are appointed by the district courts), and these judges are not subject to Senate confirmation.

**Table 1.1: Courts or Court Systems Employing Federal Judges and Appointment Terms**

<b>Court or Court Systems</b>	<b>Length of Appointment</b>
<b>Article III courts</b>	
Supreme Court	Life
Courts of appeals	Life
District courts <sup>a</sup>	Life
Court of International Trade	Life
<b>Legislative courts</b>	
Claims Court	15 years
Tax Court	15 years
Court of Veterans Appeals	15 years
Court of Military Appeals	15 years
Superior Court of the District of Columbia	15 years
District of Columbia Court of Appeals	15 years

<sup>a</sup>Three of the 94 district courts are located in the territories of the Virgin Islands, Guam, and the Northern Mariana Islands. Judges are appointed to these courts for a 10-year term.

Source: Congressional Research Service report on President Bush's Judicial Nominations During the 101st and 102d Congresses (92-35 GOV, updated January 3, 1992).

The Judicial Conference of the United States is the policymaking body of the federal courts. It is composed of the chief justice of the U.S. Supreme Court, the chief judge of each judicial circuit, the chief judge of the Court of International Trade, and a district judge from each judicial circuit. The substantive work of the conference is performed by a network of about 25 committees.

The Administrative Office of the U.S. Courts, under the direction and supervision of the Judicial Conference, is responsible for certain nonjudicial, administrative business of the U.S. courts, including the probation and bankruptcy systems. Its principal functions consist of providing staff and services to the courts, conducting a continuous study of the rules of practice and procedures in the federal courts, and compiling and publishing workload statistics on the U.S. courts. It is also responsible for certain financial functions such as budget development and for disbursing of and accounting for money for operating the courts and the Federal Judicial Center.

The Federal Judicial Center, an independent judicial agency, works to improve judicial administration in U.S. courts by undertaking policy research, including proposing recommendations to the Judicial

Conference and federal agencies, developing computer systems, and conducting continuing education activities.

Other special courts and organizations that are part of the judiciary are the U.S. Tax Court, the U.S. Court of Military Appeals, the U.S. Court of Veterans Appeals, and the U.S. Sentencing Commission.

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## **Judicial Personnel Subject to Financial Disclosure**

As of June 30, 1991, about 25,000 personnel, including 1,847 judges and 23,153 judicial employees, were on the payroll of the federal judicial branch, according to the Administrative Office of the United States Courts and the Office of Personnel and Budget of the U.S. Supreme Court. Judicial employees include public defenders, law clerks, court administrators, probation officers, marshals, bailiffs, court reporters, and secretaries.

About 9 percent of all judicial personnel filed public financial disclosure reports for calendar year 1991. As of June 1992, the Judicial Ethics Committee (JEC) of the Judicial Conference had received 2,239 public filings for calendar year 1991. About 46 percent of the 1991 public filings were made by justices and judges (1,022), 28 percent by bankruptcy and magistrate judges (633), and 26 percent by judicial employees (584). The criteria for filing these reports are discussed in chapter 2.

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## **The Judicial Ethics Committee Is Responsible for Administering Act's Financial Disclosure Requirements**

Under the Ethics in Government Act of 1978, as amended, the Judicial Conference is the supervising ethics office for the judicial branch for purposes of administering the financial disclosure provisions of Title I. The Conference delegated its authority for receipt, review, and approval of financial disclosure reports and implementation of certain general administrative provisions to the JEC. In September 1992, the Committee's name was changed to the Judicial Conference Committee on Financial Disclosure to more appropriately reflect the duties of the Committee. Most of the activities we comment on in this report were performed by the JEC before this name change.

In 1991, the JEC consisted of 15 federal judges who are located in various district and appellate courts throughout the United States. The Chairman is the Chief Judge of the Eastern District of Michigan and is located in Detroit. The JEC staff consisted of three full-time employees and two part-time managers, including the JEC counsel, all located in Washington, D.C. Generally, the JEC staff was responsible for performing an initial

review of reports filed in 1991 and then forwarding the reports to 1 of the 15 judges or the JEC counsel for final review and certification. As a record of JEC completion of final review, the final reviewer would initial a postcard that was transmitted to the Washington, D.C., staff office and maintained with the filer's disclosure statement.

The JEC's implementation of the act's provisions related to the filing and review of public financial disclosure reports in 1991 is discussed in chapters 2 through 6. To help put judicial branch activities into perspective, major differences in the procedures and practices used by the judicial and executive branches are discussed in appendix II.

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## Objectives, Scope, and Methodology

Section 108 of the Ethics in Government Act, as amended, requires the Comptroller General to do a study by December 31, 1992, and regularly thereafter, to determine whether the financial disclosure provisions contained in Title I are being carried out effectively by the executive, legislative, and judicial branches. Our objective for this report was to determine the adequacy of the judicial branch's procedures for implementing Title I provisions governing the filing and review of public financial disclosure reports due in calendar year 1991.

To accomplish our review objective, we interviewed (1) members of the JEC and Committee staff who receive and review judicial personnel financial disclosure reports; (2) the counsel to the Committee on Codes of Conduct, which publishes the codes of conduct for judges and judicial employees and renders advisory opinions interpreting certain titles of the 1989 Ethics Reform Act; and (3) personnel officials in the Administrative Office of the U.S. Courts, Federal Judicial Center, and in the Tax, Military Appeals, and Veterans Appeals courts responsible for informing the JEC staff when judicial personnel meeting the filing criteria enter or leave office. We reviewed the codes of conduct for judges and judicial employees, internal policies and procedures adopted by the 15-member JEC during its semiannual meetings, and the filing form and instructions distributed annually to those required to file public reports. We also reviewed a recently developed Guide to the Judicial Ethics Committee Policies and Procedures that the JEC's counsel provided to us in late June 1992. We analyzed correspondence that the JEC sent as of early April 1992 to a total of 183 judicial officers and employees regarding their 1991 financial disclosure reports to determine the extent to which the JEC had notified them of any noncompliance with applicable laws and regulations. We also met with the JEC Chairman and key program

managers to get their views on our preliminary findings and explore options that might be available to make administrative improvements.

To test the internal controls for implementing the filing and review provisions, we reviewed a sample of 114 financial disclosure reports required to be filed by judicial personnel in calendar year 1991. Our review of these reports was aimed at (1) testing whether established procedures for the filing and review of the reports were being followed and (2) observing the JEC's actual practices in administering applicable statutory provisions. We did not attempt to "second guess" the judgments of the reviewers of the disclosure reports; nor did we or the JEC independently audit any disclosure reports. Disclosure report filers have the responsibility under the statute to report accurately. Appendix I describes our testing approach in detail and presents a more complete statement of our objectives, scope, and methodology.

Our methodology had certain other scope limitations, which are also discussed further in appendix I. First, we did not review the judiciary's implementation of every statutory provision related to the filing and review of financial disclosure reports in 1991. Our review focused on selected provisions of Title I that we viewed as most directly related to describing an annual filing and review cycle. Second, although this report describes certain differences in procedures and practices between the supervising ethics offices in the judicial and executive branches in reviewing and certifying disclosure reports due in 1991, we did not attempt to make a judgment on which procedures and practices resulted in the strongest or weakest internal controls. Such an assessment was outside the scope of this review. Third, we did not review the extent the judicial branch had implemented the substantive legal restrictions on a public filer's responsibility for either the disclosure or acceptance of gifts, outside earned income, honoraria, or other personal financial interest.

Several of our analyses describe the status of JEC implementation of statutory provisions at certain points in time. As discussed in chapter 2, we completed our analysis of the filing timeliness of a sample of disclosure reports in May 1992. As discussed in chapter 4, we completed our analysis of the JEC's timeliness in performing initial and final reviews of these disclosure reports as of April 30, 1992. Further, we completed in early April 1992 an analysis of JEC letters of inquiry to 183 judicial officers and employees, including 18 in our sample, regarding their 1991 reports.

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We obtained written comments from the Judicial Conference Committee on Financial Disclosure on a draft of this report. We also obtained written comments from the Office of Government Ethics (OGE) on appendix II of a draft of this report. These comments are reprinted in appendixes III and IV.

We did our work from October 1991 to August 1992 in Washington, D.C., in accordance with generally accepted government auditing standards.

# Report Filing Provisions

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There are five principal statutory provisions governing the filing of public financial disclosure reports in all three branches of the government. The provisions relate to

- filing reports when due,
- annotating actual receipt dates,
- limiting time extensions to 90 days,
- exempting persons from filing who are expected to work 60 days or less, and
- granting waivers to certain persons expected to work less than 130 days a year.

Implementing procedures for four of the five provisions appeared adequate. We noted, however, that although the act places the burden on the individual to file reports on time, the JEC had not established sufficient procedures to ensure that all persons who were required to file public financial disclosure reports in 1991 were identified and timely notified.

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## Statutory Filing Provisions

The Ethics in Government Act, as amended, places responsibility on the reporting individuals to file their financial disclosure reports and file them by a certain date. Section 101 requires individuals entering, leaving, and occupying positions or offices to file a financial disclosure report if they meet the filing criteria and are expected to perform or performed the duties of their positions or offices for more than 60 days in a calendar year. However, there is no specific requirement in the act for the supervising ethics offices to identify and timely notify all individuals who are required to file a financial disclosure report.

Within the judiciary, individuals who must file a financial disclosure report are judicial officers and judicial employees as defined in certain sections of the act. Section 109(10) defines judicial officers as the chief and associate justices of the Supreme Court, the judges of the United States appeals and district courts, and judges of any court created by an act of Congress. Judicial employees are defined in section 109(8) as any employees of the judicial branch, United States Sentencing Commission, and Tax, Claims, Veterans Appeals, and Military Appeals courts (1) who are not judicial officers and who are authorized to perform adjudicatory functions or (2) who are paid at a rate of basic pay equal to or greater than

the minimum rate of basic pay of 120 percent of the GS-15 pay rate, which was \$72,298 on January 14, 1991.<sup>1</sup>

Judicial officers and employees are required by section 103(h)(1)(B) to file their reports with the Judicial Conference, which has delegated responsibility to its JEC for receiving and reviewing these reports. Officers and employees required to file initial and final reports must do so within 30 days of assuming the position or leaving office, unless they fulfilled filing obligations in a prior government position or accepted employment in another position subject to the filing requirements. Individuals nominated by the president to be judicial officers must file within 5 days of transmittal of the nomination to the Senate for confirmation. Covered officers and employees who worked more than 60 days in a prior calendar year must file on or before May 15 each year.

The supervising ethics office may, under section 101(i), grant waivers of the reporting requirement for persons who have worked or are expected to work less than 130 days in a calendar year under certain conditions.

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## **Reports Generally Filed on Time and Date Stamped but Procedures for Identifying and Notifying Required Filers Insufficient**

JEC personnel said that they determined whether reports were filed when due by date stamping reports the day they were received in the office. Based on a sample of 114 reports required to be filed in calendar year 1991 by judicial officers and employees, we found that nearly all of the reports had been date stamped, and most of the reports were filed by the due date. As shown in table 2.1, 71 (62 percent) of the 114 officers and employees filed their reports when they were due, 35 (31 percent) filed within 30 days of the due date, 7 (6 percent) filed more than 30 days after the reports were due, and 1 (1 percent) had not been filed with the JEC at the time we completed this portion of our review in May 1992.

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<sup>1</sup>As a result of the Federal Employees Pay Comparability Act of 1990 (enacted November 5, 1990), the filing threshold pay rate increased from \$72,298 to \$73,972 starting May 4, 1991.

Table 2.1: Filing Timeliness in 1991 by Report Type

Report type	Total in sample	Filed by due date <sup>a</sup>	Filed within 30 days of due date	Filed more than 30 days after due date	Report not filed
Initial	20	9	6	4	1
Annual	90	62	28	0	0
Final	4	0	1	3	0
Total	114	71	35	7	1
Percent of total	100	62	31	6	1

<sup>a</sup>Due date represents the original or extended date for filing the report.

Source: GAO's analysis of a sample of judicial officers' and employees' 1991 financial disclosure reports.

The situation in which a report was not filed with the JEC involved a district judge nominated to a circuit judge position. The JEC had not taken any action to get the nominee's report and was not aware of the nonfiling until we brought it to the Committee staff's attention. Subsequently, the JEC obtained this nominee's report from the Department of Justice in July 1992. The JEC office is generally not aware of judicial nominees until their reports are received.

### Procedures for Identifying and Notifying Initial and Final Filers Did Not Ensure Reports Were Filed on Time

The act does not specifically require the JEC to identify and notify individuals of the filing requirements. Although the burden is on the reporting individual to file a timely report, sound management practices dictate that procedures be established for identifying and notifying individuals. Further, section 104(b) requires the Judicial Conference to refer to the attorney general the name of any individual who willfully fails to file a report; thus, the JEC needs to establish procedures for determining whether all persons required to file a report have done so.

The JEC's procedures for identifying and notifying initial and final filers did not ensure that all such persons were identified and timely notified that they should file their reports when due. The JEC had not issued any written procedures on when and how other judicial branch organizations were to inform it of persons meeting the criteria for filing an initial or final report, and according to JEC staff and others, the JEC was not always timely notified about such persons. For example, a Military Appeals Court official told us in late February 1992 that he had not yet notified the JEC of an employee who was hired in December 1991.

The JEC maintains a database of those who are required to file annual, initial, and final financial disclosure reports. Each year, the JEC generates mailing labels for sending the reporting form and instructions, along with a notification letter, to officers and employees who are required to file the annual report by May 15. The JEC relies on at least five judicial branch organizations to inform it of persons entering or leaving positions who meet the criteria for filing an initial or final report. The organizations that need to notify the JEC of persons who are required to file these types of disclosure reports consist of the personnel office within the Administrative Office of the U.S. Courts, the Federal Judicial Center, and the Tax, Military Appeals, and Veterans Appeals courts. Once the JEC is notified, it sends the individuals a letter notifying them that they are required to file within 30 days of their appointment, promotion, or termination. If the JEC was not timely notified of the personnel action, it requires the individual to file within 30 days of the date of its letter.

Timely notification of initial and final filers was a problem in 1991, as demonstrated by the results of our review of the 16 officers' and employees' initial and final reports included in our sample. (This does not include the eight nominees' reports in the sample.) We found that seven of these reports (44 percent) were filed several months after the due dates partly because the JEC notified the individuals of the filing requirement either shortly before the due date for their reports or weeks after. According to the JEC counsel, six of the seven filers were not required to pay the late fee because they had not been promptly notified, and the late fee was waived for the remaining filer. However, no explicit time extensions and waivers of the late fee were granted for the six filers. In chapter 3, we discuss further the JEC's experience in assessing and waiving the late filing fee.

Judicial nominees are required by the act to file a report with the JEC within 5 days after their nomination is transmitted to the Senate. As noted earlier in this chapter, our review of the nominee disclosure report files disclosed that one of the eight nominees in our sample did not file the required report with the JEC in calendar year 1991. The JEC did not request the nominee's report because it was not aware that the individual did not file a report until we brought the matter to its attention. Because the nominees are not yet judicial officers, the JEC staff do not consider it their responsibility to track whether nominees file required reports. They said there is no requirement for them to do so. Instead, they believe that this is the responsibility of the White House and the Department of Justice. These

groups are the ones that notify nominees of the filing requirement and provide them the reporting form.

We also found that the JEC did not require a part-time employee to file a financial disclosure report even though the law required her to file. The act requires a judicial employee to file a report if the employee is paid at a rate of basic pay equal to or greater than the minimum rate of basic pay for GS-16 (now 120 percent of the GS-15 minimum basic pay rate). The employee was not asked to file a report, although her rate of basic pay exceeded 120 percent of the GS-15 minimum basic pay rate, and she had not been granted a waiver. As a division chief, the employee's rate of basic pay as of April 22, 1991, was \$91,200, but because she worked part-time, the actual pay received in 1991 was less than \$72,298, the minimum pay rate effective January 1991. Although the employee's rate of basic pay in 1991 exceeded \$72,298, the JEC counsel told us that the employee was not required to file because the salary criteria for a judicial employee filing a public disclosure report in section 109(8) could be interpreted as not requiring a report from an employee who is actually paid less than the annual pay rate.

The rate of basic pay is the rate of pay fixed by law or administrative action for the position held by the employee and is distinguishable from actual pay. We disagree with the JEC counsel and read the law to require report filing by any judicial employee whose rate of basic pay is equal to or exceeds 120 percent of the GS-15 minimum pay rate, regardless of the amount of actual pay received. We note also that section 101(d) of the act provides that a judicial employee who performs the duties of his/her position for more than 60 days in a calendar year is required to file an annual report.

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## Other Filing Irregularities

As discussed below, seven reports in our sample were incomplete because the reports did not cover the correct reporting period for the type of report required to be filed.

- A circuit judge submitted an annual report on May 21, 1991, for the period January 1, 1990, through January 1, 1991. On April 8, 1991, he retired. His report was changed to indicate that the annual report was also his final report. However, because the report does not appear to cover his outside interests up to his retirement, it appears that a complete final report was never submitted. Section 101(e) of the Ethics in Government Act requires that when an annual report has been filed, the final report should cover

the portion of the calendar year in which the termination occurs up to the date the individual left the office or position.

- An employee submitted an annual report in May 1991 that was altered to also represent his initial report, which was due in November 1990. According to the JEC's filing instructions, the reporting period for initial reports is January 1 of the year preceding the year the individual assumed or was nominated to his position. Because the employee assumed his position in 1990, the reporting period for his initial report should have started January 1, 1989, but the reporting period shown on the report was 1990.
- Three judges and two employees filed initial or annual reports in 1991 that did not cover the reporting periods for these types of reports. For example, an employee filed an initial report on November 5, 1991, that covered the period November 4, 1990, through November 4, 1991, but according to the JEC's filing instructions, the beginning date for the period should have been January 1, 1990. A magistrate judge filed his annual report covering the period January 1, 1991, through April 8, 1991, but the report should have covered calendar year 1990.

JEC officials made the following observations about these irregular filings. First, they agreed that the reporting periods on all seven reports were incomplete. Second, no attempt had been made to get the seven individuals to amend or refile their reports at the time of the JEC's review due to administrative oversight. Third, the JEC will not require these seven individuals to amend their reports because the individuals did not disclose a lot of assets, and the reporting periods were usually incomplete by only a few months. Fourth, greater attention will be paid to the reporting periods by JEC reviewers in the future.

## Procedures for Granting Extensions Were Generally Followed in 1991

Section 101(g) allows reasonable extensions of time for filing, not to exceed 90 days, based on procedures to be prescribed by the supervising ethics office. The JEC's filing instructions inform filers that requests for extensions should be submitted in writing to the JEC before the report's due date and must contain an explanation of the reason the extension is necessary. The instructions also allow for requesting extensions from JEC staff by telephone in emergency situations but require that a letter also be sent promptly to the JEC. The JEC has delegated authority to its counsel to approve requests for extensions of time for filing.

Of the 114 judicial officers' and employees' reports we selected for review, 5 were granted extensions of time for filing annual or initial reports.

Although, the time extensions were generally granted at the filers' requests and according to the procedures outlined in the JEC's filing instructions, records we reviewed on three of these five time extensions showed some minor deviations from established procedures.

First, one employee did not request an extension of time for filing as outlined in the JEC's filing instructions, but the JEC's counsel granted him an extension because he had not been timely notified of the filing requirement. Second, an officer noted on his report that an extension was granted, but there was no evidence in the file of who granted it. Third, another officer was also granted an extension, but his report and file did not contain evidence of any written or oral request for an extension of time for filing his report.

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**Authority to Grant  
Filing Exemptions  
Has Been  
Implemented but  
Reporting Waiver  
Authority Has Not Yet  
Been Used**

Section 101(h) exempts from the filing requirements a person who is not reasonably expected to perform the duties of his office or position for more than 60 days in a calendar year. The JEC has established specific procedures for implementing this authority for reemployed annuitants and part-time magistrate judges. For purposes of financial disclosure reporting, a senior judge, a bankruptcy judge, or a magistrate judge who is a reemployed annuitant is deemed to work less than 61 days if the judge certifies that the relevant circuit judicial council did not authorize the employment by the judge of at least one law clerk or secretary for the reporting period or that the judge did not perform the duties of the office for more than 60 days. A part-time magistrate judge whose annual salary is less than 16.4 percent of the salary of a full-time magistrate judge is not required to file a report because such a judge will normally perform the duties of the office for less than 61 days. The JEC's report filing instructions also alert persons whose obligation to file reports may vary from year to year to certify their exempt status with the JEC by May 15 to avoid any inquiries about failure to file a report.

According to the report filing instructions, the JEC may waive any reporting requirement for an individual who is expected to perform the duties of office or position for less than 130 days in a calendar year, but only if the JEC determines that the individual meets the four conditions specified in section 101(i). These four conditions include (1) the person is not a full-time government employee, (2) the person is able to provide services specially needed by the government, (3) the person's outside employment or financial interests will not likely create a conflict of interest, and (4) public financial disclosure by such individual is unnecessary in the

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circumstances. The instructions further state that individuals must request the waiver in writing and provide a detailed explanation of the facts upon which the JEC can determine whether the four conditions have been met. JEC staff said that they have never received any requests for waivers of the reporting requirement and thus this statutory waiver authority has not been used.

# Filing Penalties

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There are three principal statutory provisions governing the imposition of penalties for filing violations:

- referring cases of willful filing violations to the attorney general,
- taking personnel or other appropriate actions for filing violations, and
- collecting a \$200 late filing fee from persons who filed required reports more than 30 days after the due date.

Although the implementing procedures for each provision appeared adequate, the JEC had not found it necessary to refer any 1991 filers to the attorney general or to take any personnel or administrative actions under the authorities of these statutory provisions.

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## Statutory Provisions

Section 104 of the act requires the Judicial Conference to refer the names of individuals to the attorney general when it has reasonable cause to believe that the individuals willfully (1) failed to file a report, (2) falsified a report, or (3) failed to file the information required to be reported. The Judicial Conference also is required by the act to notify the judicial council of the circuit in which the individuals serve of the referral. The act further authorizes the attorney general to bring a civil action against the individuals for such filing violations in any appropriate U.S. district court that may assess a civil penalty not to exceed \$10,000. The act also gives the Judicial Conference discretionary authority to take personnel or other appropriate action for these filing violations.

Starting January 1, 1991, section 104(d)(1) of the act requires persons who file their reports more than 30 days after the due date to pay a \$200 filing fee, unless the fee is waived by their supervising ethics office because of extraordinary circumstances. The act further requires late filers to pay this fee at the direction of and pursuant to regulations issued by their supervising ethics office.

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## Procedures for Handling Willful Filing Violations

The JEC did not find it necessary to implement its statutory authority for referring 1991 filers to the attorney general or for taking personnel or appropriate administrative actions for any filing violations covered under section 104. According to JEC officials, no required 1991 disclosure report filers were found by the JEC to have willfully failed to file a report, willfully falsified a 1991 report, or willfully failed to file the information required in a 1991 report. On the basis of our review of JEC procedures for

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implementing these two statutory provisions, the procedures for handling willful filing violations appear adequate.

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## Referral Procedures

In late June 1992, the JEC counsel informed us of certain procedures that had been recently developed that he said could lead to referrals of filers to the attorney general for willful filing violations. These procedures are included in the Guide to the Judicial Ethics Committee Policies and Procedures, which was under development at the time of our review and adopted by the JEC in July 1992. The guide outlines a series of steps to be taken when reporting individuals have apparently violated the judicial codes of conduct and applicable laws and regulations. The steps include the following, according to the guide:

- The JEC Chairman is to send the filers letters apprising them of the apparent violation, asking them to correct the violation by a particular date, and advising them that the violation and their response will be brought to the full Committee's attention to determine what action, if necessary, may be required as authorized by section 104 of the act.
- The JEC is to refer the apparent violations to its Compliance Subcommittee<sup>1</sup> when the filers' responses indicate full compliance has not been achieved. The Subcommittee is to attempt to achieve compliance by communicating directly with the filers.
- When compliance is still not achieved, the Subcommittee is to send a letter to certain supervisory judicial officials. These officials include the chief judge of the court on which the filer sits and the chief judge of the circuit and the presiding officer of the judicial council of the circuit in which the filer's court is located. The letter is to outline steps taken to have the violation corrected, refer to the JEC's obligation under section 104 of the act to enforce compliance with applicable laws and regulations, ask the judicial officials to inform the JEC of the results of any action taken, and inform them that in the event compliance cannot be achieved, a complaint is to be filed with the clerk of the court of appeals for the circuit pursuant to 28 U.S.C. section 372(c). This law outlines the procedures for filing, processing, and resolving a complaint against a circuit, district, or bankruptcy judge or magistrate judge who is alleged to have engaged in "conduct prejudicial to the effective and expeditious administration of the

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<sup>1</sup>In January 1988, the JEC Chairman appointed three judges from the full JEC to the Compliance Subcommittee. The Subcommittee is responsible for assisting in (1) resolving questions about filers' reports, (2) handling unsatisfactory responses of filers to letters of inquiries, (3) correcting apparent violations of the judicial codes of conduct and applicable statutes and regulations, and (4) determining whether extraordinary circumstances exist for waiving the late filing fee.

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business of the courts or . . . is unable to discharge all duties of office by reason of mental or physical disability.”

If the apparent violation remains uncorrected after the various steps outlined above have been taken, the full JEC is to vote on what action should be taken.

While the JEC did not find it necessary to use these procedures for referring any required 1991 filers to the attorney general or any supervisory judicial officials, our review of JEC meeting records and other documents showed that before 1991 the JEC had made such referrals. For example, on September 14, 1990, the JEC had referred to the attorney general a former clerk of a district court for willfully failing to file a final financial disclosure report after resigning from the judiciary. Also, a record of the JEC’s July 1989 meeting noted that the JEC had approved sending to the supervisory chief judge letters referring to the failure of 1 magistrate judge and 13 court reporters to file required disclosure reports.

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### Procedures for Implementing Personnel or Administrative Remedies for Willful Filing Violations

The JEC policies and procedures guide provides for referring filers to certain supervisory judicial officials at the court level for action when compliance has not been achieved but does not specify what kinds of personnel or administrative actions can be taken by these officials for willful filing violations.

According to the JEC counsel, the chief judges at the local court level have the authority to determine what appropriate personnel or other actions should be taken for such violations. While section 104 states that the Judicial Conference may take any appropriate personnel or other action in accordance with applicable laws or regulations or regulations for filing violations, the Judicial Conference does not have administrative authority over the courts and thus cannot actually take direct personnel action.

Unlike referrals to the attorney general, which section 104(b) requires the JEC to make when it has reasonable cause to believe a willful filing violation has occurred, section 104(c) gives the JEC the discretion to take administrative action but does not require any action be taken. This discretionary authority was given to the Judicial Conference by the Ethics Reform Act of 1989, when the financial disclosure requirements for the three branches of government were combined into one title. The statute previously applicable to the judiciary did not have such a provision. This provision was only applicable in the executive branch before the Ethics

Reform Act of 1989 became effective. In the executive branch, the administrative action that agencies may impose for certain filing offenses can include using the employee disciplinary procedures issued by the Office of Personnel Management under 5 C.F.R. part 752. Depending on the severity of the offense, such discipline in the executive branch could involve suspension from duty without pay, reduction in grade or pay, or removal. Unlike the executive branch, the judicial branch does not have a comprehensive regulation on what appropriate personnel or other actions can be taken to discipline employees for certain offenses.

In October 1992, we asked the JEC Chairman whether the JEC could use its section 104(c) authority to develop and publish a range of suggested administrative penalties for violations of financial disclosure requirements for use by supervisory judicial officials in the courts. Such suggested penalties would be aimed at helping to ensure the consistent and fair application of penalties to all individuals who commit filing offenses. The Chairman said he did not view such action as either desirable or practical in the judiciary, and there were no plans to do so. He viewed the JEC procedures of referring to the appropriate chief judge any filing violations not warranting referral to the attorney general as a severe sanction and sufficient action to implement the authority granted the JEC under section 104(c).

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## Implementation of the Late Filing Fee Provision

The JEC's filing instructions inform filers that if they file their reports more than 30 days after the original or extended due date, they will be assessed a \$200 filing fee, unless they are granted a waiver. The instructions also state that requests for waivers must be submitted to the JEC in writing with an explanation of the reason for filing late.

In practice, the JEC sends a letter to persons whose reports are more than 30 days late asking them to forward within 10 days of receipt of the letter (1) a check payable to the U.S. Treasury or (2) justification for late filing that satisfies the extraordinary circumstances provision of the law. The JEC delegated to its Compliance Subcommittee the responsibility for determining whether extraordinary circumstances existed for waiving the filing fee for reports filed in calendar year 1991 but no set criteria were used in making these determinations. The Subcommittee's members decided on a case-by-case basis whether such circumstances existed, and the full Committee voted on whether sufficiently valid reasons existed for waiving the fee.

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1991 Late Filing Fee  
Experience

According to summary data<sup>2</sup> provided by the JEC,

- there was a total of 39 late filers, which consisted of 22 judicial officers (including a total of 13 bankruptcy and magistrate judges) and 17 employees who filed their financial disclosure reports more than 30 days after the reports were due.
- 23 (13 officers and 10 employees, 59 percent) of the 39 late filers were assessed the \$200 filing fee.
- the fee was waived for the remaining 16 filers (9 officers and 7 employees, 41 percent).

According to JEC officials, reasons for waiving the fee included reporting form not being received in the mail or illness of the reporting individual.

Within the sample of 114 reports that we selected for review, only one of the seven individuals who filed their reports more than 30 days after the reports were due had the fee waived. As we discussed earlier, the JEC did not impose the fee on the remaining six individuals because they had been notified late about the filing requirement. The person for whom the fee was waived was an officer who filed his report 163 days after it was due. According to JEC staff, his filing fee was waived because he was ill.

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<sup>2</sup>The JEC provided us this summary data in lieu of a specific accounting by each filer who was assessed or waived the late filing fee and the specific basis for each waiver.

# Report Review Provisions

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Following are the six principal statutory provisions governing the reviews of financial disclosure reports in all three branches of the government:

- reviewing reports within 60 days of the date of filing,
- giving a positive assurance opinion and signing the report,
- notifying the filer when additional information is needed,
- notifying the filer when compliance with applicable laws and regulations is questioned,
- notifying the filer of remedial steps needed to assure compliance, and
- referring instances of noncompliance to appropriate authorities.

Procedures for implementing the first two provisions—the 60-day review requirement and the signing of reports—needed improvement. The implementing procedures for notifying the filer when additional information is needed or when compliance with applicable laws and regulations is questioned appeared adequate. However, available information was insufficient for us to determine whether the JEC needed to develop implementing procedures for notifying the filer of remedial steps needed to assure compliance or referring instances of noncompliance to appropriate authorities. In this regard, the act gives the judiciary discretion as to whether to issue written implementing procedures for filer notification of needed remedial actions and referrals for noncompliance; the JEC had not established such procedures.

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## Statutory Review Provisions

Before enactment of the Ethics Reform Act of 1989, the judiciary was required under section 306 of the Ethics in Government Act of 1978 to review reports to determine that they were filed on time, complete, and in proper form. The 1989 Ethics Reform Act repealed section 306 and amended section 106 of the Ethics in Government Act to require the judiciary to carry out the following tasks:

- Review reports within 60 days after the date of filing.
- Sign reports if the reviewing official believes that, on the basis of the information reported, the individual is in compliance with applicable laws and regulations.
- Notify the reporting individual of any additional information required to be submitted and the time by which it must be submitted.
- Notify the reporting individual when the reviewing official believes the individual is not in compliance with applicable laws and regulations and provide a reasonable opportunity for a written or oral response.

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- Determine what remedial steps, if any, would be appropriate for assuring compliance with applicable laws and regulations and notify the individual of these steps and the date by which these steps should be taken.
  - Refer individuals to the appropriate authorities for not taking the remedial steps by the established date.

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## **Procedures for Reviewing Reports and Determining and Certifying Compliance With Applicable Laws and Regulations**

According to the filing instructions for judicial officers and employees, the JEC is to review reports to assure that based on the information provided, the filer is in compliance with applicable laws and regulations. As shown in table 4.1, several laws, regulations, and other written criteria are applicable to judicial officers and employees and are to be used by JEC staff in reviewing financial disclosure reports.

**Chapter 4**  
**Report Review Provisions**

**Table 4.1: Written Criteria Applicable to the Review of Judicial Personnel Financial Disclosure Reports**

<b>Title</b>	<b>Description</b>
<b>Applicable laws</b>	
Title I of the Ethics in Government Act of 1978, as amended	Contains financial disclosure requirements of federal personnel
Titles III and VI of the Ethics Reform Act of 1989	Contains provisions concerning gifts, outside employment and income, and honoraria
18 U.S.C. 155	Prohibits entering into fee-fixing agreements in cases under Title 11 and receiverships
18 U.S.C. 201	Prohibits receiving anything of value for performing official acts other than as provided by law
18 U.S.C. 203	Prohibits receiving compensation for services rendered personally or by another person before any government department, court, or agency on a matter substantially affecting United States interest
18 U.S.C. 205	Prohibits acting as an agent or attorney for anyone in a claim against the United States or before any department, agency, or court in a matter in which the United States is a party or has a direct or substantial interest
28 U.S.C. 454	Prohibits judges from practicing law
28 U.S.C. 455(b)(5) (iii)	Requires a judge to disqualify himself/herself in any proceeding in which the judge, the judge's spouse, or minor child residing in the household has a financial or other interest that could be substantially affected
<b>Regulations</b>	
Regulations of the Judicial Conference under Title VI of the Ethics Reform Act of 1989	Discusses the limitations on outside earned income and outside employment and the prohibition on receipt of honoraria
Regulations of the Judicial Conference under Title III of the Ethics Reform Act of 1989	Discusses prohibitions on the giving, solicitation, or acceptance of certain gifts and provides for the establishment of reasonable exceptions to the prohibitions
<b>Other written criteria</b>	
<u>Codes of Conduct for Judges and Judicial Employees</u>	Contains codes of conduct for federal judiciary employees and judges, advisory opinions interpreting the codes, statutory provisions relating to judges' and employees' conduct, Judicial Conference resolutions, and financial disclosure instructions
<u>Financial Disclosure Instructions for Judicial Officers and Judicial Employees</u>	Discusses the preparation, filing, and review of financial disclosure reports; reporting requirements for disclosure reports; public access to reports; and the Judicial Conference regulations on implementing Titles III and VI of the 1989 Ethics Reform Act
<u>Guide to the Judicial Ethics Committee Policies and Procedures</u>	Contains a compilation of the policies and procedures adopted by the JEC during its semiannual meetings; procedures with respect to violations of the codes of conduct, statutory provisions, and regulations

Source: GAO's analysis of laws, regulations, and procedures applicable to the judicial branch.

The JEC was also to review reports to “determine potential conflicts of interest or ethical problems,” according to the JEC financial disclosure instructions. Judges are required by Canon 3C of the Code of Conduct for United States Judges to disqualify themselves from performing adjudicatory functions when they, their spouse, or dependent child have a financial or other interest that could be substantially affected by the outcome of the proceeding. They also have to complete a certification statement at the end of their reports that says in part “...I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.” The JEC does not review reports to determine if conflicts existed between the filer’s performance of adjudicatory functions and their outside interests. According to the JEC’s counsel, it would be an onerous task for the JEC members to become knowledgeable about all the issues involved in the hundreds of cases handled by the reporting individuals to determine if such conflicts existed.

In July 1990, the JEC established a written policy on when initial reviews were to be completed by JEC staff and what such reviews were to consist of in order to meet the 60-day statutory review requirement. However, no time limits have been established for final review and certification of reports. Initial staff reviews are to consist of date stamping and logging receipt of incoming reports and checking them for completeness and timeliness. JEC staff also check for consistency between the current and prior years’ reports during the initial review. JEC staff are to complete the initial reviews of reports and forward officers’ reports to one of the 15 judges for final review. Employees’ reports, except Administrative Office employees, are to be forwarded to the JEC’s counsel for final review. Administrative Office employees’ reports are to be reviewed by one of the judges since the JEC’s counsel is an Administrative Office employee. According to the JEC counsel, the purpose of the second and final review is to ensure that filers are in compliance with the Ethics in Government Act and the judicial codes of conduct.

After completing the final reviews of the reports, the reviewing officials were to initial a postcard. According to the JEC’s counsel, the final reviewers’ initials on the postcard represented their certification that the filers’ reports were acceptable and complied with applicable laws and regulations, including the judicial codes of conduct. The postcard was to be forwarded to JEC staff, located at the Washington, D.C., headquarters, who maintained the card with the filers’ disclosure statements as a record

that the JEC review had been completed. Table 4.2 identifies each final reviewing official by name, position, and geographic location and also the total number of filers that each was expected to review on the basis of new assignments made in December 1991.

**Table 4.2: The JEC's Final Reviewing Officials and Number of Filers Assigned to Each in December 1991**

Name	Position	Geographic location	Number of filers
<b>Final reviewers of judicial officers</b>			
Hon. Julian A. Cook, Jr.	Chief district court judge and JEC chairman	Detroit, Michigan	<sup>a</sup>
Hon. Robert B. Propst	District court judge	Birmingham, Alabama	135
Hon. F. A. Little, Jr.	District court judge	Alexandria, Louisiana	138
Hon. James B. Moran	Chief district court judge	Chicago, Illinois	135
Hon. Peter K. Leisure	District court judge	New York, New York	134
Hon. Leonard I. Garth	Appellate court judge	Newark, New Jersey	137
Hon. Dickinson R. Debevoise	District court judge	Newark, New Jersey	139
Hon. Eugene A. Wright	Appellate court judge	Seattle, Washington	136
Hon. Alan D. Lourie	Appellate court judge	Washington, D.C.	136
Hon. Howard C. Bratton	District court judge	Las Cruces, New Mexico	130
Hon. Norman P. Ramsey	District court judge	Baltimore, Maryland	137
Hon. Frank J. Magill	Appellate court judge	Fargo, North Dakota	138
Hon. Robert R. Beezer	Appellate court judge	Seattle, Washington	131
Hon. Harry H. MacLaughlin	District court judge	Minneapolis, Minnesota	134
Hon. Ronald R. Lagueux	District court judge	Providence, Rhode Island	130
<b>Final reviewer of judicial employees</b>			
Raymond Karam	Assistant Director, Office of Finance, Budget, and Program Analysis and JEC counsel	Washington, D.C.	569

<sup>a</sup>The JEC assignment list did not include an estimate of the total number of filers assigned to the JEC Chairman which includes all judicial nominees and Supreme Court personnel.

Source: JEC.

### Report Review Procedures Did Not Result in Reports Being Reviewed Within 60 Days and Signed

More than 75 percent of the reports in our sample of 114 reports were not initially reviewed within 60 days of filing nor finally certified as of April 30, 1992. In addition, the reports were not signed by the final reviewers as the statute specifically requires. Instead, most of the 16 final reviewing officials initialed a postcard, and a few signed a letter or put a note in the

file to indicate they had completed reviewing the reports. The reporting form did not provide a space for the JEC reviewers' signatures.

Untimely Reviews

As shown in table 4.3, at least 18 (16 percent) of the 114 reports we reviewed received an initial review within 60 days of filing. Of at least 88 reports (77 percent) that took longer than 60 days to review, 33 (29 percent) took more than 240 days. One report, due from a nominee, was not filed with and reviewed by the JEC. We could not determine for the remaining seven reports—six filed by nominees and one by an employee—when the initial review was completed because tracking sheets were not prepared for nominees' reports, and no other documents, such as a review sheet, were in the files indicating when the review had been completed, and the tracking sheet for the one employee did not show when the initial review was completed.

**Table 4.3: Timeliness of Completing the Initial Reviews of Calendar Year 1991 Reports by Report Type as of April 30, 1992**

Days to complete initial review	Type and number of reports				Percent of total
	Initial	Annual	Final	Total	
60 or less	13	4	1	18	16
61 to 180	0	30	1	31	27
181 to 240	0	22	2	24	21
More than 240	0	33	0	33	29
Days to complete initial review cannot be determined <sup>a</sup>	6	1	0	7	6
Report not filed	1	0	0	1	1
<b>Total</b>	<b>20</b>	<b>90</b>	<b>4</b>	<b>114</b>	<b>100</b>

<sup>a</sup>We could not determine the number of days to complete the initial review of the seven individuals' reports because six were nominees, and a tracking sheet is not prepared for nominees. The remaining individual was an employee, and his tracking sheet did not show when the initial review was completed.

Source: GAO's analysis of a sample of judicial personnel's 1991 financial disclosure reports.

According to JEC officials, the total time it takes, on average, to complete reviews of reports is 6 to 8 months after the reports are filed. Data provided by the JEC showed that of 2,239 reports the JEC received for calendar year 1991, final review and certification had not been completed for 1,103 reports (or 49 percent) as of April 30, 1992. However, our sample of disclosure reports filed in 1991 had a much higher percentage of reports that were not certified.

**Chapter 4**  
**Report Review Provisions**

As shown in table, 4.4, of 114 reports in our sample, 88 (77 percent) were awaiting final review and certification as of April 30, 1992, which means that the reports had been forwarded to the final reviewers. No postcards or other documents were in the 88 individuals' financial disclosure report files at the time we reviewed them to show that the JEC's review was completed either because the review had not been completed or the postcards had not been filed with the individuals' reports. For the remaining 26 reports, 5 were completed within 60 days, 8 were completed within 61 to 240 days, 8 were completed in more than 240 days, 1 was not filed with and reviewed by the JEC, and the status of 4 was undeterminable because there was insufficient documentation in the files.

**Table 4.4: Timeliness of Completing the Final Reviews of Calendar Year 1991 Reports by Report Type as of April 30, 1992**

Days to complete final review and certification	Number of reports				Percent of total
	Initial	Annual	Final	Total	
60 or less	4	1	0	5	4
61 to 180	2	2	1	5	4
181 to 240	0	3	0	3	3
More than 240	0	8	0	8	7
Awaiting final review and certification	9	76	3	88	77
Days to complete final review and certification could not be determined <sup>a</sup>	4	0	0	4	4
Report not filed	1	0	0	1	1
<b>Total</b>	<b>20</b>	<b>90</b>	<b>4</b>	<b>114</b>	<b>100</b>

<sup>a</sup>We could not determine the number of days to complete the final review and certification of the four individuals' reports because at the time we reviewed the files there was no documentation in the files indicating the reports had been forwarded to the final reviewers and were awaiting final review and certification or indicating the review had been completed.

Source: GAO's analysis of a sample of judicial personnel 1991 financial disclosure reports.

The delays in completing the final reviews and certifications were, in part, due to delays in forwarding the reports to the final reviewing official. We found that at least 39 of our sample reports were not forwarded to the final reviewing officials until months after the initial review was completed. According to JEC staff, the reports were forwarded months after the initial reviews had been completed because of understaffing and changes in committee assignments that were not completed until December 1991.

**Reports Were Not Signed**

JEC reviewers did not sign the 1991 reports as required by the act. Moreover, the JEC reporting form did not provide a space for the reviewers'

signatures. Instead, the JEC's procedure was for the final reviewers to initial a postcard that indicated they had completed reviewing the reports. In our sample of 114 disclosure reports, we found that the files for 21 of them contained a postcard, letter, or note indicating that review of the reports had been completed. The files for the remaining 93 reports did not contain any documents at the time we completed our sampling that indicated the JEC had completed their reviews. Although the JEC officials who completed the 21 reviews in our sample initialed and/or signed a postcard, letter, or note, none of the documents contained a statement by the reviewing official certifying that the report complied with applicable laws and regulations.

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## Procedures for Obtaining Additional Information and Referring Filers for Noncompliance

In January 1988, the JEC established a policy that final reviewing officials are responsible for determining what additional information is needed to be submitted by filers to complete the JEC review of the reports. In making this determination, each reviewer is allowed to apply a "de minimis" standard. In applying this standard, the final reviewer can determine that errors or omissions in reporting identified by the JEC staff are not significant enough to require the filer to provide additional information. When the reviewing officials decide that additional information is needed, they are to send filers a letter of inquiry under the JEC chairman's signature asking them to provide the requested information by a certain date. In some cases, the chairman may send filers "advisory letters" informing them of the error or omission in reporting and advising them to correct the errors or omissions in future reports rather than the current year's report.

The chairman is to inform filers when, based on the information reported, they are considered by the JEC not to be in compliance with the judicial codes of conduct and/or with applicable laws and regulations. When filers are nonresponsive or fail to fully comply with the judicial codes and applicable laws and regulations, the JEC as a whole is to refer the matter to the JEC's Compliance Subcommittee, whose duties and composition we discussed in chapter 3.

Section 106(a)(3) of the act requires the JEC to direct filers to take remedial steps when it determines they are not in compliance with applicable laws and regulations. Such steps may include but are not limited to (1) divestiture; (2) restitution; (3) establishment of a blind trust; (4) request for an exemption under section 208(b) of title 18, U.S. Code;<sup>1</sup> or

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<sup>1</sup>We discuss the nonapplicability of this criminal statute to judicial officers and employees in appendix II in the section on compliance review differences.

(5) voluntary request for transfer, reassignment, limitation of duties, or resignation.

According to the JEC's counsel, although the JEC has never had the occasion to require employees to use any of the five remedial steps outlined in the act, several of the steps have been used by judges. In addition, he said that impeachment is a possible means that could be used to resolve judges' noncompliance with applicable laws and regulations. However, the JEC had not established written procedures for (1) notifying filers in writing of the kinds of remedial steps the JEC would use to ensure filer compliance and (2) referring filers to the Judicial Conference when they fail to comply with the remedial steps.

Section 106(b)(3) requires that use of any such remedial steps be in accordance with "rules or regulations as the supervising ethics office may prescribe." However, the JEC had not issued any such rules or regulations. Further, while section 106(b)(6) requires referral to "the Judicial Conference, for appropriate action" if insufficient action was taken on proposed remedial steps, the JEC had not established written procedures for making such referrals.

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## 1991 Notification and Referral Experience

As of early April 1992, the JEC chairman had sent at least 183 judicial officers and employees inquiry or advisory letters regarding their 1991 reports. The primary reason for sending the letters was to ask filers to provide additional information to correct errors and omissions in reporting and/or inconsistency in reporting between the current and prior years' reports. Examples of reporting errors and omissions included nondisclosure of the locations of financial institutions, incorrect reporting of value codes for assets, and nondisclosure of travel reimbursement details.

As shown in table 4.5, our analysis of the 183 letters disclosed that filers were asked a total of 155 times to provide information to correct errors, omissions, and/or inconsistencies in reporting. Eight filers were notified to provide additional information to enable the reviewing official to determine if they had violated the judicial codes of conduct. These eight inquiry letters each asked a district court or magistrate judge for a clarifying response within 30 days. Most of the letters concerned the filer's reported serving as a trustee or executor of a trust or estate. For example, the JEC told a district court judge "you reported that you are Co-Trustee of various . . . Trusts. Canon 5D of the Codes of Conduct provides that a

judge should not serve as the trustee, except for the trust of a member of the judge's family and then only if such service will not interfere with the proper performance of judicial duties . . . Because your service as trustee may conflict with Canon 5D, it is requested that you furnish the Committee with additional information concerning this position."

**Table 4.5: Reasons for Notifying Filers About Their 1991 Reports**

Reasons for notifying filer	Number of times reason cited			Percent of total
	Alone	With one other reason	Total	
<b>Provide additional information to</b>				
Correct errors and omissions in reporting and/or inconsistencies in prior and current years' reports	124	31	155	71
Enable reviewer to determine if codes of conduct have been violated	4	4	8	4
Enable reviewer to determine if a conflict of interest exists	0	0	0	0
Advise that certain information does not need to be reported	12	25	37	17
Advise to disclose certain information in future reporting that was reported incorrectly in the current year's report	13	4	17	8
<b>Inform of noncompliance with</b>				
Judicial codes of conduct	0	0	0	0
Applicable laws and regulations	0	0	0	0
<b>Totals</b>	<b>153</b>	<b>64</b>	<b>217</b>	<b>100</b>

Source: GAO's analysis of 183 JEC inquiry and advisory letters sent to 1991 filers.

As shown in table 4.5, the JEC had not made use of the authority of section 106(b)(3) to inform a 1991 filer of any remedial steps to assure compliance with an applicable law or regulation. According to the JEC counsel, while the need to take remedial steps occurs infrequently and did not arise in the JEC inquiries we reviewed, the JEC had in the past directed filers to take remedial steps to assure compliance with the judiciary's code of conduct.

# Ethics Agreement Provisions

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Following are three statutory provisions governing ethics agreements in the three branches of the government:

- entering into agreements to comply with ethics and conflict-of-interest laws,
- documenting actions taken to comply with ethics agreements by specified dates, and
- documenting specific recusal agreements and processes.

No implementing procedures have been established for these provisions, and the JEC did not view them as having any practical application to judicial personnel.

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## Statutory Provisions

Before enactment of the Ethics Reform Act of 1989, the financial disclosure statute governing the judiciary did not address ethics agreements. Section 110 of the Ethics Reform Act extended to both the judicial and legislative branches provisions for entering into and monitoring such agreements that were previously only applicable to the executive branch. These provisions provide that the Judicial Conference can enter into an agreement covering any action by the reporting individual to comply with the act or any other law or regulation governing conflicts of interest or standards of conduct. If such an agreement is made, the Judicial Conference is to

- receive written notice of any action taken pursuant to the ethics agreement either before the specified date for taking the agreed upon action or no later than 3 months after the date of the agreement.
- receive a written recusal agreement when the ethics agreement requires individuals to recuse themselves from certain official actions. The documentation required to be submitted is to address the subjects applicable to the recusal agreement and the process for determining the specific instances when the individuals must recuse themselves.

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## JEC Has Not Established Procedures for Implementing and Monitoring Ethics and Recusal Agreements

No procedures have been established for implementing or monitoring ethics and recusal agreements under section 110, according to the JEC counsel, because there has not been a need to require judicial officers and employees to enter into formal ethics agreements. Inquiry letters requesting additional information are sent to officers and employees, but the JEC does not consider the responses as an ethics agreement between the JEC and the individual.

Recusals are the predominant form of ethics agreement made by presidential appointees in the executive branch during the confirmation process. For example, about 36 percent of the 921 ethics agreements made by nominees to executive positions requiring the advice and consent of the Senate during the 3-year period 1989 to 1991 involved nominees agreeing to recuse themselves from acting on matters involving financial interests held by them or their spouse or dependent children, according to data reported by OGE. The JEC, however, does not require written recusal agreements and does not attempt to monitor individual compliance with any recusals. When the need arises for judges to recuse themselves from proceedings, the local courts process and maintain records on recusals, according to the JEC counsel.

As we discuss further in appendix II, each branch is governed by a different primary conflict-of-interest statute that prohibits covered persons from working on a matter when he or she has a financial interest in the outcome. While the judicial statute covers judges, there is no similar statutory prohibition for judicial employees. The conduct of certain types of judicial employees is regulated by the Judicial Conference through specific codes of conduct covering judicial employees such as clerks of court, circuit executives, and administrative office employees at GS-15 and above. Not all these judicial employee codes, however, specifically require the covered employee to disqualify himself or herself from a matter in which he or she has a financial interest. Additional information on this matter is contained in table 5.1.

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**Chapter 5**  
**Ethics Agreement Provisions**

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**Table 5.1: Judicial Conference Codes of Conduct for Judicial Employees That Do and Do Not Contain a Financial Interest Disqualification Requirement**

<b>Category of judicial employee covered</b>	<b>Disqualification requirement contained in code</b>
Clerk of court/deputy clerk of court	No <sup>a</sup>
Probation officers/pretrial services officers	Yes
Circuit executives/ administrative office employees GS-15 and above <sup>b</sup>	No <sup>a</sup>
Staff attorneys of U.S. courts	Yes
Federal public defenders/ assistant federal public defenders	No <sup>a</sup>
Law clerks	No <sup>a</sup>

<sup>a</sup>Standards more stringent than this Judicial Conference code may be promulgated by individual court order.

<sup>b</sup>This code also applies to the director of the Administrative Office, the director of the Federal Judicial Center, and the administrative assistant to the chief justice.

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# Conclusions, Recommendations, and Agency Comments

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## Conclusions

Of the 17 statutory provisions that we reviewed to determine how the JEC had implemented financial disclosure provisions for the 1991 filing and review cycle, we found that the JEC's procedures did not adequately comply with the governing statute or sound management practices in three areas. First, the implementing procedures did not ensure that all persons who were required to file reports were identified, timely notified, and filed reports covering the proper time period; including requesting disclosure reports from part-time employees who met the salary threshold for filing. Second, the procedures did not provide for the completion of disclosure report certifications within 60 days when no additional information was requested of filers. And thirdly, the procedures did not provide for persons who are designated to perform compliance reviews to sign the disclosure report when they could give a positive assurance opinion.

Details on the implementation of each of the 17 provisions are discussed in chapters 2 through 5. In the following sections, we present our conclusions on those areas that needed improvements and the general reaction of the JEC Chairman and key program managers. It should be noted that we are not making a recommendation with regard to the lack of either a conflict-of-interest statute or a code-of-conduct provision for certain judicial employees. Although it appears to us that all employees should be subject to some sort of restriction, the scope of this review did not enable us to examine the matter in sufficient depth to conclusively determine the most appropriate approach for judicial branch employees. We plan to examine this matter further in our future work.

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## Report Filings

As discussed in chapter 2, JEC procedures were insufficient to ensure that all persons who were required to file public financial disclosure reports in 1991 were identified, were timely notified, and had filed required reports covering the proper time period. Timely notification of initial and final filers was a problem in 1991. Of 16 such filers in our sample, 7 filed several months after the due date, in part, because the JEC notified them of the filing requirement either weeks after or shortly before the due date for their reports. Although no explicit time extensions or waivers of the late filing fee were granted to six of these filers, the JEC did not impose a late fee because it had not timely notified them of the filing requirement. In addition, seven reports in our sample were incomplete because the reports did not cover the correct reporting period for the type of report required to be filed.

Given the above findings, we believe the JEC needs to place greater emphasis on ensuring that all persons who are required to file reports are identified, are timely notified, and file reports covering the proper period. On October 27, 1992, the JEC Chairman and key program managers generally agreed with this conclusion and said that actions would be taken to place greater emphasis in this area. For example, we were told that personnel components of judicial organizations would be asked to provide the Committee more timely notification of the personnel subject to financial disclosure.

With regard to the application to a part-time employee of the act's salary threshold criteria for filing a public financial disclosure report, we disagreed with the JEC counsel's interpretation of the act's criteria as discussed in chapter 2. We interpreted the act as requiring public financial disclosure reports from individuals who are paid at a rate of basic pay equal to or greater than 120 percent of the basic pay in effect for GS-15, regardless of their part-time status. In its comments on a draft of this report, the Committee agreed to abide by our interpretation (see app. III).

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## Report Review Timeliness

As discussed in chapter 4, the JEC did not sufficiently provide for timely 1991 report reviews. We could determine that only 16 percent of 114 reports in our sample had been initially reviewed within 60 days of filing, as called for by JEC policy. For at least 88 reports (77 percent of our sample), it took longer than 60 days to complete the initial review; 33 (or 29 percent) took more than 240 days to complete the initial review. The JEC had not set any time limits for completing final reviews and certifications. As of April 30, 1992, more than 75 percent of the sampled reports were awaiting final review and certification. Because of insufficient available documentation, we were unable to determine the initial review times for seven reports and final review times for four of these seven reports.

On October 27, 1992, we explored with the JEC Chairman and key program managers the availability of various options for what the JEC could do to timely complete disclosure report reviews and certifications. We explained that we viewed the act as requiring final certification within 60 days unless further information is requested from the filers. However, as long as the JEC continues to have judges perform the final review and certification, we are concerned that meeting the 60-day review requirement may not be practical given the priority they must give to their other judicial duties. We observed that the JEC had several years earlier transferred responsibility for the final review and certification of judicial employees from judges to

the JEC counsel as a means to reduce the number of reports reviewing judges consider.

The JEC Chairman said that given the stature and responsibilities of federal judges within the government, he believed the practice of only judges providing the final review of other judges' disclosure reports should continue. Further, no other option we discussed for improving review timeliness appeared to him or the program managers to be a desirable alternative to the current review approach. The JEC Chairman also said that he did not believe the 60-day review requirement was a realistic period for final review and certification, and, as a result, he did not attempt to hold the reviewing judges accountable for meeting this requirement. Further, setting a deadline for a judge to complete the final review and certification of reports was viewed as not reasonable given that the judges' time is such a limited resource, and they need flexibility to manage their workloads. However, 60 days was viewed as a reasonable period for staff persons to complete the initial review.

Given that section 106(2) requires the completion of disclosure report certifications within 60 days when no additional information is requested of filers, we believe the Committee should further consider ways to meet this requirement. If use of personnel other than judges to complete the final review and certification continues to be viewed as not a viable alternative, we believe consideration should be given to assigning more judges to perform these reviews.

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### **Reviewer Certification on the Disclosure Form**

As discussed in chapter 4, JEC procedures did not sufficiently provide for the final reviewing official to (1) provide a positive assurance opinion that the filer is in compliance with applicable laws and regulations and (2) sign the report, as required by section 106(b)(1). The JEC's 1991 practice of having the reviewing official sign a postcard, which was not part of the financial disclosure form and did not include a certification statement, failed to comply with the statute. Accordingly, we concluded that the JEC should revise its procedures and disclosure report form to comply with the two provisions in section 106 of the Ethics in Government Act of 1978, as amended, that require final reviewing officials in the three branches of the government to (1) provide a positive assurance opinion and (2) sign the report. We viewed both of these features of the statute as important means to provide the public assurance that a reasonable effort was made to determine that the information disclosed in the reports comply with applicable laws and regulations.

The JEC Chairman agreed to take actions to revise the Committee's procedures and disclosure report form to provide a positive assurance opinion and have the final reviewer sign the report. In October 1992, we were provided with a draft of proposed revisions to the form:

"8. On the basis of the information contained in this Report, it is in compliance with applicable laws and regulations \_\_\_\_\_

Reviewing Officer Signature \_\_\_\_\_"

In commenting on a draft of this report, the Committee said that beginning in 1993 it would start to require a positive assurance opinion and signature on the report.

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## Recommendations

To improve the Committee's compliance with and implementation of the statutory financial disclosure requirements governing judicial personnel, we recommend that the Chairman of the Judicial Conference Committee on Financial Disclosure

- place greater emphasis on ensuring that all persons who are required to file a report are identified and timely notified and file reports covering the proper period; and
- further consider ways to complete disclosure report review and certification within 60 days when no additional information is requested of filers.

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## Agency Comments and Our Evaluation

The Committee's written comments on a draft of this report and our specific responses, where appropriate, are in appendix III.

We considered the specific comments of the Committee as fully implementing two of the four proposed recommendations contained in our draft report, thus we deleted them from this report. The deleted recommendations dealt with the lack of a reviewer certification on the disclosure report form and the filings of part-time employees. While the Committee has begun actions to implement the two recommendations contained in this report, it will take some time to determine whether the actions taken and planned will effectively improve compliance with filing and report review requirements. Regarding filing compliance, the Committee said, among other things, that the administrators responsible for the identification of individuals required to file disclosure reports

would be reminded at regular intervals of the need to timely inform the Committee of such individuals. And regarding report reviews, the Committee said, among other things, that the JEC counsel has been instructed to review the Committee's report review procedures and available equipment to improve report review timeliness.

While the Committee's planned administrative improvements may improve report review timeliness, these improvements do not include addressing the role of the reviewing judges. We remain concerned that meeting the 60-day review requirement may not be practical as long as the Committee continues to have judges perform the final review and certification, a situation that the Committee comments reaffirm should continue. Before seeking a statutory amendment to respond to the problem of untimely report reviews, which the Committee suggests is a better response than administrative improvements, we believe the Committee should not only attempt to make the administrative improvements it outlines in its response but also consider additional alternatives, such as having additional judges help do the reviews if it is not viable to use personnel other than judges to do them. However, the idea of people other than judges reviewing judges' reports should not be dismissed without considering the fact that none of the supervising ethics offices in the other branches require "peer review" of disclosure reports; each has designated staff attorneys or ethics officials perform the final reviews and certifications. With the proper guidance and experience or training, perhaps effective and timely reviews of judges' reports could be accomplished by persons other than judges.

Beyond commenting on our specific recommendations, the Committee found "quite informative" the "very significant" differences that we highlight in appendix II of this report between the judicial and executive branches in implementing the same statute. The Committee recognized that the differences between branches make a comparison of the branches difficult to assess. Nevertheless, the Committee found that such a comparison makes it possible to judge better how the judiciary fares in executing the financial disclosure statute.



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# Objectives, Scope, and Methodology

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The objective of our review was to determine the adequacy of the judicial branch's procedures for implementing provisions of Title I of the Ethics in Government Act, as amended, that governed the filing and review of public financial disclosure reports in calendar year 1991. The 17 provisions selected for review, and discussed in detail in chapters 2 through 6, were those we viewed as most directly related to describing an annual cycle of filing and review of disclosure reports.

To accomplish our review objective, we interviewed (1) members of the JEC and Committee staff who receive and review judicial personnel financial disclosure reports; (2) the counsel to the Committee on Codes of Conduct, which publishes the codes of conduct for judges and judicial employees and renders advisory opinions interpreting certain titles of the 1989 Ethics Reform Act; and (3) personnel officials in the Administrative Office of the U.S. Courts, Federal Judicial Center, and in the Tax, Military Appeals, and Veterans Appeals courts who are responsible for informing the JEC staff when judicial personnel meeting the filing criteria enter or leave office. We reviewed the codes of conduct for judges and judicial employees, internal policies and procedures adopted by the 15-member JEC during its semiannual meetings, and the filing form and instructions distributed annually to those required to file public reports. We also reviewed a recently developed Guide to the Judicial Ethics Committee Policies and Procedures that the JEC's counsel provided to us in late June 1992. We analyzed correspondence that the JEC sent as of early April 1992 to a total of 183 judicial personnel regarding their 1991 financial disclosure reports to determine the extent to which the JEC had notified them of any noncompliance with applicable laws and regulations. On October 28, 1992, we met with the JEC Chairman and key program managers to get their views on our preliminary findings and explore options that might be available to make administrative improvements.

We also reviewed the procedures and practices the Office of Government Ethics (OGE) used to review and certify the 1991 public financial disclosure reports of executive branch personnel. Along with the results of our prior reports on executive branch financial disclosure programs (see the related GAO products list at the end of this report), this work helped form the basis for our description of the major differences between the judicial and executive branches presented in appendix II.

We obtained written comments on a draft of this report from the Judicial Conference Committee on Financial Disclosure. The Committee generally agreed with the facts as presented. Its comments and our evaluation of

them are discussed in chapter 6. The text of the Committee's entire comments appears in appendix III. We also obtained written comments from OGE on appendix II of a draft of this report and made technical changes to that appendix on the basis of its comments. The text of OGE's entire comments appears in appendix IV.

## Testing Approach

To test the judicial branch's internal controls for implementing the filing and review provisions, we reviewed a random sample of financial disclosure reports required to be filed by judicial personnel in calendar year 1991. As part of our test of the JEC controls over required filers, we used data from various sources<sup>1</sup> to estimate the universe of judicial personnel required to file initial (including reports filed by nominees), annual, and final reports in 1991. Table I.1 describes the sample of 114 reports we selected for review out of a total of 2,606 judicial personnel included in this estimate. Our total sample size was large enough to generalize our findings at a 95-percent confidence level to the estimated universe with a sampling error of less than 10 percent.

**Table I.1: Number of Judicial Personnel Included in Our Sample of Public Reports, by Type of Report**

Report type	Estimated universe	Sample
Initial	248 <sup>a</sup>	20 <sup>a</sup>
Annual	2,318	90
Final	40	4 <sup>b</sup>
<b>Total</b>	<b>2,606</b>	<b>114</b>

<sup>a</sup>These figures include reports required to be filed by nominees for federal judgeship positions by the president. Reports filed by nominees within 5 days after transmission of their nomination to the Senate are considered their initial report. Of 108 individuals nominated by President Bush in 1991 to be judicial officers, we selected a sample of eight nominees' reports for review.

<sup>b</sup>We judgmentally selected for review three final reports required to be filed by officers since our random sample did not include many final reports.

Source: GAO's analysis of data provided by the Administrative Office of the U.S. Courts, Federal Judicial Center, U.S. Sentencing Commission, and Congressional Research Service.

**Our review of these reports was aimed at (1) testing whether established procedures for the filing and review of the reports were being followed**

<sup>1</sup>To develop the list of judicial personnel required to file financial disclosure reports in 1991, we obtained data from several offices in the Administrative Office of the U.S. Courts, the U.S. Sentencing Commission, the Federal Judicial Center, and the Congressional Research Service. The data included copies of personnel action forms and reports generated from the judicial branch's personnel system of employees who assumed or left office in 1991; reports generated from the judicial branch's payroll system of personnel who met the salary criteria for filing an annual report in 1991; and a Congressional Research Service report issued January 3, 1992 on President Bush's Judicial Nominations During the 101st and 102d Congresses (92-35 GOV, updated January 3, 1992).

and (2) observing the JEC's actual practices in administering applicable statutory provisions. In reviewing the reports, we completed a standard data collection instrument to record data on implementation of various sections of the Ethics in Government Act related to the filing and review of the public reports. Specifically, we gathered data on when the reports were filed and reviewed, actions taken by reviewing officials to notify filers that additional information needed to be reported or that they were not in compliance, and actions taken by the filers to correct errors or omissions in reporting and to comply with applicable laws and regulations. We did not attempt to "second guess" the judgments of the reviewers of the disclosure reports; nor did we independently audit any disclosure reports.

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### Other Scope Limitations

We did not review the judiciary's implementation of every statutory provision related to the filing and review of financial disclosure reports in 1991. For example, we did not review the judiciary's implementation of provisions related to section 105 that provided for public access to financial disclosure reports, nor did we review section 106(7), which requires supervising ethics offices to render advisory opinions interpreting the provisions of Title I. Our review focused on selected provisions of Title I that we viewed as most directly related to describing an annual filing and review cycle.

Although this report describes certain differences in procedures and practices between the supervising ethics offices in the judicial and executive branches in reviewing and certifying disclosure reports due in 1991, we did not attempt to make a judgment on which procedures and practices resulted in the strongest or weakest internal controls. We recognize that each supervising ethics office is part of a different government branch with its own way of governing its personnel and developing administrative procedures that has evolved over time. These different personnel and administrative policies and practices explain some of the differences in approaches each supervising ethics office had adopted to implement common statutory requirements. However, an assessment of each branch's personnel and administrative policies on such matters as disciplining employees was outside the scope of this review. Similarly, we recognize that each branch has different functions and legal constraints that affect the way their respective supervising ethics offices implement the Ethics in Government Act.

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**Also, we did not review the extent the judicial branch had implemented the myriad of substantive legal restrictions on a public filer's responsibility for either the disclosure or acceptance of gifts, outside earned income, honoraria, or other personal financial interests. As previously discussed, our review focused on the implementation of selected provisions of Title I that we viewed as most directly related to describing an annual filing and review cycle.**

# Major Differences in Procedures and Practices Between the Judicial and Executive Branches in Administering Financial Disclosure Requirements

This appendix describes the major differences in the procedures and practices between the judicial and executive branches that we observed in examining each branch's implementation of the financial disclosure requirements established by the Ethics Reform Act of 1989. As discussed in chapter 1, the Ethics Reform Act of 1989 combined the statutory financial disclosure requirements for the three branches of the federal government into Title I of the Ethics in Government Act effective with reports filed after January 1, 1991. In many instances the statutory provisions that were previously applicable solely to the executive branch were extended to both the judiciary and legislative branches. However, each branch has different functions and legal constraints that affect the way their respective supervising ethics offices have implemented the Ethics in Government Act.

Within the executive branch the supervising ethics office comparable to the Judicial Ethics Committee (JEC) is the Office of Government Ethics (OGE). Our observations are based primarily on the procedures and practices the JEC and OGE used in 1991 to review and certify public financial disclosure reports. We did not attempt to determine which procedures and practices resulted in the strongest or weakest internal controls.

We recognize that each supervising ethics office is part of a different government branch with its own administrative procedures and personnel authority that have evolved over time. These different personnel and administrative policies explain some of the differences in approaches each supervising ethics office has adopted to implement common statutory requirements governing financial disclosure of federal personnel. However, an assessment of each branch's personnel and administrative policies on such matters as disciplining employees was outside the scope of this review.

Table II.1 summarizes our observations of the major differences in procedures and practices between the judicial and executive branches in performing six administrative functions.

**Appendix II  
Major Differences in Procedures and  
Practices Between the Judicial and  
Executive Branches in Administering  
Financial Disclosure Requirements**

**Table II.1: Major Differences in Procedures and Practices Between the Judicial and Executive Branches in Performing Selected Administrative Functions in 1991**

Administrative function	Executive branch (administered by OGE)	Judicial branch (administered by JEC)
Processing of presidential nominee reports	<p>OGE review was aimed at resolving possible conflict of interest and frequently results in formal ethics agreements.</p> <p>Act requires OGE to submit nominee's disclosure report to Senate confirmation committees and OGE regulation requires agency and OGE to certify in an opinion letter that the nominee report contains no unresolved conflict of interest.</p>	<p>JEC review focused on proper completion of disclosure form for future reporting purposes and did not result in formal ethics agreements.</p> <p>The JEC was not required to provide the nominee's disclosure report to the Senate confirmation committees, nor provide any opinion letter.</p>
Certifications required of internal government reviewers and public filers on the reporting form	<p>OGE form had three signature blocks for reviewing officials and required agency reviewer to complete a certification statement.</p> <p>OGE form contained a filer certification statement that the information provided is "true, complete, and correct."</p>	<p>JEC form lacked any signature blocks for reviewing officials and did not contain a reviewer certification statement.<sup>a</sup> Final JEC reviewers were to initial a postcard to indicate review completion.</p> <p>JEC form contained a three-paragraph certification statement that referred to three laws, certain regulations of the Judicial Conference and the judicial code of conduct, and an advisory opinion.</p>
Compliance reviews	<p>OGE viewed review of reports for financial conflicts a major purpose of internal government reviews.</p> <p>18 U.S.C. 208 is applicable to all executive branch officers and employees; this is the primary financial conflict-of-interest statute, violations of which are subject to criminal and civil penalties.</p>	<p>JEC viewed review of reports for financial conflicts of interest as not practical.</p> <p>18 U.S.C. 208 is not applicable to judicial officers and employees. 28 U.S.C 455, however, covers judges with a similar prohibition but has no criminal or civil penalties for violation.</p>
Treating report corrections	<p>OGE had not established a materiality standard for final reviewers that would specifically allow (1) certain minor errors or omissions to go uncorrected or (2) corrections be made in future reports rather than the current report.</p> <p>OGE did not require that information submitted on behalf of the filer be authenticated with the filer's signature.</p>	<p>JEC had established a materiality standard allowing final reviewers to decide that errors or omissions identified during JEC reviews were not material enough to warrant filer correction. JEC also used "advisory letters" to inform certain filers to correct a problem in future reports rather than the current report.</p> <p>JEC required that any response to a JEC inquiry bear the original signature of the reporting person.</p>

(continued)

**Appendix II  
Major Differences in Procedures and  
Practices Between the Judicial and  
Executive Branches in Administering  
Financial Disclosure Requirements**

Administrative function	Executive branch (administered by OGE)	Judicial branch (administered by JEC)
Requiring confidential disclosure	Under OGE regulation, executive branch employees whose government duties involve the exercise of significant discretion in certain sensitive areas are subject to submitting a confidential report of their financial interests and outside business activities to their employing agency for review of possible conflicts of interest.	The JEC did not require confidential reports be filed by any judicial employee, and the JEC had not formally assessed the need for requiring such reports. Section 107 gives the judiciary the discretion not to require confidential reporting.
Issuing regulations on the late filing fee	OGE followed the process of the Administrative Procedures Act for giving public notice and comment, allowing affected parties an opportunity to comment, and publishing the regulations in the daily Federal Register for later incorporation in the Code of Federal Regulations.	The Administrative Procedures Act does not apply to the judicial branch, and the judiciary has no similar standardized development process for issuing "regulations." Late filing fee guidance was issued by the JEC as part of financial disclosure instructions.

\*As noted in the Committee's written comments on this report (see app. III), beginning in 1993 the disclosure form for judicial personnel was changed to include a reviewer's positive assurance opinion and signature.

## Presidential Nominee Report Processing Differences

The JEC placed less emphasis on the review of the public financial disclosure reports of a judicial nominee to a judgeship position in the U.S. courts than the emphasis placed by OGE on review of executive nominees to a position requiring the advice and consent of the Senate. The general statutory filing requirement for both types of nominees is the same. Section 101(b)(1) provides

"Within five days of the transmittal by the President to the Senate of the nomination of an individual . . . to a position, appointment to which requires the advice and consent of the Senate, such individual shall file a report . . ."

To meet the general filing requirement in the judiciary, candidates and nominees to federal judgeship positions are notified to file a public report with the JEC using the same form used by judicial officers submitting annual disclosure reports. Although the JEC reviews the report, the law does not require the JEC to provide any views to the Senate committee considering the nomination. According to the JEC counsel, Senate confirmation committees have not requested the views of the JEC on judicial nominees' financial disclosure reports. The JEC reviews of 1991 nominee reports we examined resulted in advice being provided some

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**Appendix II  
Major Differences in Procedures and  
Practices Between the Judicial and  
Executive Branches in Administering  
Financial Disclosure Requirements**

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filers on how to properly complete the form for future reporting but did not result in the nominee entering into any agreements with the JEC to take remedial actions to assure their compliance with applicable laws and regulations. According to the JEC counsel, unlike the situation in the executive branch where potential conflicts may be more readily identified from a nominee's proposed duties, it is not known what cases a judge may hear, and a judge could be involved in any number of situations. Thus, specific agreements concerning conflicts are not viewed as practical. In addition, the JEC counsel said that the JEC does not require changes to be made to the report to accommodate their comments because the nominees are not yet officially judicial officers under the JEC's jurisdiction.

To meet the general filing requirement in the executive branch, in contrast, potential nominees are notified to file draft copies of a public report with the White House, the designated agency ethics official (DAEO), and/or OGE, as applicable, before the nomination. According to a published OGE description of how these nominee reports are processed, an extensive review of the report by agency and OGE reviewers is made to resolve any possible conflicts of interest or appearance concerns and any technical or substantive omissions or inaccuracies. Such resolution frequently results in the nominee entering into formal ethics agreements with the agency. By regulation, (5 C.F.R. 2634.605(c)(2)), the DAEO must write an opinion letter to the director, OGE, personally certifying that there is no unresolved conflict of interest under applicable laws and regulations and also include, among other things, any specific commitment or ethics agreement by the nominee to resolve any conflicts. Further, the director, OGE, must write a letter to the appropriate Senate committee, expressing the director's opinion whether the nominee has complied with all applicable conflict laws and regulations.

The statute, section 103(c), requires the director of OGE to forward a copy of the reports of each presidential nominee to the congressional committee considering the nomination. However, there is no similar statutory requirement for the JEC to forward nominee reports to congressional committees. This difference also helps to explain the greater emphasis on nominee reports placed by OGE.

While the JEC did not review judicial nominee reports as closely as OGE and DAEOs did with executive nominees, we noted that both the Office of the Attorney General and the Senate Judiciary Committee required judicial nominees to provide them more financial information on a confidential basis than was required on the public disclosure form filed with the JEC.

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For example, the Office of the Attorney General asked judicial nominees to supply “a complete, current financial net worth statement that itemizes in detail . . .” Likewise, in a questionnaire for judicial nominees, the Senate Judiciary Committee asked a series of questions on financial data and conflict of interest, including how the nominee would resolve any potential conflicts of interest likely to initially arise in the nominated position. We did not review the procedures each confirmation committee uses in requesting or reviewing financial disclosure information from presidential nominees. As a result, we are not in a position to comment on either the value of OGE’s role with the confirmation committees or the JEC’s lack of a role with the confirmation committees. According to a 1988 report of the National Academy of Public Administration,<sup>1</sup> the procedures committees use in reviewing presidential nominations vary widely. Further, section 101(b)(1) of the Ethics in Government Act states that “nothing in this Act shall prevent any Congressional committee from requesting, as a condition of confirmation, any additional financial information from any Presidential nominee whose nomination has been referred to that committee.”

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**Differences in  
Certifications  
Required of  
Government  
Reviewers and Filers  
on the Reporting  
Form**

The Ethics Reform Act of 1989 gave OGE the responsibility to develop and make available the forms for public financial disclosure reporting of all federal personnel covered by the statute. However, May 1990 amendments to this provision transferred this responsibility from OGE to “each supervising ethics office,” and in the judiciary this authority has been delegated to the JEC.

The OGE and JEC forms used in 1991 differed substantially in structure and appearance. However, the most prominent difference between the reporting forms, in our opinion, was the difference in certifications required of government reviewers and reporting individuals.

The JEC form lacked any certification statement or signature block on the report to record JEC reviews.<sup>2</sup> In contrast, the OGE form had three signature blocks for reviewing officials—an optional agency block for recording the signature of an intermediate agency reviewer, a block for the DAEO (or other final agency reviewer), and a signature block for OGE review. The DAEO signature block contained the following certification statement: “The

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<sup>1</sup>The Presidential Appointee’s Handbook, Second Edition, 1988.

<sup>2</sup>As noted in the Committee’s written comments on this report (see app. III), beginning in 1993 the disclosure form for judicial personnel was changed to include a reviewer’s positive assurance opinion and signature.

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information contained in this report discloses no conflict of interest under applicable laws and regulations.” There was also an optional block where any reviewing official may record comments. As discussed in chapter 4, the JEC procedure was for final JEC reviewers to initial a postcard, rather than to sign the report, to indicate that the JEC review was completed.

On the other hand, the JEC form required a more specific certification statement by the reporting individual than the OGE form. The JEC form, in pertinent part, stated

“IX. CERTIFICATION.

“In compliance with the provisions of 28 U.S.C. 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

“I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

“I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 7, § 501 et.seq., 5 U.S.C.A. § 7353 and Judicial Conference regulations.

“Signature \_\_\_\_\_ Date \_\_\_\_\_”

In contrast, the OGE form contained the certification statement shown in figure II.1.

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**Figure II.1: Certification by Reporting Individual on OGE's Form**

Certification	Signature of Reporting Individual	Date (Month, Day, Year)
<p>I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge and belief.</p>		

**Compliance Review  
Differences**

The JEC did not attempt to review the reports for potential financial conflict-of-interest situations. In contrast, review for financial conflicts was a major purpose of the report reviews by OGE and DAEOS.

The financial disclosure statute governing the judiciary before enactment of the Ethics Reform Act of 1989 required that reports of both judicial officers and employees be reviewed for possible violations of applicable conflict-of-interest laws and regulations. The original statute also required that appropriate action be recommended to correct any conflict or ethical problem found. However, in a 1983 report, we said that the JEC believed there was no absolute way to determine possible conflicts of interest by reviewing the disclosure reports.<sup>3</sup> In this regard, the judiciary disclosure report form was amended to incorporate a certification statement by the filer of nonparticipation in any litigation during the period covered by the report that the filer had a financial interest in the outcome.

Our current examination of JEC review procedures showed that the JEC did not attempt to review the 1991 reports for financial conflict-of-interest situations. The JEC reviews focused on proper completion of the reporting form and potential violations of the judicial codes of conduct. The JEC counsel told us that the JEC is not in a position to review judges' and certain employees' financial disclosure reports and give positive assurances that they recused themselves from matters whenever a conflict presented itself. Further, the express statutory language requiring a review for "violations of applicable conflict of interest laws or regulations" was changed by the Ethics Reform Act of 1989 to a review of "compliance with applicable laws and regulations."

<sup>3</sup>Information On Selected Aspects of the Ethics in Government Act of 1978 (GAO/FPCD-83-22, Feb. 23, 1983).

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A major difference in the applicable laws between the judiciary and the executive branch is coverage under 18 U.S.C. 208. Section 208 is not applicable to judicial officers and employees, but it is applicable to all executive branch officers and employees. Section 208 is the primary conflict-of-interest statute that reviewers in the executive branch are concerned with when reviewing financial disclosure reports, according to an OGE reviewing official. Generally, section 208 prohibits a covered person from personally and substantially participating in a matter when he or she has a financial interest in the outcome. The prohibition applies regardless of the value of the financial interest.

Extending section 208 to the judicial officers and employees was a specific recommendation of the President's Commission on Federal Ethics Law Reform in its March 1989 report.<sup>4</sup> The Commission recognized in its report that judges were covered separately by "very strict" statutory standards for disqualification under 28 U.S.C. 455. Section 455 requires a judge to disqualify himself/herself in any proceeding in which his/her impartiality might be questioned, including cases in which the judge, the judge's spouse, or minor child residing in his/her household has a financial interest or other interest that could be substantially affected by the outcome of the proceeding. Disqualification must also be made where the judge or spouse or a person within the third degree of relationship of either of them (such as a nephew or niece) has such an interest.

Notwithstanding these judiciary-specific controls, the Commission favored "consolidating the self-dealing prohibitions in one statutory scheme, and extending the prohibitions to employees in the judicial branch." Congress, however, did not enact this Commission recommendation. After the Commission's report was released in March 1989, the Executive Committee of the Judicial Conference, in a letter to the President commenting on the report's recommendations, disagreed that there was a need for new conflict-of-interest legislation applicable to the judiciary. The comments stated, among other things, that existing laws provide satisfactory assurance that judicial decisionmaking will not be affected by personal financial interests.

While the judiciary has specific controls governing judges' disqualifications from matters in which they have a financial interest, these controls differ from section 208 executive branch controls in several important respects. First, violation of section 208 is a criminal offense

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<sup>4</sup>To Serve with Honor: Report of the President's Commission on Federal Ethics Law Reform, March 9, 1989.

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whereas violation of 28 U.S.C. 455 is not. Second, the judiciary controls apply solely to judges and do not cover judicial employees whereas section 208 applies to all executive branch personnel. Third, the JEC (as the supervising ethics office in the judicial branch) does not monitor judicial officer compliance with 28 U.S.C. 455 whereas the OGE (as the supervising ethics office in the executive branch) monitors executive branch personnel compliance with section 208. Fourth, 28 U.S.C. 455 requires disqualification in a situation where section 208 would not be violated; specifically, when a person within the third degree of relationship of the judge or spouse has an interest that could be substantially affected by the outcome of the proceeding.

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## **Differences in Treating Report Corrections**

We noted several areas in which the JEC policies or procedures for treating report corrections were substantially different from OGE policies or procedures.

First, the JEC established a policy allowing final reviewers of the disclosure report to determine whether errors or omissions in reporting identified during JEC reviews were material enough to warrant the filer providing additional information. The JEC refers to this policy as a “de minimis” standard. Under this standard, the final reviewing official could allow filers to incorporate information from prior reports by reference, thus avoiding repeating the same information year after year. OGE, on the other hand, has not established a materiality standard for final reviewers, although we observed instances in which a final reviewer had declared errors or omissions identified by intermediate reviewers not material enough to warrant correction.

Second, the JEC may send filers “advisory letters” informing them of an error or omission in reporting but advising them to correct the problem in future reports rather than the current year’s report. OGE had not authorized reviewers to use this procedure.

Third, the JEC required that any clarifying letter responding to its inquiry must bear the original signature of the reporting person. This requirement was noted in the written instructions given the filer. We observed one instance in which an accountant’s response to an inquiry was considered inadequate because of the lack of the original signature by the reporting person. OGE, on the other hand, did not require the signature of the reporting person in response to an OGE inquiry. Our review showed that OGE-requested information was most often submitted by agency officials

without a clear indication that the information was reviewed and approved by the filer. This information would be made part of the report on file with OGE by OGE officials. According to OGE, every effort is made to accept only material that the agency ethics official has verified with the filer.

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## **Confidential Financial Disclosure Reporting Differences**

Section 107 provides each supervising ethics office the discretionary authority to (1) require officers and employees under its jurisdiction to file confidential financial disclosure reports and (2) prescribe the reporting form. The judiciary has chosen not to require confidential financial disclosure reporting while the executive branch has had a system of confidential financial disclosure since regulations issued by the Office of Personnel Management in September 1968, and recently updated by OGE in April 1992.

The section 107 authority for each supervising ethics office did not provide the judiciary new authority to establish confidential reporting. The previous judicial disclosure statute governing the judiciary had also given the JEC the authority to require such reporting with the approval of the Judicial Conference. According to the JEC counsel, the JEC has never formally assessed the need for confidential reporting by judicial officers and employees.

OGE views the executive system of confidential (nonpublic) financial disclosure for certain officers and employees as complementing the public financial disclosure system. The basic rationale for requiring confidential reporting in the executive branch is presented by OGE in the opening paragraph of its April 7, 1992, regulation (5 C.F.R. 2634), which became effective October 5, 1992, and states:

“High-level officials in the executive branch are required to report certain financial interests publicly to ensure that every citizen can have confidence in the integrity of the Federal Government. It is equally important in order to guarantee the efficient and honest operation of the Government that other, less senior, executive branch employees, whose Government duties involve the exercise of significant discretion in certain sensitive areas, report their financial interests and outside business activities to their employing agencies, to facilitate the review of possible conflicts of interest. These reports assist an agency in administering its ethics program and counseling its employees.” (5 C.F.R. 2634.901(a))

Covered executive employees are generally those in positions at GS-15 (or equivalent) and below that the agency concludes exercise significant judgment in taking certain government actions, including contracting or

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procurement, and administering or monitoring of grants or other federally conferred financial benefits. Another category of covered positions cited in OGE's regulation are positions that the agency concludes require the employee to file a confidential report to avoid involvement in a real or apparent conflict of interest. Positions OGE cited as potentially subject to confidential reporting under this category are those involved in investigating and prosecuting violations of criminal or civil law.

In March 1992, OGE reported that 251,822 regular executive branch employees filed a confidential financial disclosure report in 1991. This number represented about a 16-percent increase over 1990 in the number of confidential filers agencies reported to OGE. Further, OGE reported that agencies required regular employees who filed confidential reports to take a total of 13,833 remedial actions in 1991, which mostly consisted of written disqualifications. On the basis of these figures, OGE determined that about 5.5 percent of the confidential financial disclosure reports filed in the executive branch in 1991 resulted in a remedial action to resolve an actual or potential conflict-of-interest situation.

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## **Differences in Processes for Issuing Implementing Regulations on the Late Filing Fee**

The degree of required participation by affected parties in the development of procedures for implementing the late filing fee provision differed substantially between the JEC and OGE.

Section 104 requires that each supervising ethics office issue regulations on payment of the \$200 late fee. In response, the JEC issued guidance on the application of the late fee as part of its instructions to financial disclosure report filers, and OGE issued formal regulations after providing affected parties an opportunity to comment on the regulations.

Unlike the executive branch, the judiciary has no standardized development process for issuing regulations. By way of comparison, when a statute requires an agency to issue regulations in the executive branch, the agency is required to (1) follow the process of the Administrative Procedures Act for giving public notice and allowing affected parties an opportunity to comment and (2) publish the regulations in the daily Federal Register for later incorporation in the Code of Federal Regulations. This was the process that OGE had to follow in issuing regulations governing the imposition of the late filing fee on executive personnel, which can be found at 5 C.F.R. 2634.704, issued on April 7, 1992. The Administrative Procedures Act does not apply to the judicial branch.

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We observed that while the JEC issued guidance on the late filing fee as part of its instructions to filers of public disclosure reports in the judicial branch, the Judicial Conference issued regulations to implement other provisions of the Ethics Reform Act of 1989 concerning outside earned income, honoraria, outside employment, and gifts. In commenting on our observation in October 1992, the JEC counsel said that another committee of the Judicial Conference had decided to issue its implementing procedures for aspects of the 1989 act as a regulation of the Judicial Conference whereas the JEC had chosen not to take that more formal approach with the late filing fee.

# Comments From the Judicial Conference Committee on Financial Disclosure

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

**Committee on Financial Disclosure**  
Judicial Conference  
of the  
United States

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March 1, 1993

Mr. Richard L. Fogel  
Assistant Comptroller General  
General Accounting Division  
U.S. General Accounting Office  
Washington, D.C. 20548

Dear Mr. Fogel:

I write in response to your letter of January 8, 1993, in order to comment on the draft report of the General Accounting Office (GAO) on the Judiciary's administration of the statutory financial disclosure provisions governing judicial officers and employees. I note that an extension of the 30 calendar day response time to the draft report has been approved by GAO staff.

In the first instance, I commend your staff for the very thorough analysis undertaken in fulfilling the requirements of the ethics statute. The long time and considerable resources expended by GAO and the staff of the Committee on Financial Disclosure of the United States Judicial Conference have been well spent. It is imperative that employees of the United States Government are perceived, and actually do, comply with the high standards of conduct that the statutes, pertinent regulations, and the citizenry of our nation expect and require. Your report tends to affirm that this is the case for the United States Judiciary.

I believe it would be useful to comment specifically on the four recommendations made in the draft report and then discuss in general other aspects of the analysis and its results. The GAO recommendations are:

1. *"Place greater emphasis on ensuring that all persons who are required to file a report are identified, timely notified, and file reports covering the proper time period."*

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Comments From the Judicial Conference  
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Comment: The Committee has taken actions to comply with this recommendation. The identification of individuals required to file is done, primarily, by using the personnel processing and payroll systems of the Judiciary. Those who, by virtue of duties or income threshold, must file are identified and sent the necessary materials. For those individuals whose personnel and payroll support are not performed by the Administrative Office of the United States Courts, such as the Court of Military Appeals and the Court of Veterans' Appeals, the administrator of the unit bears the responsibility to inform the Committee of those required to file. Such information has not always been timely. Committee Counsel has written recently, and will do so at regular intervals, to the administrators involved reminding them of this need.

Timely notification of filers has been quite successful, once they are identified. The Committee continues to review and improve its procedures so that statutory time constraints are met. The draft report notes that, in a small number of instances, reports were filed with an incorrect statement of the time period being reported. These report errors resulted in oversights by staff and reviewing judges and have been called to everyone's attention. Particular care will be taken to assure immediate corrections if such errors occur in the future, and the Committee has addressed and taken action on all instances from the past.

See comment 1.

2. *"Request public financial disclosure reports from individuals who meet the salary threshold criteria for filing, regardless of their part-time status."*

Comment: In a handful of cases, less than five, part-time employees without adjudicatory functions were deemed to have satisfied the filing threshold if the money earned met the statutory minimum. GAO believes that the rate of pay should be used, rather than total pay, for part-time employees and that those who qualify as filers on the basis of rates should be required to file. The Committee considered this, the GAO, interpretation of the statute and agreed to abide by it.

3. *"Further consider ways to complete disclosure report review and certification within 60 days when no additional information is requested of filers."*

Comment: At the time that the 1989 amendments to the Ethics Act were enacted, and the 60 day completion requirement was established, the Committee considered how to comply with this requirement. It was quite evident that reviewing judges could not review filings to the exclusion of all other duties. The Committee also reaffirmed that judges' filings should be reviewed by judges. Further to save scarce judges' time, the preliminary review, and comparison of asset reporting from the previous report, were to be continued to be performed by Administrative Office staff. These procedures precluded full review within 60 days. As a compromise, the Committee directed staff to perform initial reviews for completeness and adequacy of

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filings within the 60 day period. At the Committee's request at the time of the amendments, staff in support of the reviewing process was doubled, to four.

In response to the GAO recommendation, and realizing that the Committee has never been in full compliance with this one provision of the statute, the Committee has instructed Counsel to review the procedures used and the equipment available in order to improve on the time needed to complete reviews. The computer program used to monitor filings and subsequent inquiries, and which failed in 1992, is being recast as a more reliable and useable tool. Work station equipment is to be supplied to staff to allow for speedier processing of the voluminous levels of paper that flow through the office. Other improvements, especially in the processing of filings, will also reduce the time needed.

The better response to this problem would be to amend the statute and to double or triple the 60 days currently allowed.

See comment 2.

See comment 3.

4. *"Revise its proceedings and disclosure report form to comply with statutory provisions requiring final reviewing officials to provide a positive assurance opinion and to sign the report."*

Comment: Prior to 1993, the Committee's procedure was to have reviewing judges submit a pre-printed postcard to the Washington office where the files are kept which indicated that a filing, having been reviewed, was acceptable. The card was then filed in the dossier of the person submitting the report. With the national distribution of filers and reviewing judges, this procedure saved significant postage. Beginning in 1993, the cover page of the report submitted by filers (Form AO-10) has been changed to allow reviewing judges to note thereon a positive assurance opinion and signature. This will, in the future, constitute evidence that a report has been found acceptable.

See comment 4.

In addition to the specific recommendations discussed above, the draft report also compares the Judiciary's compliance with the statute with the Executive Branch. This comparison is quite informative and highlights the very significant differences between the two branches in implementing the same statute. As examples, the draft report properly points out that it is virtually impossible for a judge to predict whether assets he or she owns would cause an apparent or actual conflict of interest in cases not yet filed with a court. In the Executive Branch, on the other hand, the activities of an official are clearly defined in the job title and responsibilities, and agreements on assets, trusts, etc., can be meaningful. Also, the Judiciary does not believe that confidential financial disclosure reports are necessary from employees who do not reach the pay threshold. All persons performing adjudicatory work do file reports and such work is the essential activity of the Third Branch.

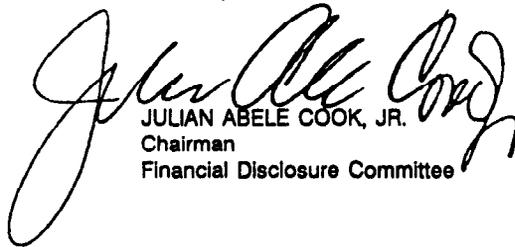
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One last point, I appreciate the understanding and sensitivity of the GAO analysts to the very different circumstances that pertain in the Judiciary, and how the draft report takes this into account. For example, the Codes of Conduct which judges must adhere to are more restrictive than the prohibitions of the Ethics Act which applies across government. The permanence of judiciary personnel, judges are appointed for life, compared to the two to three year average tenure of Executive Branch people required to submit disclosure reports is also significant. These, and other differences, make a comparison of the branches difficult to assess. With such a comparison, however, it is possible to judge better how the judiciary fares in the execution of the statute.

Thank you for the opportunity to review the draft report and to address the issues it raises. If you wish additional information, or to discuss further any items that have been raised, please let me know.

Sincerely,



JULIAN ABELE COOK, JR.  
Chairman  
Financial Disclosure Committee

The following are GAO's comments on the Committee's March 1, 1993, letter.

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## **GAO Comments**

1. We consider the Committee's agreement to abide by our interpretation of the statute for determining who meets the salary threshold criteria for filing a public financial disclosure report as a satisfactory response to this proposed recommendation in our draft report. Accordingly, we deleted the recommendation from this report. We note that the Committee will need to take steps to ensure that all units responsible for identifying persons required to file are aware of this interpretation.

2. We do not favor a legislative solution for dealing with this problem at this time. Increasing the time for completing the reviews from 60 days to 120 or 180 days and still having judges do the final certifications, as the Committee proposed, may not solve the problem of untimely reviews given that our work showed that it took the reviewing judges more than 180 days to complete the final review of most of the 114 reports in our sample. However, if the statute were to be amended to address this problem, a better legislative solution in our view might be to adopt a 2-stage review process in which staff would complete an initial review within 60 days and a reviewing judge would complete a confirming certification within 60 days of receipt of the report from the staff. This 2-stage review process would be like the 2-stage review process used in the executive branch by individual agencies and the Office of Government Ethics for presidential appointees who require Senate confirmation. Regardless of the amount of time provided for the review of disclosure reports by the final certification official, a time limit should be imposed for completion of the final certification, in our opinion, as a matter of sound management practice in holding people accountable for results. Given that the statute established 60 days as the general governmentwide standard for completion of disclosure report reviews, we have no basis for suggesting a longer period to accommodate the circumstances of federal judges other than the 2-stage review process that is applicable to reports reviewed by OGE.

3. We consider the Committee's revision of its disclosure report form and corresponding review procedures as a satisfactory response to this proposed recommendation in our draft report. Accordingly, we deleted the recommendation from this report.

**4. In providing further information on one of the major differences between branches, the Committee cited the judiciary's belief that confidential financial disclosure reports are not necessary from employees who do not reach the pay threshold for filing a public report. As a further basis for this belief, the Committee said that all persons performing adjudicatory work do file reports and such work is the essential activity of the judicial branch. We are not in a position, at this time, to agree or disagree that some type of confidential financial disclosure might be appropriate for certain judicial employees who do not file public reports. An assessment of the need for confidential financial reporting in the judicial branch was beyond the scope of our review for this report. In appendix II we discuss the executive branch's use of confidential financial disclosure reports to facilitate review of possible conflicts of interest by certain executive employees who do not file public reports as one of the major differences in approaches between the judicial and executive branches in implementing the same statutory authority. We were told during our review that the Committee had never formally assessed the need for confidential financial reporting by judicial officers or employees.**

# Comments From the Office of Government Ethics

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



United States  
**Office of Government Ethics**  
1201 New York Avenue, NW., Suite 500  
Washington, DC 20005-3917

JAN 29 1993

Richard L. Fogel  
Assistant Comptroller General  
General Accounting Office  
Washington, DC 20548

Dear Mr. Fogel:

Your letter of January 8, 1993, offered us a second opportunity to review an appendix to your draft report on differences between the judicial and executive branches in administering financial disclosure requirements. We appreciate your incorporation of some of our earlier comments, which we sent to Mr. John Tavares on October 13, 1992.

One matter which we would like to reemphasize concerns your notation at pages 68 and 74 of the current draft report that the executive branch public disclosure form (SF 278) contains a filer certification statement which is less extensive than the judicial branch form's certification. In order to avoid any unintended implication that the SF 278 might be deficient in that regard, we simply want to reiterate our view that the instructions which accompany the SF 278 fully inform filers of the restrictions on actual or potential conflicts between their public responsibilities and private interests. Additionally, the instructions adequately warn filers that disclosure of information does not authorize the holding of any financial interests or affiliations which are prohibited by law, Executive order or regulation, and that criminal and other penalties may be imposed for falsification or failure to disclose required information.

We have no additional comments at this time. Thank you for this opportunity to review your latest draft of the report.

Sincerely,

Handwritten signature of Stephen D. Potts in cursive.

Stephen D. Potts  
Director

OGE - 106  
August 1992

See comment 1.  
Now app. II.

See comment 2. As  
revised, now on pp. 55  
and 59.

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The following are GAO's comments on the Office of Government Ethics' January 29, 1993, letter.

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## **GAO Comments**

1. We asked OGE to comment on the results of our analysis of major differences in procedures and practices between the judicial and executive branches in administering financial disclosure requirements that now appear in appendix II of this report. OGE was not asked to comment on the results of our review of the judicial branch's procedures that now appear in chapters 1 through 6.

2. OGE expressed concern that our analysis might leave the unintended implication that the executive branch public disclosure form was deficient in that the executive branch form contains a filer certification that is less extensive than the certification in the judicial branch form. Although our analysis showed that the executive branch form contains a filer certification that is less extensive than the certification in the judicial form, we have not concluded (and do not mean to imply) that the executive form is deficient in that regard. We revised our presentation of this issue to reduce the potential for unintended implications. For example, we deleted reference to the warning the judiciary form provides filers about criminal penalties that can be imposed for falsification or failure to disclose required information because, as OGE noted, the instructions in the executive form contain a similar warning.

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# Related GAO Products

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Tax Administration: IRS Should Expand Financial Disclosure Requirements (GAO/GGD-92-117, Aug. 17, 1992).

Foreign Assistance: AID's Use of Personal Services Contracts Overseas (GAO/NSIAD-91-237, Sept. 13, 1991).

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Employee Financial Disclosure: Farm Credit Administration System Is Generally Operating Effectively (GAO/GGD-90-115, Sept. 27, 1990).

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