

THE KANSAS CITY STAR.

SUNDAY, April 5, 1998

METROPOLITAN EDITION ★★

\$1.50

Stocks and ethics collide in courtroom

KC federal judges have ruled on cases while invested in a litigant.

By JOE STEPHENS

Staff Writer

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Federal judges here and elsewhere repeatedly have presided over lawsuits against companies in which they own stock.

That's not supposed to happen. U.S. law requires judges to withdraw from any lawsuit in which they know they have a financial interest, however small. So does the judicial Code of Conduct.

Yet a study by *The Kansas City Star* discovered federal judges from the Kansas City area issued more than 200 court orders while holding an interest in a litigant. They set hearings, granted motions, threw out legal claims and even conducted a jury trial.

For comparison, *The Star* examined courthouses in Oregon and Pennsylvania — and found identical problems.

In all, *The Star's* investigation identified 57 legal actions in which a district judge entered one or more such orders. In the Kansas City area alone, nine district judges, or two-thirds of those in the local courthouses, entered orders in 33 problem cases.

At the same time, the judges owned anywhere from a few thousand dollars to as much as \$250,000 in stock in companies involved in a suit, or in the companies' parent corporations.

"I'm shocked," said Jeffrey Shaman, a judicial ethicist and a law professor at DePaul University in Chicago. "It's such a clear violation."

The newspaper's study found no evidence any judge benefited personally or let his stock holdings influence his rulings.

But many litigants and lawyers said the findings raised questions about how judges, who are appointed for life to ensure others follow the letter of the law, police

themselves.

David Barrett, an attorney in one of the lawsuits, called the findings "a little scary."

"People assume," he said, "that judges are all honest and fair — and avoid conflicts."

Most judges said in explaining the lapses that they made innocent mistakes or forgot what they owned. Some said their staffs were supposed to spot the conflicts. Others blamed the crush of paperwork.

Many orders were routine and had little effect on the lawsuits, which often were settled out of court. Some orders simply appointed legal couriers or set filing

See **HANDLING, A-12, Col. 1**

On their
honor
Judges and
their assets

*This is the first
in a two-part series
that examines
the stock holdings
of federal judges.*

Continued from A-1

schedules. And in at least seven of the 57 cases, judges recognized their stock conflict and stepped out of the lawsuits before *The Star* began its study.

Yet experts said that, in each instance, judges should have monitored their investments and withdrawn before entering a single order.

"This kind of sloppiness is more than unseemly; it is destructive of the public's confidence in an impartial judiciary," said James C. Turner, a Washington lawyer and consumer advocate.

Many judges acknowledged they may have broken ethics laws, at least technically.

"I take it very seriously," Judge John W. Lungstrum of Kansas City, Kan., said of the lapses. He inadvertently presided over two recent lawsuits while his family owned up to \$65,000 in stock in the defendants.

"I want to make sure," he added, "that it doesn't happen again."

For some litigants, the judges' stock ownership already has sullied the image of the court system.

Two years ago a Kansas City man sued cigarette manufacturers, accusing them of deliberately addicting smokers to nicotine. Seven weeks later, a judge threw out the lawsuit as frivolous.

Until told by *The Star*, the plaintiff had no idea the judge owned stock in one of the companies.

In another lawsuit, Dana DeSuza of Independence charged that the Sprint Corp. violated discrimination laws when it fired her. A judge threw out part of her \$1.9 million claim, and presided over a trial in which a jury rejected the remainder of her case.

Two years passed before DeSuza learned the judge owned stock in Sprint. Her reaction: "I'm disgusted."

The Star's findings already are leading to change here and around the country.

For example, at least one judge sold his stock within days of being interviewed. "I don't want any question," said Judge Dean Whipple, "about whether I had any ulterior motive on those cases."

Two weeks after court officials sent her notice that the newspaper was reviewing her investments, Judge Kathryn H. Vratil mailed letters to litigants in at least six lawsuits. She told them they might have grounds to vacate her judgments and reopen their cases. Vratil called the timing a coincidence.

In Pittsburgh, a judge withdrew from a \$9 million lawsuit shortly after *The Star* notified him that his wife owned stock in three separate defendants, eight years into the legal action.

A factory worker in northern Pennsylvania, alerted to his judge's stock by *The Star's* study, two weeks ago filed a motion accusing the judge of violating ethics laws. He requested a new trial in the age-discrimination case, which had been closed for two years.

Other litigants said they also were looking into resurrecting their long-closed cases.

Authorities in Washington are taking notice, too.

Three days after being contacted by *The Star*, the Administrative Office of the U.S. Courts faxed a memo marked "URGENT" to more than 100 chief judges across the nation. It suggested they review and update their methods for identifying conflicts of interest. That is

something several judges said they were doing already.

"What we're really talking about is the integrity of the judicial system," explained Leslie W. Abramson, a law professor at the University of Louisville and an expert on judicial ethics.

"In the worst-case scenario, judgments could be affected."

The honor system

Congress was worried about such conflicts 24 years ago. That's when legislators beefed up ethics laws to bolster confidence in the courts.

They considered financial conflicts so serious, in fact, that they made them illegal even when the judge's investment is tiny and when lawyers waive any objections.

The idea was to prevent quibbling over the extent of the judge's legal role or the size of his financial stake. As a practical matter, experts said, it would be impossible to determine the purity of a judge's thoughts when he renders a particular decision.

To help ensure compliance, judges must list their investments annually on reports filed in Washington.

But strict rules make the reports difficult to get and alert the judges they are under scrutiny. That ensures few people review them.

Short of Congress impeaching a judge, no one outside the judiciary is authorized to enforce the ethics statutes. Judges are on the honor system, trusted to police their own conflicts. The law sets no penalty for crossing the line.

Until now, experts said, no one has taken an in-depth look at how scrupulous trial-level judges have been about avoiding such problems.

For its study, the newspaper analyzed financial disclosure reports filed since 1991 by district judges based in parts of four of the 13 federal appellate circuits.

The courthouses were chosen because of their size and because each represents a different judicial district: Kansas City (Western Missouri District); Kansas City, Kan. (Kansas); Pittsburgh (Western Pennsylvania) and Portland (Oregon).

The Star then compared the judges' stock holdings with thousands of civil lawsuits.

Although the study found problems at each courthouse, on average judges in the Kansas City area issued more court orders in more questionable cases.

Among the lawsuits identified locally, 19 involved judges who owned stock in a litigant; one suit involved a judge whose wife owned the problem stock. In 11 other lawsuits, judges owned stock in the parent corporation of one or more litigants.

The final two cases involved a different sort of problem. A judge who sat on the Board of Governors at Truman Medical Center presided over two lawsuits against the center — and threw both out of court.

Under ethics statutes and judicial canons, experts said, judges should have no role in any of those cases.

"Some people might say it's surprising," Abramson said of *The Star's* findings. "Other people might say it's disappointing."

'Slap in the face'

Some litigants grew furious when told of the judges' investments.

"It makes me feel like I've been violated," litigant Ed Wallace said

moments after hearing that the judge in his lawsuit against the Chrysler Corp. bought Chrysler stock in the midst of the case.

"I really feel that I got the raw end of the deal."

Nancy Powell is stinging, too. The judge who handled Powell's lawsuit against her former employer revealed her stock ownership just 11 days before trial, bringing the case to a halt.

"The sheer emotion of the whole thing was horrendous," Powell said.

Darrell Taylor suffered severe injuries in a traffic accident, then pursued a \$1 million lawsuit against an insurance company. He had no idea his judge owned stock in the company's holding corporation.

"There should be a law against that," he said.

Even in cases where a judge's involvement was brief and cursory, some litigants grew indignant.

For example, the first judge assigned to handle Linda Zimmerman's lawsuit against General Motors issued one order, scheduling a conference. Because of a conflict unrelated to stock ownership, the judge withdrew nine days later.

Even so, Zimmerman erupted when a reporter told her the judge owned up to \$30,000 in General Motors stock.

"I did not know about any of this," Zimmerman said. "That's a conflict."

Rightly or wrongly, the findings also fed a pervasive skepticism about the fairness of American courts.

"I am not a fan of the justice system," explained one litigant, Har-

vey Bruce. "You cannot get a fair shake in this country."

Among the lawyers involved, Randy James' reaction mirrored that of many.

James of Overland Park praised the integrity of federal judges. He is confident stock investments did not sway the judge's rulings in his case.

Yet James responded to *The Star's* overall findings with exclamations of "Wow!" and "My goodness!" And he found the picture they painted disturbing.

"It's so obvious it slaps you in the face," James said. "If you've got a conflict, you've got to get out."

Unlike James, many lawyers refused to discuss the conflicts unless promised anonymity.

"You've got to understand my position," one attorney said, repeatedly asking that his name not appear in the newspaper. "This judge determines my ability to make a living."

Several lawyers said they never considered looking for financial conflicts. They assumed judges were conscientious and would reveal any stock interests.

Some also pointed out that if an attorney had a financial conflict, he would face serious trouble for himself and his case.

"It's more than a little ironic," one lawyer said, "that a judge got caught in this situation."

Hollow warnings

Each spring, judges take part in a ritual designed to remind them of conflicts and their duty to avoid them.

Every judge lists his assets on a detailed form, then signs an at-

tached certification declaring that he did not break any ethics laws.

The certification requires each judge to attest that:

"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 ... had a financial interest. ..."

The judge's signature is followed by a pre-printed warning:

"Any individual who knowingly and wilfully falsifies ... this report may be subject to civil and criminal sanctions."

But the warning is hollow. Court officials in Washington could not identify a single instance in which a judge was disciplined. And the certification clearly did not stop judges from handling cases in which they owned stock.

For example, Whipple presided over two 1996 lawsuits against the Philip Morris Cos. Whipple threw out both.

Then, Whipple filed a financial report last spring that disclosed he owned up to \$15,000 worth of stock in Philip Morris. (The form only shows ranges of stock value, not precise amounts.)

Whipple said in an interview he believed that, in some cases, he could legally own stock in litigants, although he concedes his opinion is in the minority.

Whipple was far from alone in signing the statement. *The Star* reviewed more than 200 of the certifications filed over six years by judges in four states. None of the judges disclosed a single conflict.

That's the case even for judges who presided over part of a law-

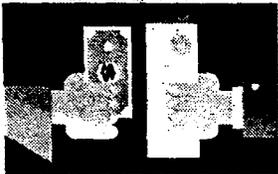


FRED BLOCHER/The Star

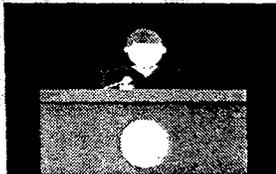
Ed Wallace of St. Joseph has been unemployed since the rim of a tire he was changing on a church van exploded, leaving him with brain damage. The

judge who presided over his claim against Chrysler Corp. owned company stock. "It makes me feel like I've been violated," Wallace said.

Judging a conflict of interest



Judge buys stock in XYZ Corp.



Judge presides over lawsuit against XYZ Corp.



Judge signs certification that he has no financial conflicts of interest



Judge mails certification and list of his stocks to Washington, where they are seldom reviewed.

DAVE EAMES/ The Star

suit, discovered and acknowledged their stock ownership, then belatedly withdrew. Each later signed the statement without elaboration.

For example, Judge Elmo B. Hunter presided over a lawsuit filed in 1990 by the General Motors Acceptance Corp. Ten months and seven court orders into the suit, he notified lawyers that he owned General Motors stock; his disclosure reports show it was worth \$100,000 to \$250,000.

Hunter announced he would sit aside over the case unless the lawyers objected. They did not, and Hunter continued on the case until the parties reached a negotiated settlement six months later.

Federal law requires a judge with an interest in a litigant to withdraw even if the lawyers beg him to stay. That applies even when the judge's interest is in the litigant's parent company, experts said. Yet Hunter signed the certification.

Hunter, who has been ill, could not be reached for comment.

The lapses are especially striking in instances where a judge issued orders in a lawsuit just before signing the certification.

Two years ago, for example, Judge Fernando J. Gaitan Jr. issued an order in a lawsuit against AT&T Communications, a common name for AT&T Corp. The very next day, Gaitan signed the certification and sent a list of his investments to Washington.

The list included up to \$15,000 in AT&T stock.

Gaitan declined repeated requests for an interview. In a letter, he called his AT&T holdings insubstantial and his role in the case minimal.

About the same time, Judge Lungstrum signed a 108-page consent decree in a lawsuit against a

string of corporations, including Western Resources Inc. and General Motors.

The same day, Lungstrum signed the certification and mailed a list of his family's 1995 holdings to Washington. They included Western Resources stock and a special class of General Motors securities, worth up to \$100,000.

Lungstrum acknowledged he probably did not compare his assets with his caseload before signing the form. Instead, he assumed he already would have discovered and resolved any conflicts.

"I just did not think about that," he said. "But I signed it with an absolute certainty that I did not have a conflict."

"I probably had a little bit of hubris there that I was not going to miss it."

In one case, the disclosure ritual failed to prevent stock problems from cropping up twice in a single lawsuit.

Jerald Heintzleman filed suit in 1995 after losing his job at AT&T Microelectronics, a division of AT&T with offices in Lee's Summit.

The case was assigned to Judge Howard F. Sachs, who owned AT&T stock worth \$15,000 to \$50,000. Sachs issued two orders.

Seven months into the suit, Sachs disclosed his stock and withdrew. Three days later, a magistrate withdrew before taking any action because he also was an AT&T stockholder.

The case then passed to Gaitan, who issued five orders. Ultimately, Gaitan agreed to requests by both sides and dismissed the lawsuit.

Five weeks later, Gaitan signed a form disclosing his assets.

The only stock listed: AT&T.

KC not alone in seeing problem cases

By JOE STEPHENS

Staff Writer

ERIE, Pa. — Engineer Walt Sweet always suspected something was amiss during his lawsuit against General Electric, the largest employer around this blue-collar town. Now he's even more convinced.

"I don't think I got a fair shake," Sweet said. "It makes me disbelieve even more in the justice system."

There is no evidence that U.S. District Judge Sean McLaughlin skewed his rulings to favor General Electric. Sweet himself acknowledges that.

But records show that while overseeing the case, McLaughlin owned stock in the manufacturing giant. During that period he presided over seven other lawsuits against General Electric.

"I can't say the guy did anything wrong," Sweet said. "But there's always that question, you know?"

Two weeks ago, prompted by *The Kansas City Star's* study, Sweet filed a motion accusing the judge of violating federal ethics laws. He asked for a new trial before a different judge.

McLaughlin said in letters to *The Star* that he was "not cognizant" of his stock ownership while handling Sweet's lawsuit. The problem was compounded, he wrote, because someone left the stock off a list, which his staff kept to prevent conflicts.

He declined to say whether Sweet was entitled to a new trial.

McLaughlin's lapse is one of

many among federal judges outside the Kansas City area. *The Star* studied financial reports filed by judges in the districts of Oregon and Western Pennsylvania, and found problems involving stock ownership both places.

In Pennsylvania, the newspaper reviewed six years of financial disclosure forms for 12 district judges. It found that six of the judges had issued orders in lawsuits involving corporations in which they or their spouses had a financial interest.

The court orders spanned 20 legal actions. In two additional cases, trust funds that benefited a judge's wife held stock in a litigant.

The cases included lawsuits that resulted in million-dollar settlements, charges that corporate negligence led to deaths, claims that faulty appliances set homes ablaze — even two class-action complaints.

One still-pending hazardous-waste lawsuit may have set a record for conflicts. As the litigation stretched over years, Judge Gustave Diamond's wife bought stock in one company listed as defendant in the \$9 million case. Then she bought stock in a second defendant. Then a third.

Diamond told *The Star* he was unaware the companies were among the many defendants in the 8-year-old Superfund cleanup lawsuit. He speculated that the discovery would force him to withdraw and a short time later, he did.

He passed the case — which now fills 60 file folders — on to a new judge.

McLaughlin appeared to have the most problem cases among the Pennsylvania judges. He presided over all or part of 10 legal actions involving companies in which he owned stock.

Six of those lawsuits were brought by workers who, like Sweet, claimed General Electric demoted them or laid them off to hire younger workers.

Sweet said he had no idea about the judge's stock until told by *The Star* — yet McLaughlin presided over Sweet's case and jury trial for 15 months.

Sweet said several of the judge's rulings damaged his chances of winning. For example, McLaughlin barred Sweet from telling the jury about comments made by some of his co-workers. Sweet claimed the remarks proved the company discriminated against older employees.

On two occasions, McLaughlin's office notified General Electric that it was delinquent in filing court papers. Yet the court docket indicates the judge never penalized the company or ruled that General Electric had defaulted in the case.

Sweet pushed on through a jury trial overseen by McLaughlin. The jury found in favor of General Electric.

That outcome prompted Sweet's lawyer to abandon other claims he was handling for laid-off General Electric workers, including Eleanor May Nelson.

"I dropped it," Nelson explained, "because I didn't think I could win."

Eileen Damico also was pursuing an age-discrimination lawsuit against the company at the time, a case handled by McLaughlin. The judge sold his stock, worth up to \$15,000, during the case and continued to preside through a jury trial.

Damico won a judgment of \$62,000, and later settled for a reduced amount to avoid an appeal.

Today, despite lacking any evidence, Damico is convinced McLaughlin's stock holdings influenced his rulings. She thinks the judge should face a penalty.

"Judges have an awful lot of power," Damico said. "Too much power, I think."

McLaughlin said in a written response that he was surprised Damico or any other plaintiff would describe him as hostile or biased.

"Every litigant was treated fairly and impartially," the judge said. "I was not cognizant of my stock ownership in those cases and had I been, they would have been re-assigned."

"Thus, my stock ownership in G.E. played no role whatsoever in any of my rulings."

Even so, Sweet is pushing for a new hearing. The next step is ordering a transcript of his last trial, he said, at an estimated cost of \$6,000.

"I hate to shell it out when it's somebody else's fault," Sweet said. "This guy is a judge, and he's paid to know the law."

"If there is such a thing as integrity, I think the cases ought to be re-heard."



EMILIO DiVALERIO/Special to The Star

Walt Sweet was stunned that the Erie, Pa., judge who presided over his lawsuit against General Electric owned stock in the company.

Oregon judges

In Oregon, *The Star* reviewed disclosure forms for nine federal district judges and identified two problem cases. In each instance, a judge issued orders while owning stock in a litigant.

The study also raised questions about the finances of Judge Ancer Haggerty. He submitted unitemized statements from a stockbroker showing that in 1996 he owned \$116,762 worth of "investments." The statement did not identify any of them.

An official at the brokerage firm explained that the term refers to a mix of stocks, bonds and mutual funds. Filing instructions and federal law require judges to disclose and identify each of their assets — including individual stocks, bonds and mutual funds.

Also raising questions: A 1995 report in which Haggerty disclosed he bought American Express stock valued at almost \$4,500. Yet he never reported selling the stock and it does not appear on his disclosure forms in following years.

Court records show Haggerty recently threw out a lawsuit against a subsidiary of American Express.

Some forms submitted by judges in other states also appeared to be incomplete, misleading or wrong. The judges attributed the problems to honest mistakes.

In Haggerty's case, he agreed in a letter to *The Star* that he would disclose the stocks in his accounts in the future. But he refused to clarify his past reports.

"By law, you are entitled to these reports," he said of the unitemized stockbroker's statements, "but that is all you are entitled to."

Most area federal judges have owned stock in litigants

District judges in the Kansas City and Kansas City, Kan., federal courthouses:

Kathryn H. Vratil
Kansas City, Kan.
Appointed in 1992
by President Bush
Problem cases: 14

Vratil owned stock in more companies than did any other local federal judge. She also issued orders in more lawsuits involving those companies.



Vratil

And she offered by far the most extensive explanation of any judge. The cases involved General Electric, Travelers Group Inc., Sprint Corp., General Motors, Transamerica Corp. and their subsidiaries. Vratil owned no more than \$30,000 in stock in any of the corporations.

Vratil acknowledged that her stock ownership may have created the appearance of impropriety. "It's a bad situation," she said.

In fact, last year Vratil wrote to litigants in six of the lawsuits and offered to consider vacating her judgment and reopening their cases. (None has accepted.) She told them her stock holdings resulted in an "actual or apparent" conflict of interest.

In interviews and a detailed letter complete with footnotes, she offered a series of explanations:

■ She gave an investment manager discretion to buy and sell some stocks in her portfolio. She

said she mistakenly thought her staff was tracking the purchases and comparing them with her caseload.

■ Although she signed annual disclosure reports that listed her stocks, Vratil said she lacked "conscious knowledge" that she had a financial interest in any of the companies while signing court orders.

That, she said, meant the stock ownership did not bias her rulings and did not create what she considered a true conflict of interest.

■ Vratil said she told her staff to scour her mail and remove information about her investments, such as brokerage statements, annual reports and letters to shareholders. The judge said she did not want to know details of her portfolio.

However, federal law states: "A judge should inform himself about his ... financial interests." Ethicists said Congress enacted that rule to prevent judges from claiming ignorance of their investments.

■ Finally, the judge said, the investment manager who bought stocks for her also bought stocks on behalf of other investors in a "managed money" program. That, she said, means her portfolio shared some, but not all, the attributes of a mutual fund.

Investments made through a mutual fund are exempt from ethics laws. Judges are not required to disclose the underlying stocks.

But Vratil's disclosure reports list her stocks as individual assets. The reports do not identify the securities as part of a fund and do not indicate they were under independent management.

And Vratil acknowledged that, unlike mutual fund investors, she

took direct ownership of the stock and was notified about all trades.

"I considered the ownership to be sort of technical in nature," Vratil said. "I don't know if I made the right call."

Vratil said she discovered her stock ownership last spring while in the midst of two of the lawsuits. She disclosed the investments, withdrew from the cases, then told her staff to search for similar problems in older, closed lawsuits.

Vratil eventually notified litigants in at least six of those legal actions about her stock. She mailed letters to them about two weeks after *The Kansas City Star* began reviewing her finances. The timing, she said, had nothing to do with the newspaper's investigation.

In some other lawsuits, Vratil said, she was unaware she had owned stock in a litigant or in a litigant's parent company until questioned by *The Star*.

Vratil said she has moved her savings into mutual funds to avoid similar problems in the future.

"I'm sorry this happened," she said. "And this is not going to happen again."

Elmo B. Hunter
Kansas City
Appointed in 1965
by President Johnson
Problem cases: 5



Hunter

Hunter's financial disclosure reports show he owned General Motors stock worth as much as \$250,000 while presiding over all or part of four legal actions involving the car company or one of its wholly owned subsidiaries.

Midway through one lawsuit against a General Motors subsidiary, Hunter notified lawyers for both sides that he owned General Motors stock. The lawyers waived any objection, and Hunter remained on the case until its conclusion seven months later.

Federal law requires judges to withdraw when they know they have an interest in a litigant, even when no one objects.

In a fifth case, Hunter's wife owned stock in General Electric while he appointed a legal courier in a lawsuit involving the company.

Hunter, who has been ill, could not be reached for comment. Lawyers in the cases, like those in the other lawsuits identified by *The Star's* study, said they saw no evidence of bias in the judge's rulings.

Fernando J. Gaitan Jr.
Kansas City
Appointed in 1991
by President Bush
Problem cases: 3



Gaitan

Gaitan owned stock in AT&T while presiding over all or part of three cases involving the company or one of its wholly owned subsidiaries. Gaitan declined repeated requests for an interview.

In a brief letter, however, he described his handling of the law-

suits as minimal and called his investment in the company insubstantial. Federal records show his stock was worth \$15,000 or less.

Gaitan said he acquired the stock during the six years he worked for a subsidiary of AT&T.

"Obviously, I would not intentionally violate a code of conduct," Gaitan wrote. "I have scrupulously avoided conflicts during my nearly 18 years as a judicial officer.

"Two of the three cases were dismissed by agreement of the parties at a very early stage. The third was dismissed for plaintiff's failure to comply with procedures necessary to prosecute the case, again at an early stage of the case."

Howard F. Sachs
Kansas City
Appointed in 1979
by President Carter

Problem cases: 3

Sachs owned up to \$50,000 worth of stock in AT&T while entering orders in three cases against AT&T or one of its wholly owned

subsidiaries.

In one lawsuit, Sachs issued two orders, then disclosed his stock ownership and withdrew.

In another, Sachs said a clerk stamped his signature on an order appointing a legal courier; Sachs later disclosed his stock and passed the case to another judge. That order, like many identified by the study, was routine and had little effect on the case.

None of the litigants in Sachs' cases contested any of the orders, and Sachs estimated he spent no more than a minute working on each lawsuit.

He acknowledged that "conceivably, somebody could say it's an illegal situation." But he called any violation a technicality and said he would be inclined to do the same thing in the future.

"Maybe," he joked, "I will be impeached."



Sachs

Dean Whipple
Kansas City
Appointed in 1987
by President Reagan
Problem cases: 2

Whipple presided over two lawsuits against the Philip Morris Cos. and other cigarette manufacturers. The suits, each filed by a state inmate, accused the tobacco companies of manipulating nicotine levels to addict smokers.



Whipple

Whipple declared both cases "frivolous" and threw them out of court. He said he believed he could lawfully handle the lawsuits, despite owning up to \$15,000 worth of stock in Philip Morris.

"I take the position that whatever I rule will not affect the bottom line of Philip Morris," he said.

After researching the issue, however, Whipple agreed his position was not supported by most legal ethicists or by case law.

"I'm in the minority in my opinion," he acknowledged. "Although I think that I have a valid argument, I'm not going to fight it. And so, from now on, if I have a case where I own any stock, I'll just disqualify (withdraw)."

Shortly after being questioned by a reporter, Whipple sold all his shares in Philip Morris.

"I don't want any question," he said, "about whether I had any ulterior motive on those cases."

John W. Lungstrum
Kansas City, Kan.
Appointed in 1991
by President Bush
Problem cases: 2

Lungstrum presided over two lawsuits against companies in which he and his family owned stock. In each instance, he acknowledged, his actions appeared contrary to ethics laws.



Lungstrum

Lungstrum entered several orders in a \$2 million lawsuit against the Chrysler Corp. that the litigants ultimately settled out of court. He said the case slipped by because he bought stock in the car company — up to \$15,000, according to his disclosure form — after the case was assigned to his courtroom.

"I forgot I had the case at the time the stock was bought," he said. "By the time the case came back to my attention, I had forgotten I had the stock."

Lungstrum also filed one order and approved a consent decree in a lawsuit over the multimillion-dollar cost of cleaning up a Superfund hazardous waste site in Johnson County. Lungstrum and his family owned up to \$50,000 in stock in one of the many companies named in the lawsuit.

"I may not have even checked who the parties were," he said. "I probably just got lazy."

Lungstrum said he made no contested rulings in that case. Still, he says he plans to tighten his procedures for identifying financial con-

flicts.

"We should be concerned about these things," he said. "I'm glad to have my attention called to it, and to redouble my efforts to make sure things don't fall through the cracks."

D. Brook Bartlett
Kansas City
Appointed in 1981
by President Reagan

Problem cases: 2

Bartlett, chief judge for the Western District of Missouri, presided over two lawsuits against McDonald's restaurants while he owned up to \$50,000 in stock in McDonald's Corp.

In one case, Bartlett issued two orders, then disclosed his stock ownership and withdrew. In the other, he issued one order, then granted the plaintiff's request that he dismiss the lawsuit.

"I should not have done that," Bartlett said. "It probably was a technical violation (of ethics laws)."

"It's below the standards I set for myself. It just means I have to be more careful."

Upon checking, Bartlett said he was relieved to discover that "all orders entered were either routine or not opposed by plaintiff."



Bartlett

Ortrie D. Smith
Kansas City
Appointed in 1995
by President Clinton

Problem cases: 1

Smith issued a single order setting deadlines in an employment discrimination lawsuit against Wal-Mart Stores Inc. Two months later, Smith withdrew because he owned up to \$15,000 worth of stock in the company.



"It probably was a technical violation (of the law)," Smith said. "I regret that it happened, but it did."

Smith said he did not read the routine order, which was issued by a clerk using a signature stamp. The order did not affect the outcome of the lawsuit, he said.

"There should have been a procedure in place to avoid it ever coming to me to begin with," he said of the case. "That is now in place."

NO PROBLEMS

District judges from the Kansas City area who did not issue any court orders in cases involving companies in which they owned stock:

Western District of Missouri

Gary A. Fenner
Nanette K. Laughrey
Scott O. Wright

District of Kansas

Earl E. O'Connor
G. Thomas Van Bebber

Position held at hospital poses different problem

Joseph E. Stevens Jr.
Kansas City
Appointed in 1981
by President Reagan
Problem cases: 2

For many years, Stevens was a powerful figure at Truman Medical Center, where he sat on the board of governors.

But during that time he also had a hand in the hospital's affairs while sitting on the bench.



Stevens

That's where, in May 1995, Stevens threw out a legal claim against Truman. Eleven months later, he threw out another.

He ultimately dismissed both lawsuits "with prejudice," meaning the plaintiffs can never refile them.

Yet federal law is clear: Judges must withdraw from any lawsuit in which they know they are a "director, adviser or other active participant in the affairs of a party."

Stevens did not dispute that he should not have handled cases against Truman. In fact, he said he was surprised to learn that he had presided over the lawsuits. Each was filed by an inmate at the Jackson County Jail, alleging he received substandard medical care.

"If I had known Truman was on the pleading," Stevens said, "I would not have signed the orders."

Each order emanating from Stevens' chambers bears his signature. But in many routine lawsuits, he said, law clerks draft orders for him to review and sign.

If they failed to point out Truman was a defendant, he ar-

gued, the conflict was due to "administrative error" by the clerks — not to his own lapse.

Both of the court orders that dismissed the claims against Truman referred to the medical center four times by name. One of those orders mentions Truman in both its first and last sentence. Directly below the last sentence, the judge signed his name.

Yet Stevens said that does not mean he realized Truman was a defendant. "I just barely see them," he explained of the orders, which did not list Truman in the headings.

Stevens said *The Star's* discovery might lead him to resign from Truman — and nine days later he did.

At Truman, Stevens said, he and his fellow governors acted as advisers to the hospital's board of directors.

Governors attend but have no vote at the hospital's monthly business meetings. That power is reserved for directors, a position Stevens held for nine years before becoming a governor.

But governors also serve on policy committees with the directors. Governors may vote at committee meetings, officials said, and their duties can include guiding litigation.

The hospital listed Stevens in its corporate filings as part of the medical center's controlling board. And it listed Stevens on its federal tax return as among its "directors, trustees and key employees."

Still, Stevens said, determining whether his actions broke ethics laws remains "a hard question."

"There isn't any black and white," he said.

But the judge agreed that his actions may have created the appearance of impropriety.

"I now think it would have been better," he said, "to have recused."

Judicial ethics law contains few loopholes

By JOE STEPHENS

Staff Writer

Congress had a simple idea in mind two decades ago when it enacted strict new ethics laws:

No one should be a judge in his own dispute.

So Congress set an exacting standard. A judge, it said, must pull out of a lawsuit when he knows he has a financial interest "in the subject matter in controversy or in a party to the proceeding."

In 1988, the U.S. Supreme Court weighed in. It ruled that a judge must step aside even when no reasonable person would conclude that the investment could affect his judgment.

Federal law, the court said, "requires disqualification no matter how insubstantial the financial interest and regardless of whether or not the interest actually creates an appearance of impropriety."

Appeals courts and ethics committees have ruled the same way in case after case, noting that judges must withdraw even when no one objects and when doing so "would involve great inconvenience."

The only other option: Sell the stock.

In one often-cited case, a judge was presiding over a complex class-action lawsuit involving thousands of companies when he discovered that his wife had an interest in the dispute worth less than \$30. A federal appeals court ruled that the judge had to withdraw.

"Thus," the court wrote, "after five

years of litigation, a multimillion-dollar lawsuit of major national importance, with over 200,000 class plaintiffs, grinds to a halt over ... \$29.70."

And just in case a judge claims ignorance of what he owns, the law flatly states: "A judge should inform himself about his personal and fiduciary interests." Failure to do so, the Supreme Court has held, may constitute a separate violation of ethics laws.

Peter W. Rodino Jr. was chairman of the House Judiciary Committee in 1974 and helped craft the ethics statutes. He describes them as common sense.

"Public service is a public trust," Rodino explained in an interview last month. "We've got to have *full* trust."

That is why Rodino and his colleagues provided judges with a clear formula for determining when they must disqualify themselves. The legislators did not want anyone questioning when the rule applied.

"So there is no argument upon which reasonable people could differ, Congress chose to draw a bright line," explained Stephen Gillers, a judicial ethicist at New York University who has worked as a White House consultant.

"What the Congress did was simply not leave room for discretion. Congress decided it's better to err on the side of recusal when a judge has a financial interest in a party, rather than split hairs about whether the judge's financial interest is likely to be decreased or increased, depending on the result of the case."

And if the rule seems severe, that's

as it should be, said Steven Lubet, a judicial ethicist at Northwestern University in Chicago.

"It's supposed to be picky," he said, "because judging is important."

The rules also recognize the uncommon influence commanded by members of the bench.

Judicial authority is not hamstrung by politics or limited by the need to reach consensus. The clout wielded by Kansas City Mayor Emanuel Cleaver pales beside that of U.S. District Judge Russell G. Clark, who took control of Kansas City public schools and ordered a property tax increase. Or that of Judge Dean Whipple, who seized the Kansas City Housing Authority.

Unlike senators and presidents, federal judges are guaranteed their jobs for life. Even if they retire or are convicted of a felony, federal law gives them the right to receive their full salary until death.

"A federal district court judge in many ways is the most powerful individual in our governmental system, excepting the president," said James C. Turner, a Washington lawyer and legal reformer.

In return for that power, ethics canons demand that the nation's 585 district judges be not only incorruptible but also above even the appearance of impropriety. Actions and conflicts common among elected officials are expressly illegal for federal judges.

Congress enacted those prohibitions in a flood of post-Watergate reforms. And in particular, Rodino recalled, they were prompted by Clement Haynsworth.

The Star

KANSAS CITY

You can review the investments of federal district judges in the Kansas City area on *The Star's* on-line site. The judges' 1997 financial disclosures are at www.kcstar.com/judges/.

Also on the Web site: A copy of the official form you need to request a judge's financial holdings.

Richard Nixon nominated the appellate judge to the U.S. Supreme Court in 1969. Soon, scandal erupted over Haynsworth's business dealings.

Two civil cases in which Haynsworth took part, it turned out, involved subsidiaries of companies in which he owned a few thousands dollars in stock. One of the cases was a personal injury lawsuit that resulted in an award of just \$50.

Although no one charged Haynsworth with making money off his rulings, U.S. senators cited the conflicts as the reason for his rejection. Some critics even called for him to resign from the federal appeals court.

Tom Eagleton, then a senator from Missouri, lambasted Haynsworth in a nationally televised debate.

"It's fundamental that a judge is prohibited from sitting on a case when he has stock ownership in one of the parties," Eagleton said. "That in itself disqualifies him from being considered for the court."

About the series

"On their honor: Judges and their assets" is a two-part series that emerged from several months of work by special projects reporter Joe Stephens.

Stephens collected hundreds of pages of documents listing the financial assets of judges in four courthouses, then matched the litigants in each case handled by each judge in recent years against the judge's portfolio. Stephens then reviewed his findings with judges, lawyers, litigants and legal experts.

The series:

Today: Federal judges preside over lawsuits against companies in which they have a financial interest even though federal law prohibits it.

Monday: It's hard to find out what stocks judges own, and misconduct complaints against judges almost never result in discipline.

Stephens has worked on numerous investigative stories since joining *The Kansas City Star* in 1987.



Stephens

Stephens won a George Polk

Award in 1995 for a series of stories about riverboat casinos, their political connections and the power of big money. The series focused on Missouri House Speaker Bob Griffin, who later pleaded guilty to bribery and fraud.

In 1996, Stephens revealed that a vice chairman of Bob Dole's presidential campaign provided his employees stacks of \$100 bills and directed them to make individual political contributions in their own names.

As a result, Simon Fireman and his company pleaded guilty to 74 counts of violating federal campaign-finance laws. Fireman was sentenced to six months confinement and \$6 million in fines — 10 times the previous record fine for campaign violations.

Stephens can be reached by calling 234-4427, or by sending e-mail to stephens@kcstar.com.

THE KANSAS CITY STAR.

MONDAY, April 6, 1998

METROPOLITAN EDITION ★

50¢

Judges escape public scrutiny on ethics

And process of finding out what stocks they own can be inhibiting.

By **JOE STEPHENS**
Staff Writer
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If you fear that the judge handling your federal lawsuit has a hidden conflict of interest, the law gives you a way to find out.

Just scan the investments listed on his annual disclosure statement, a public document designed for that very purpose. Sounds easy, right?

It's not.

Court rules make reviewing the forms impractical. And by the time you see the first sheet, the judge will know you are snooping into his finances.

When someone does discover a bona fide conflict, the judge need not fear punishment. Litigants file hundreds of complaints against judges each year, but they almost never produce so much as a reprimand. And district judges get their six-figure salaries for life, misconduct or not.

"The lack of any meaningful oversight over federal judges is one of the gaping loopholes in our legal system," said lawyer James C. Turner, a Washington-based consumer advocate.

"It cries out for reform."

U.S. law requires federal judges to withdraw from any case in which they know they have a financial interest, however small. Yet, *The Kansas City Star* reported Sunday, judges repeatedly have presided over lawsuits against companies in which they own stock.

Most judges said they made honest mistakes that, while regrettable, did not hurt anyone. Many litigants, however, were shocked and embittered by the judges' lapses.

The newspaper began its study by collecting disclosure statements from judges in four states. Individuals might find it difficult to make the same comparisons.

The reports are not available in

Kansas City — or even in the Midwest. Instead, authorities keep them 1,100 miles away at the Administrative Office of the U.S. Courts in Washington, D.C.

You must request copies in writing, not over the phone. And a simple letter will not suffice. Authorities consider only requests made on Form AO-10a, available only from the office in Washington.

You must list your name, address and occupation. Then you must disclose the "organizations or persons on whose behalf this request is made." The form warns that lying could lead to a \$10,000 fine and five years in prison.

All mail requests must be notarized. See **COMPLAINTS, A-11, Col. 1**

On their honor

Judges and their assets

This is the second in a two-part series that examines the stock holdings of federal judges.

rized. The White House and Congress make no such demand when handing out their reports.

Furthermore, the courts charge 50 cents a page, payable in advance. A copy of U.S. District Judge Kathryn H. Vratil's reports for the last two years costs \$50.

But critics call those impediments small compared to the final hurdle: Court workers send each judge a photocopy of your request, including your name. The president, senators and members of the House do not get similar warnings.

Court administrators described the notifications as a security precaution. However, they could not identify a single instance where someone used the reports to harm a judge.

Critics said the policy puts a litigant at risk of infuriating the very official who will determine the destiny of his lawsuit. Lawyers are in an even more precarious position because they must appear repeatedly before the judges, who have lifetime appointments.

"The last thing a lawyer wants to do is anger a judge," said Washington attorney William Fry, who specializes in consumer issues. "It's almost a total barrier to a lawyer making a request" for a report.

Court officials described such fears as unreasonable. Yet experts pointed out that lawyers could be disciplined or disbarred for challenging a judge's integrity.

Fry argues that the financial reports should be available for free review at local courthouses. The names of litigants who look at them should be confidential, he said, to forestall retaliation.

Some litigants, angry about their judges' stock holdings, went even further.

"It should be posted outside the judge's courtroom," litigant Nancy Powell said of the forms. "It should be on a plaque on the door."

That is unlikely. But beginning today, local judges' investments are available for free and anonymous review on *The Star's* Internet site. Anyone with a home computer or access to a public library can see the reports for district judges on the World Wide Web at <http://www.kcstar.com/judges/>.

Form AO-10a, needed to order reports from Washington, also is on the Web site.

Local lawyers and public-interest advocates called that a step in the right direction.

"People want to know whether their judge has a conflict," Fry said. The judiciary's reluctance to make the reports more available on its own, he added, "is shocking."

The Star

KANSAS CITY

Washington makes it difficult to discover what federal judges own, but *The Kansas City Star* makes it easy on the newspaper's Web site.

You can review the investments of federal district judges in the Kansas City area by looking at their financial disclosure forms, posted at www.kcstar.com/judges/. The forms also list gifts they accepted, corporate positions they hold, and free trips.

For the holdings of other federal judges, you must write to Washington. But instead of mailing away for the official request form, you can speed things up by printing a copy at the same Web address.

About the series

Today: It's hard to learn what stocks judges own, and misconduct complaints against judges seldom result in discipline.

In the previous segment Sunday: Federal judges preside over lawsuits against companies in which they have a financial interest even though federal law prohibits it.

Reporter Joe Stephens can be reached at 234-4800, Ext. 4427, or by e-mail at stephens@kcstar.com.

Lax enforcement

Discovering a stock conflict might give you grounds to remove a judge from your lawsuit. But it would not mean the judge is in trouble.

"What would happen, at most, would be that the chief judge of the circuit would have a full and frank discussion with the district judge to ensure that he knows what his obligations are," said Stephen Gillers, a judicial ethicist at New York University Law School.

"And it will end there. There will be no formal discipline, public or private."

That illustrates a central feature of the federal court system: Although judicial ethics laws are strict, enforcement is not.

The system trusts judges to police themselves. Unlike the executive branch, with its inspectors general, no one in the court system is empowered to ferret out violations.

To be sure, a judge can be tried and convicted of pocketing a bribe or some other crime. Unlike other

convicts, however, the judge would keep his salary while in prison. The U.S. Constitution guarantees that as long as a judge retains his title, no one — even the president — can reduce his pay for any reason.

Yet when someone catches a judge flouting ethics laws, there is no set penalty. In a nod to the separation of powers, Congress left matters of discipline to the judiciary itself.

The courts do accept complaints of misconduct, which in theory can lead to an official reprimand or even a paid suspension. But lawyers who stumble across judicial wrongdoing tend to keep their complaints to themselves.

"Lawyers are not going to criticize judges in their own districts," Gillers said. "It's just suicide. Federal judges are simply too powerful."

A litigant can file his own complaint with the chief judge of his judicial circuit. The chances of eliciting even a private rebuke, however, are slim.

In fiscal 1996 and 1997, chief judges looked into more than 1,000 formal complaints against federal judges nationwide. The chief judges decided that not one required official discipline, according to reports from the Administrative Office of the U.S. Courts.

The reports show chief judges failed to send even a single complaint on to the next level in the complaint process: investigation by a committee of judges.

In 461 instances, complainants appealed the dismissals up the line to a judicial council. The councils threw out every single appeal.

Although some court officials questioned whether the numbers were complete, the Administrative Office could not explain any omissions.

In fact, officials in Washington could not identify the last time a judicial council publicly disciplined a judge. They are sure, however, it hasn't happened in the last five years.

"It makes you suspicious," said U.S. Rep. Ed Bryant, a Tennessee Republican who wants to beef up the complaint process.

"You would believe that out of that number there would be a handful or so that would have some merit."

If so, it would be impossible for anyone outside the judiciary to tell. Officials keep all complaints, and the judges they name, secret from the public.

"It's disturbing to think none of those complaints can be reviewed by any public group," Fry said.

A judge, however, knows the names of his accusers, receiving a copy of a complaint as soon as it is filed. Critics and supporters of the system alike acknowledge that it

ensures few complaints are filed by lawyers, who are in the best position to spot misconduct.

Court officials said the rules protect judges' reputations from unfounded attacks. And they argued that no one meant for the complaint system to be adversarial or punitive.

Instead, it is an administrative tool to help chief judges correct the behavior of wayward colleagues, said appeals court Judge Henry A. Politz of Louisiana.

"The most effective way to do that," he told a congressional committee last year, "is by informal pressure and persuasion brought to bear by other judges — not by any formal complaint process."

On occasion, the informal method prompts judges to correct their behavior before the complaint process begins, he said. In some cases, chief judges also may take "corrective action" outside the process.

Critics contend that judges simply balk at facing the sort of adversarial battle that they subject other folks to daily. And they ridicule the notion that a public official, armed with a lifetime appointment and training as a professional advocate, needs to hide behind secrecy rules.

"Our federal judiciary is virtually immune to attack," New York lawyer Thomas Liotti wrote in a letter published in the *National Law Journal*. "This situation threatens the system of checks and balances necessary to the democratic functioning of government."

'Wake-up calls'

Reformers point out that judges often do not consider unethical behavior alone to be grounds for a reprimand. A recent misconduct complaint illustrates the point.

A Nevada state prosecutor filed a complaint against an unidentified magistrate judge from the Tenth Circuit, which includes Kansas. The prosecutor accused the magistrate of improperly seeking the release of a man jailed on a warrant issued in Nevada. The prisoner's sister worked for the magistrate as a secretary.

A committee of judges investigated and told Stephanie Seymour, chief judge of the circuit, that they thought the magistrate may have violated the judicial Code of Conduct. But Seymour said in court documents that was not enough to trigger a reprimand.

"The fact that a judge's conduct violates the Canons," Seymour wrote, "does not necessarily mean that it constitutes judicial misconduct."

"The complaint is therefore dismissed."

Turner argues that it is time to open up the process. He is executive director of a Washington-

based group named HALT — an Organization of Americans for Legal Reform.

"Sunshine is the best disinfectant," he said. "While it's messy and it may cause individuals some discomfort to have matters considered in public, in a democracy that is the way things are done. There is no better way."

Turner's organization recommends sprinkling ordinary citizens among the judges on disciplinary boards. And it calls for public censure, even when judges lapse inadvertently.

For example, Turner recommends public reprimands for judges who preside over lawsuits while owning stock in a litigant. That, he said, would put all judges on notice that such problems are serious.

"Even if you have the most honest jurist in history," he said, "that guy every now and then needs a wake-up call that he has got to be careful."

"The wake-up calls are not coming."

The disciplinary system also is under fire in Congress, where some legislators are calling for greater accountability.

Recently proposed legislation would require that judges undergo congressional confirmation every 10 years and that judges convicted of serious crimes be banned from the bench.

Bryant and other Republican lawmakers are backing another bill that would bar chief judges from deciding the outcome of complaints against judges in their own circuits. Instead, complaints would be referred to chief judges in another region of the country.

"This whole process is being conducted by colleagues," Bryant complained. "They play golf together and drink together."

With the proposed reforms, he said, "at least we avoid the appearance of a conflict of interest."

Bryant's bill passed out of the judiciary committee last month and awaits consideration by the full House. It faces stiff opposition.

The U.S. Judicial Conference argues that there is no evidence of lax enforcement. And many legislators are reluctant to tamper with

the hallowed principle of judicial independence.

Even if Bryant's bill passes, however, the U.S. Constitution ensures the only substantial penalty judges face will remain the same: removal from the bench.

That can be accomplished only through impeachment by the House and conviction by the Senate. And in the 222-year history of the United States, federal judges have met that fate only seven times.

That's an average of once every 32 years.

Slim to none

According to the Administrative Office of the U.S. Courts, anyone who complains about a federal judge has almost no chance the judge will be disciplined. The record in 1996 and 1997:

Number of complaints against judges*	Number of judges disciplined	Number appealed	Number that resulted in discipline of judge
1,090	0	461	0

* Includes those in which the complaint process concluded in fiscal 1996 and 1997. Two complaints were dismissed because of "appropriate action already taken."

Source: Judicial Business of the U.S. Courts

DAVE EAMES/ The Star

Finding out more

Here's how to check on a federal judge's investments:

- Call the Administrative Office of the U.S. Courts at (202) 273-4626 and request a copy of Form AO-10a, Request for Examination of Report Filed by A Judicial Officer. (A copy of the form also is available on *The Star's* Web site at www.kcstar.com/judges/.)

- Fill out the form, including a section demanding that you list the "organizations or persons on whose behalf this request is made."

- Find a notary public. Sign the form in front of him. Then pay him to stamp the document with his official seal, as the Administrative Office requires. This certifies the information is true and that you realize lying could result in a \$10,000 fine and five years in prison.

- Mail the document to the Administrative Office in Washington.

- Await word on the cost, set at 50 cents a page.

- Mail a check to Washington.

- Await the judge's disclosure reports. And be warned: By the time you get the reports, court officials will have notified the judge in writing that you are looking into his or her assets. They also will tell the judge your address, occupation — and the organizations or persons on whose behalf you made the request.

'Immunity from mistakes' disgusts former litigants

By JOE STEPHENS

Staff Writer

A court reporter, hired to transcribe statements from witnesses, told lawyers in a 1994 lawsuit that she felt compelled to make a disclosure:

Her husband worked for the company at the center of the dispute, the Sprint Corp.

The announcement sent attorneys scrambling to hire a new court reporter.

The lawyers had no idea that the judge presiding over the \$1.9 million lawsuit against a Sprint subsidiary had her own ties to the company. U.S. District Judge Kathryn H. Vratil owned stock in Sprint.

Vratil issued an order in the case on Jan. 5, 1995, setting filing deadlines and a trial date. The very next day, records show, she invested up to \$15,000 in Sprint.

Six months later, Vratil bought another block of Sprint stock worth up to \$15,000.

Unlike the court reporter, however, the judge did not reveal her ties to Sprint. They remained unknown throughout the jury trial — and for another two years.

Dana DeSuza, the former Sprint worker who filed the lawsuit in Kansas City, Kan., lost that trial. Along the way, Vratil granted Sprint's request that she throw out part of the claim. Today, DeSuza is bitter.

"I hate everybody who had anything to do with this case," she said.

Vratil said she discovered the problem herself in spring 1997, more than a year after the trial. A short time later, after *The Kansas City Star* began reviewing Vratil's finances, the judge sent DeSuza an extraordinary invitation: Vratil said she would consider throwing out the judgment and reopening the case.

But DeSuza said the first trial emptied her savings and that she could not afford to head to court yet again. And she wants nothing more to do with the legal system.

"I should be fighting back," she acknowledged, "but after two years of fighting, I was so disgusted. I'm disgusted with all of it."

Vratil declined to respond to DeSuza's criticisms but took responsibility for not revealing her stock earlier. She acknowledged that the investment may have created the appearance of impropriety. And she said in a letter that it resulted in an "actual or apparent" conflict of interest.

"I'm not proud of this," the judge said in an interview. "It's a bad situation."

Vratil said she mistakenly thought her staff was monitoring stock trades made by her investment manager and was scouring her caseload for conflicts. Her broker had discretionary authority to buy stocks in a "managed money" program, the judge added, so she considered the ownership largely technical.

"I don't know that I'm right," she acknowledged. "You will have to make your own judgment."

Lawyers for Sprint would not comment.



WILLIAM VASTA/Special to The Star

Nancy Powell says her suit against Sprint Corp. went into a tailspin when the judge announced she owned Sprint stock. "It was a nightmare," said

Powell, a former Lenexa resident who lives in California. "My case is paying the price for her mistake."

'Something wasn't right'

DeSuza's four-year legal odyssey shows how a judge's stock ownership can shake litigants' faith in the courts.

The journey began when she lost her job in telephone sales for a subsidiary of Sprint. The company said she missed work too often.

But DeSuza, who is white, thought Sprint was discriminating against her because of her race and because she had a disability. At the time, she said, her doctor had just diagnosed her as suffering from hypoglycemia, or low blood sugar.

The Independence woman was 23, unemployed and the single mother of a 2-year-old daughter. Over the next two years she poured an estimated \$6,000, much of it borrowed, into a lawsuit against the subsidiary.

The dispute climaxed in a four-day trial in which DeSuza and her lawyer said Vratil made rulings that

damaged DeSuza's case.

Then, just before the jury began deliberating, Vratil ruled that DeSuza had failed to prove the company discriminated against her because she was disabled. Vratil personally decided that claim in favor of the company.

The jury decided the remaining race discrimination issues, returning a verdict against DeSuza.

"The whole thing was awful," DeSuza recalled. "I had \$5,000 in my savings and it was all gone after the trial."

That was June 1995. Two years later, *The Star* requested copies of Vratil's financial disclosure reports.

The Star's request triggered written notice to Vratil that her finances were under review by the newspaper.

Two weeks later, Vratil mailed notices to DeSuza and litigants in at least five other lawsuits. The judge said she was writing "with embarrassment" to reveal for the

first time that she owned stock in Sprint and other corporations.

"I understand," Vratil wrote, "that the parties may be entitled to have the judgment in this case vacated."

Vratil said in an interview that the timing had nothing to do with *The Star*. In each case, she said, the recipients ignored her offer or told her they considered her rulings fair.

DeSuza's lawyer explained in a letter to DeSuza that Vratil "presided over your trial against Sprint when she should have recused herself. The net effect of this is that Judge Vratil will likely grant you a new trial, and then assign the case to another judge for hearing."

There was no evidence the investment influenced Vratil's rulings. Still, the revelation shook DeSuza and left her lashing out at the judge and the legal system.

"I knew something wasn't right," she said. "I've been suspicious all along. Now, everything makes sense to me."

David Barrett, her lawyer, is more forgiving. He complimented Vratil's judicial ability and said he was sure the stock did not slant her decisions. Yet Barrett said the wider findings of *The Star's* investigation left him wondering.

"I wouldn't want a judge to own stock in a company I was suing," Barrett said. "You would think they would be more careful."

'Dear Shareholder'

The judge's disclosure in that case had its genesis in a similar but unrelated lawsuit against the same company. That case shows how even temporary conflicts of interest can hurt.

Nancy Powell sued Sprint and two of its subsidiaries in August 1996, claiming the companies denied her promotions and eventually did away with her job because she was a woman.

Eight months of legal wrangling later, Powell was less than two weeks from trial. Vratil was signing her final pretrial order. Only then, the judge said, did she notice a letter on her desk from Sprint. It began, "Dear Shareholder."

Vratil already had signed a disclosure form listing two separate investments in Sprint. Still, Vratil

said that seeing the letter was the first time she reached "actual knowledge" that she owned the stock. She called Powell's lawyer and broke the news.

Vratil immediately withdrew. That set back the entire lawsuit.

"Eleven days before the trial, this all comes to a stop," Powell said. "We were going to turn back the clock and start over."

Powell said her lawyers were unwilling to begin again. They urged her to settle out of court for less money than planned, she said, or to find new attorneys.

Powell, who by then was living in California, said she had no choice. She ended the lawsuit but remains angry.

"I could not put in economic terms what this has actually cost me," she said. "I paid a huge price."

Bob Bailey, one of her lawyers, agreed with Powell's account but added that other factors contributed to dropping the lawsuit. An attorney for Sprint would not comment.

Powell called it ironic that the courts provide no way to punish the judge for her lapse.

Just six weeks before Vratil's disclosure derailed the case, Powell said, the judge took Powell and her lawyers to task for not promptly producing documents sought by Sprint. Vratil ruled that Powell had failed to "timely comply" with a schedule she set for the case and, as a penalty, ordered her to pay almost \$2,800 to Sprint.

But when Vratil's revelation set back eight months of litigation, Powell said, there was no penalty at all.

"Where is the fairness here?" Powell asked. "She should not have immunity from her mistakes. It's not right."

Vratil would not respond to Powell's complaints.

Powell said she wanted to file a formal misconduct complaint against the judge but her lawyers talked her out of it. By breaking her silence today, she said, she hopes to spark reform.

"The system failed me," she said. "So what do we do about fixing the system so it doesn't fail anybody else?"

Apr. 12, 1948

Editorials

Who'll judge the judges?

Federal judges — at least those singled out in a recent series of articles in *The Star* — must do much better in the sensitive area of financial conflicts of interest. They must avoid potential conflicts between their personal holdings, such as investments, and litigants that come before them.

This is but one conclusion that can be drawn from the newspaper's extensive study into the ethics of district court judges, here and elsewhere.

Another obvious shortcoming in the federal court system involves access to the financial disclosure reports of the judges. Right now it is much too difficult for a citizen to examine the records.

This information should be easily available in the courthouses in which the judges serve. The individual who seeks the information should not have to be identified by name. The reports should be available at no charge or a minimal fee to cover costs.

The results of *The Star's* probe, conducted by staff writer Joe Stephens, deserve attention. Stephens found, after exhaustive research, that no judge "benefited personally or let his stock holdings influence his rulings."

The voice of The Kansas City Star

Nonetheless the investigation shows that judges have presided over lawsuits while having an interest in a litigant's operation. That can leave an extremely bad impression on the other parties in the case, as well as the public. Claiming they were unaware of their holdings is not a valid excuse.

The issue here is perception. Not only are judges required to avoid conflicts, but they also must take care to avoid any impression they are guilty of conflicts. If there is the slightest potential for conflict, they should withdraw.

Adherence to the canons of conduct is critical.

Judges must hold the respect and confidence of the public they serve. If they don't, the people are likely to withdraw their support. That could be extremely harmful to our system of governance.

Federal judges, by the nature of their positions, hold immense power. They are appointed for life. Congress allows the judiciary to discipline itself. The provisions in the law are designed to maintain an independent judiciary and the separation of powers among the branches of government.

This arrangement will be satisfactory as long as judges uphold ethical and self-discipline standards.

Abuses and needless questions encourage the type of legislation now before Congress that would place limits on the federal judiciary.

It would be far better for the judges to continue unrestricted, independent of the political winds that sweep through the other branches of the government. Citizens who need to have their conflicts resolved must have a place where fair decisions can be made on the law and facts of a case, insulated from special-interest pressures.

Judges can and should provide this place. But that can happen only if the judiciary avoids conflicts, or even the slightest perception of them.



Columnist

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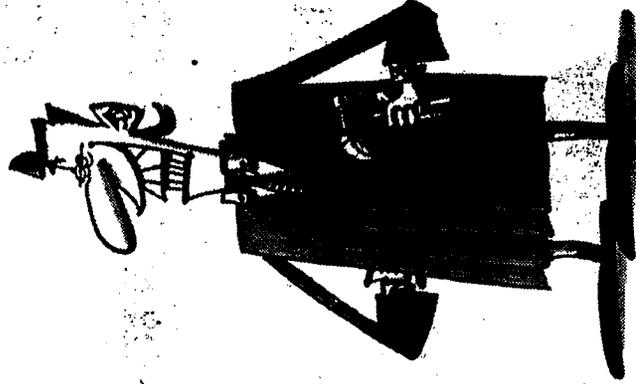
Wednesday, April 8, 1998 C-11

Judge's opinion



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A.



Judge discloses holdings

Scott O. Wright acts to revive confidence in the federal judiciary.

By JOE STEPHENS
Staff Writer

A federal judge, seeking to restore confidence in the judiciary, took the unusual step Monday of making a list of his assets available for anonymous review by the public.

District Judge Scott O. Wright filed a copy of his new financial disclosure form with the clerk of courts at the federal courthouse in Kansas City. Wright hopes the move will encourage judges across the country to do the same.

"Anybody who wants to come in and see it, they are free to do so," Wright said of his form.

In addition, Wright said he plans to recommend other methods for identifying and avoiding conflicts of interest during a meeting next month of judges from the Western District of Missouri.

Wright said he made the decision last week while reading a series in *The Kansas City Star*. The stories revealed that federal judges repeatedly presided over lawsuits in which they had a financial stake.

See JUDGE, A-9, Col. 1

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Judge Wright lists his assets,

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despite federal laws prohibiting such conflicts of interest.

The series also showed that court officials make it uncommonly difficult to review judges' disclosure reports.

The reports are available only in Washington. You must order them using a special request form available only from the Administrative Office of the U.S. Courts. All requests must be notarized. And before you see a single page, court officials warn the judge that you are probing his finances.

Taken altogether, the restrictions make judges' disclosure forms far more difficult to obtain than those filed by the president or members of Congress.

Wright, who had no conflicts identified in *The Star's* study, said the rules stop most lawyers and litigants from reviewing the forms. No one wants to risk angering a federal judge, he explained.

In fact, Wright said that during his 19 years on the federal bench, no one but *The Star* had looked at his list of assets.

"I didn't realize getting this information from the Administrative Office was so intimidating," he said.

Chief Judge D. Brook Bartlett could not be reached for comment Monday concerning Wright's plans. G. Thomas Van Bebber, chief judge of the District of Kansas, said he had no opinion on

the matter.

Wright said he was stunned by *The Star's* study, which found that area judges had entered more than 200 court orders in lawsuits while owning stock in at least one of the litigants. The orders spanned more than 33 cases.

"It never occurred to me that there had been that many violations," Wright said. "I would be willing to bet the same thing is happening all over the country.

"We don't want something like this to happen again."

Several judges found to have conflicts of interest said they already have taken steps to prevent future problems.

Wright predicted the investiga-

tion will spark changes nationwide.

"I can guarantee you that things are going to be tightened up a little bit, from the top on down," Wright said. "There is going to be something done about this."

Federal judges, he said, "are stirred up about this thing — as they should be. They are considerably embarrassed."

Wright's decision to make his assets public was applauded by Washington lawyer James C. Turner, executive director of the legal reform group HALT.

"That is the type of leadership that can go miles toward doing what Congress has been unable or unwilling to do, in terms of injecting some real oversight," Turner

said. "Guys like that (Wright) really give me some hope."

Turner said he would like to see congressional hearings on *The Star's* findings.

Legislators on the Senate and House judiciary committees were on break last week and this week and unavailable for comment. But staffers said lawmakers plan to address the findings when they return to Washington next week.

Sen. Chuck Grassley, an Iowa Republican and member of the Senate Judiciary committee, last week issued a statement through his office, saying both the Senate and court officials should look further into the conflicts.

"The strength of the judicial sys-

tem is its perceived objectivity," Grassley said. "If that objectivity is challenged, it can undermine public confidence in our federal court system."

Meanwhile, litigants who want to see whether their judge has a conflict of interest can look at *The Star's* Web site at www.kcstar.com/judges. There they can review the forms filed by federal district judges from the Kansas City area for fiscal year 1996.

Court officials in Washington said no one ever before had made judicial disclosure forms available directly to the public on the Internet. During the first three days on the Web site, the disclosure pages were viewed more than 2,000 times.

In addition, more than 70 people called or wrote *The Star* last week in reaction to the series. They overwhelmingly called for greater disclosure among judges and for more accountability when judges are found to have violated conflict of interest laws.

"I'm just horrified," said B.J. Renfrow of Fairway. "When you go to court, the person who sits on that bench has life and death power over us."

Judge Wright said reactions such as that are reason enough to seek reform.

"The public just can't understand it," Wright said of the problems found by *The Star*. "And I just don't blame them."

Reform urged on conflicts

Federal judiciary should act on judicial ethics, judge says.

By JOE STEPHENS
Staff Writer

The highest levels of the federal judiciary should explore ways to combat financial conflicts of interest, the chief judge for the 8th U.S. Circuit Court of Appeals said this week.

"I don't want to see Congress jump in with more legislation," said Judge Pasco M. Bowman. "I would like it to be handled by the judiciary."

Bowman, who oversees federal courts in Missouri and six other states, said he hopes reform will be studied by the U.S. Judicial Conference, which sets policy for federal courts nationwide. Bowman sits on the conference, along with Chief Justice William Rehnquist and 25 other judges.

One possible reform might be better disclosure of judges' investments, Bowman said.

He is not alone in weighing the need for change. Officials responsible for federal court administration in at least two other circuits are looking into better ways to ferret out conflicts, especially by

See JUDGES, A-14, Col. 1



Judges study interest conflict

Continued from A-1

using computers to track judges' investments.

Their concern stems from a series published this month in *The Kansas City Star*. The series revealed that judges here and elsewhere had presided over dozens of lawsuits against companies in which they owned stock, despite laws forbidding such conflicts.

The articles also showed how rules set by the judges ensure that their financial disclosure statements remain largely secret from the public. And they documented how the judiciary has failed to police its own members.

Bowman said the conflicts identified by the study "almost certainly" will be reviewed by one or more committees of the Judicial Conference, and very likely by the full conference. The conference meets twice a year; the sessions are closed to the public.

"This has really gotten everybody's attention," Bowman said. "None of us realized conflicts of this kind were occurring."

The federal judiciary already has critics in Congress, from conservative senators who decry "activist" judges, to the House Judiciary Committee.

"The judiciary is an independent branch of government and has been pretty good throughout history about keeping its own house in order," Bowman said.

Part of the problem may vanish on its own as judges across the nation review the study, recognize their own lapses and increase their vigilance. "We have all got to redouble our efforts," he said.

Beyond that, Bowman and other judges said fuller disclosure could help avoid such conflicts.

Federal judges file their disclosure reports only in Washington, under the current system. Anyone seeking a copy must use a special order form, which is not available in Kansas City. All requests must be notarized. And before court officials release a single page, they notify each judge of the name and occupation of the person looking into his or her finances.

Taken together, that means it is far more difficult to get disclosure statements filed by judges than those filed by U.S. senators or the president. In fact, Bowman said that during his 15 years on the bench, his forms have been reviewed only twice.

"Why should these forms be so hard to get?" asked Bowman, who became chief judge on Saturday, replacing Richard Arnold of Little Rock, Ark. "That needs to be looked at."

The judiciary should consider posting lists of judges' assets at each federal courthouse, he said. Litigants could review the disclosure statements without giving their names or paying a fee, as currently required.

"Wider, freer availability would be a major step" toward reform, Bowman said.

Some judges worry that broader release of the information could lead to security problems. Yet court officials cannot identify a single instance where someone used asset information to harm a judge.

"I don't know how much substance there is to those concerns," Bowman acknowledged.

Officials at the 10th Circuit Court of Appeals, which oversees courts in Kansas and five other states, said judges there also are weighing new methods for identifying financial conflicts. Stephanie K. Seymour of Tulsa, chief judge for the 10th Circuit, declined to comment.

In Philadelphia, Judge Edward R. Becker also is planning changes. He is a member of the Judicial Conference and chief judge of the 3rd Circuit, which encompasses Pennsylvania, New Jersey and Delaware.

Becker is looking into using computers to automatically match

lists of litigants against judges' stock holdings.

"My first task is to see to it that the problem is eradicated," Becker said of the conflicts. "We want to see to it that it doesn't happen again."

Becker said he began by sending copies of the study to each judge in his circuit. "A judge has got to know what his or her holdings are," he said.

Becker declined to say whether he favors wider distribution of judges' disclosure statements.

In Kansas City, District Judge Scott O. Wright took matters into his own hands last week and filed his statements with the clerk of courts at the downtown courthouse. Wright, who had no financial conflicts identified by the study, hopes his move will convince other judges to do the same.

"I was really surprised by how much response I've had," Wright said. "It's all been really positive."

"I think it is clearly the right thing to do."

Unlike other judges interviewed, Wright said he would welcome congressional inquiry into the problems.

"If they do their job," Wright said of Congress, "they are going to make us do some things that maybe we ought to be doing anyway."

Financial disclosure forms for local judges on the federal district court are available for free and anonymous review at The Kansas City Star's Web site, www.kcstar.com/judges.

Two seek scrutiny of judges' conflicts

By JOE STEPHENS
Staff Writer

Two members of the U.S. House Judiciary Committee are calling for a congressional inquiry into financial conflicts of interest among federal judges.

Reps. Howard Coble and Ed Bryant said Congress should examine the conflicts and consider remedial legislation, especially ways to make judges' assets known to the public.

"I don't think that judges' financial holdings ought to be insulated from public knowledge," said Coble, a North Carolina Republican and chairman of the subcommittee on courts and intellectual property.

"I want to get some sunlight into what appears to be a dark room," he said Friday.

The lawmakers' concerns resulted from a series published this month by the *The Kansas City Star*. The articles revealed that federal judges here and elsewhere re-

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peatedly had presided over lawsuits against companies in which they owned stock, despite laws

forbidding such conflicts.

The series also showed that few people see judges' financial disclosure statements because the judiciary imposes tight restrictions on their release.

Coble and Bryant said congressional hearings may be needed, although they want to confer with other legislators before setting a plan of action.

"We need to approach this very deliberately and very thoroughly," Coble said. "Let's sit down in a calm and orderly fashion and determine which is the best course."

"But I think the legislative branch ought to get involved. We might want to insert our legislative oars into the water."

See **INQUIRY, A-20**, Col. 1

Inquiry into judges' conflicts is sought

Continued from A-1

Sen. Charles Grassley, an Iowa Republican and chairman of the subcommittee on administrative oversight and the courts, said this month that Congress should look into the findings. He has yet to make a detailed proposal.

Coble said he was especially concerned that judges' financial disclosure statements are not readily available to the public.

Under the current system, judges file lists of their assets only in Washington. The public can request copies but must use a special order form unavailable outside the capital. All requests must be notarized. And before court officials mail out a disclosure statement, they alert the judge to the name and employer of the person who wants to see the list of assets.

Taken altogether, the requirements ensure that few persons look at the statements for fear of angering the judge presiding over their lawsuit.

"I find it very troublesome that the public cannot gain access to information such as this," Coble said. "If there is something to hide, let's correct it."

Bryant, a Tennessee Republican and former U.S. attorney from Memphis, agreed that the House should consider legislation.

"If they can't do a better job of policing themselves, then maybe it's time to change the law and make sure (they do)," Bryant said of federal judges.

Bryant described the frequency of ethical violations as "incredible." *The Star's* investigation identified 57 lawsuits in four states where a judge entered a court order while having a financial interest in a litigant.

"I just can't believe there are 57 such cases where the judges did not come clean and recuse themselves," Bryant said. "It violates the basic tenants of American justice."

"You assume when you go before a judge that he does not have an interest in the litigation."

Bryant said he plans to ask the U.S. Judicial Conference to explain publicly how the problem developed without being discovered within the court system.

Chief Justice William Rehnquist heads the conference, which sets policy for federal courts nationwide.

"The Judicial Conference (is) out there to watch for things like this," Bryant said.

"If it's happened 57 times, how many other times are there out there? And why aren't (financial disclosure) records more available to the public, without so many hoops?"

One solution may be to post judges' disclosure forms on the Internet, he said.

"If the litigants want to look into (a judge's stock holdings), they ought to be able to do that without prejudicing the judge," Bryant said.

On Monday, the chief judge for the 8th U.S. Circuit Court of Appeals said he hoped the Judicial Conference would look into ways to combat conflicts of interest. Judge Pasco M. Bowman, who oversees federal courts in Missouri and six other states, recommended that Congress let the judiciary clean up its own problems.

District Court Judge Scott O. Wright already has filed a list of his assets with the clerk of courts at the federal courthouse in Kansas City in the hope that other judges will follow his example.

Earlier this month, *The Star* posted financial disclosure reports filed by district court judges from the Kansas City area on the Internet, at www.kcstar.com/judges. Court officials said it was the first time anyone had made the information available directly to the public on the World Wide Web.

In the first two weeks, the forms on the Web were viewed 3,200 times.

Reporter Joe Stephens can be reached by calling 234-4800, Ext. 4427, or by e-mail at stephens@kcstar.com.

Letters urge judges to heed laws on ethics

By JOE STEPHENS
Staff Writer

The U.S. Judicial Conference, under fire from Congress, has written each of the nation's 2,000 federal judges and urged them to obey ethics laws.

Marked "Urgent Information," the letters stress that judges must withdraw from any lawsuit in which they have a financial interest. The letters also reveal that court administrators are looking into creating a computer system that would ferret out financial conflicts among judges nationwide.

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"Recent events have highlighted the importance of judges being alert to possible conflicts of interest," say the letters, issued by the federal court system's top governing body.

The letters are in response to a series published last month in *The Kansas City Star* that revealed judges repeatedly flouted ethics laws.

The series, "On Their Honor," showed that federal judges in the Kansas City area and in other regions presided over dozens of lawsuits against
See **COURTS, A-16, Col. 1**

Continued from A-1

companies in which they owned stock. The newspaper's investigation identified more than 300 court orders entered by judges who had a financial interest in the lawsuits those orders affected.

The articles documented how the judiciary had failed to police ethical lapses by its own members. And although judges list their stocks on annual disclosure reports, the series showed that court rules ensured few people reviewed them.

In light of the revelations, federal lawmakers plan a congressional inquiry. Judges in at least three of the nation's 13 appellate circuits also are studying reforms.

A committee of the U.S. Judicial Conference will address the newspaper's findings at an Aug. 17 meeting, according to U.S. Circuit Judge Frank Magill. The Judicial Conference, which meets in secret, sets policy for all federal courts and is led by Chief Justice William H. Rehnquist.

The letters, which were not publicly announced, arrived in judges' chambers this week. They were signed by Magill, chairman of the conference's committee on financial disclosure, and Circuit Judge A. Raymond Randolph of Washington, head of the conference's Codes of Conduct committee.

The letters warn judges about "possible conflicts of interest between their financial interests and their assigned cases....United States Code places the responsibility for avoiding such conflicts on each individual judge."

In an underlined section, the letters emphasize that the rule requiring judges to withdraw from cases in which they have a financial stake "is mandatory under the statute and cannot be waived."

The letters suggest strategies for averting conflicts. For example, they recommend that judges limit their stock investments and instead invest in mutual funds.

Even judges who give control of their portfolios to professional money managers must stay abreast of stock purchases, the letters stress, and judges must recuse from cases involving those companies.

The letters recommend that judges use clerks and secretaries to help identify conflicts. At least one state court system uses computers to automatically compare judges' stock holdings with their case-loads, they point out.

"The Administrative Office is conducting a survey to identify what automated systems of this kind are in use and determine whether any would have national applicability," they add.

The letters conclude by offering each judge a copy of *The Star's* series, saying its findings underscore the importance of avoiding conflicts.

Independently, the Federal Judicial Center last week distributed copies of the series to chief judges from each of the nation's 94 judicial districts. The center, the federal courts' agency for judicial education, used the articles during an ethics seminar in San Diego.

In an interview, Randolph said he was disappointed at the frequency of ethical lapses discovered among federal judges. But because the judiciary is largely decentralized, he does not favor new laws or judicial rules.

Instead, he said, the solution is for individual judges to take responsibility.

"We have a very conscientious group of people," he said of the judges. "I think the problem is due to inattention or a lack of knowledge."

In fact, Randolph speculated that the problem would fix itself. Judges across the country already have renewed their efforts to identify conflicts, he said.

"I am confident that whatever the problems were, they are going to be corrected (by individual judges)," Randolph said. "The rules are there. The only thing that is required is for judges to pay close attention."

Magill, too, remains unconvinced new rules are needed in his area of authority, financial disclosure. The court's current system for making judges' financial disclosure reports available to litigants meets all requirements set by Congress, he said.

Judges file lists of their assets only in Washington. The public can request copies but must use a special order form unavailable outside the capital. All requests must be notarized. And before court officials mail out a disclosure statement, they alert the judge to the name and employer of the person who is looking into their holdings.

Critics say the rules ensure that few litigants look at the reports for fear of angering the judge handling their case.

Magill described the rules as a security precaution. But he could not explain how someone could

use the disclosure statements to harm a judge.

"We are going to have to study that," Magill said. "Trial judges are very skittish about security."

Rehnquist, who presides over the judicial conference, did not respond to a written request for comment.

Reporter Joe Stephens can be reached by calling 234-4800, Ext. 4427, or by e-mail at stephens@kcstar.com. The most recent financial disclosure reports filed by local district judges can be reviewed on The Star's Web site at www.kcstar.com/judges.

Judges to list investments, assets publicly

Federal jurists in Missouri's Western District approve the idea.

By JOE STEPHENS
Staff Writer

Reacting to widespread criticism, federal judges in Kansas City announced Saturday that they would provide lists of their assets directly to the public.

Judges said their new financial disclosure system appeared to go further than any other in the nation. At least one judge hopes it will become a blueprint for reform throughout the country.

Under the new system, judges will compile lists of their stocks and other holdings and then file them with the clerk of courts. Anyone may review the lists at the downtown courthouse without providing identification. And, unlike the current system in place nationwide, no one will warn the judge that someone is snooping on his investments.

"Anybody can go in, and there will be no questions asked," said D. Brook Bartlett, chief judge for the Western District of Missouri.

The new system should make it easier to spot poten-

See **JUDGES, A-7**, Col. 1

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Judges will make list of assets public

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tial ethical conflicts among judges here than anywhere else in the country, local judges said.

Judges approved the system in response to a series published last month in *The Kansas City Star*. The articles showed that judges here and elsewhere had presided over dozens of lawsuits against companies in which they own stock, despite laws forbidding such conflicts.

The articles also showed that few people look at the financial disclosure statements that judges currently file because the judiciary imposes tight restrictions on their release.

Those reports are stored only in Washington. The public can request copies but must use a special order form that is unavailable outside the capital. All requests must be notarized. And before court officials mail out any disclosure report, they alert the judge to the name and employer of each person looking into their assets.

Critics charge that the system is not only cumbersome but also scares off litigants who fear angering the very official who will decide the outcome of their lawsuits. Kansas City judges said they designed their new system to resolve those criticisms.

"The confidence people have in the courts is very important," District Judge Scott O. Wright of Kansas City said Saturday. "I am proud of our court for taking this very positive step. I hope that other courts follow our lead."

Similar steps are under consideration in at least three federal appeals circuits, including those that encompass Missouri, Kansas and 14 other states. In addition, a committee of the U.S. Judicial Conference, which sets policy for federal courts nationwide, plans to consider the need for reform at a meeting in August.

Some members of Congress also called *The Star* findings troublesome and questioned whether they should pass laws making information about judges' assets more available.

Judges from the Western District of Missouri approved the new sys-

tem Friday afternoon at an *en banc* meeting in Springfield. Such meetings are secret, and the judges reached Saturday declined to say whether the vote was unanimous.

The new system calls for each of the district's 18 district, magistrate and bankruptcy judges to report stocks and other investments to the clerk of courts. Judges also will disclose each corporate board position they hold.

They will not, however, make available all the information that they list on the disclosure forms they will continue to file in Washington. For example, judges will not disclose the value of their stockholdings.

The judges also voted not to disclose their real estate holdings. That information could lead to security problems, Bartlett said, and might encourage fringe groups to file fake property liens.

Court administrators have no authority to force judges to comply with the new system, Bartlett acknowledged. But he said there was no reason to believe any judge would refuse to participate.

Bartlett said creation of the new system did not necessarily mean judges agreed that the old system was intimidating to litigants.

"This is an effort to go one step farther (than required by federal court rules)," Bartlett said.

Increased public scrutiny could help detect conflicts of interest, he said. "It's another way I can be advised if something slips by me," Bartlett said.

Wright, however, has said that the old system of warning judges about who was looking into their assets clearly scared off lawyers and litigants alike. In fact, Wright had already filed his disclosure statement with the clerk of courts.

"This is common sense," Wright said of the new system. "It's just like falling off the log, once you're confronted with the problem."

Wright, who had no financial conflicts identified in *The Star* investigation, said the findings embarrassed judges throughout the nation.

"We'll do everything we can to see that this doesn't happen again," Wright said.

Senators: Judiciary needs help

Ashcroft and Grassley call for high-level action to prevent ethics violations.

By JOE STEPHENS
Staff Writer

WASHINGTON — Two U.S. senators say broad reform is needed to combat what appears to be a “disturbing pattern of judicial ethics violations.”

John Ashcroft and Charles Grassley, ranking members of the Senate Judiciary Committee, leveled the charges in a blunt letter sent Friday to the federal court system’s top administrator, L. Ralph Mecham.

“An alarming number of federal judges have apparently heard cases involving corporations in which they held stock,” the Republican senators wrote. “The number of unreported financial conflicts of interest indicate that reform of the process is necessary.”

The letter says the problem may require wider financial disclosure, perhaps even the posting of judges’ assets on the Internet.

Ashcroft, of Missouri, is chairman of
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the Senate's Subcommittee on Constitution, Federalism and Property Rights. Grassley, of Iowa, is chairman of the Subcommittee on Administrative Oversight and the Courts.

The senators said their concerns stemmed from a series published in April by *The Kansas City Star*. The articles revealed that federal judges in Kansas City and elsewhere presided over dozens of lawsuits against companies in which they owned stock, despite laws forbidding such conflicts.

The series also showed that judges caught in conflicts almost never face discipline. And it revealed that few people see judges' financial disclosure reports because the judiciary imposes tight restrictions on their release.

In their letter, the senators described the process for obtaining the reports as "difficult and intimidating." They questioned why judges filed them in Washington but not at local courthouses.

Although members of the public can request copies of the reports, the letter pointed out that they must use a special form unavailable outside the capital. All requests must be notarized. And before court officials mail out a disclosure report, they alert the judge to the name and occupation of the requester.

"This notification procedure cannot help but have a chilling effect," the senators wrote. "Litigants understandably are reluctant to appear to be snooping around in the presiding judge's finances.

"These procedures appear to be in need of substantial revision."

Reforms approved last month by judges in the Western District of Missouri could be a model for a nationwide solution, the letter says.

The judges plan to make lists of their assets available locally, at the clerk of courts office. Anyone will be able to review the reports without providing identification, and no one will warn the judge.

The letter asks Mecham, director of the Administrative Office of the U.S. Courts, to estimate the frequency of ethics-law violations by judges throughout the country. And it asks Mecham's opinion on other ways to make judges' assets more available to the public.

In particular, the letter asks Mecham to examine the feasibility of posting lists of judges' assets on the Internet.

"We are concerned about the scope of this problem and the need for enhanced access to financial disclosure forms," the letter explains. "At the same time, we understand there are legitimate concerns regarding security and potential harassment suits. However, we believe these concerns can be addressed."

The senators' letter adds to a growing momentum for judicial change since *The Star* series ran.

The Administrative Office is investigating creation of a computer system that would automatically identify conflicts of interest. Independently, three federal appeals

circuits are exploring other possible reforms.

The U.S. Judicial Conference, which sets policy for federal courts nationwide, recently wrote each of the nation's 2,000 federal judges and urged them to obey ethics laws. A committee of the judicial conference plans to consider the need for systemwide change at an August meeting.

The senators also are not the first on Capitol Hill to express concern. In April, two members of the House Judiciary Committee called for a congressional inquiry into the conflicts.

"We might want to insert our legislative oars into the water," Rep. Howard Coble, a North Carolina Republican, said at the time.

Ashcroft and Grassley have a history of pressing for more accountability among judges. For example, Ashcroft called hearings last year on judicial activism and Grassley called for a General Accounting Office study that was critical this year of travel by judges.

"Needless to say," the senators wrote in the letter Friday, "when federal judges fail to obey the laws that govern their conduct, they send a terrible message to the public."

THE SENATORS' LETTER

This is the full text of the letter sent Friday by Sens. John Ashcroft and Charles Grassley to L. Ralph Mecham, director of the Administrative Office of the Courts.

A series of articles in *The Kansas City Star* has unearthed what appears to be a disturbing pattern of judicial ethics violations. Despite the clear prohibitions on financial conflicts of interest, an alarming number of federal judges have apparently heard cases involving corporations in which they held stock. Needless to say, when federal judges fail to obey the laws that govern their conduct, they send a terrible message to the public.

The number of unreported financial conflicts of interest indicate that reform of the process is necessary in order to enforce the conflict of interest rules. However, the current policy governing disclosure of judges' financial information makes it difficult and intimidating for the public to help police the judges' compliance with the applicable conflict of interest provisions. Financial disclosure statements do not appear to be available in the local courthouse. Rather, they are available only in Washington, D.C., upon the filing of a specific form. In addition, judges apparently are notified whenever an individual attempts to gain access to a financial disclosure statement. This notification procedure cannot help but have a chilling effect as litigants understand-

ably are reluctant to appear to be snooping around in the presiding judge's finances.

These procedures appear to be in need of substantial revision. The Western District of Missouri, which was the principal subject of *The Kansas City Star's* reporting, has already changed its policy concerning access to the financial disclosure statements. The Western District now makes the financial disclosure forms available locally and without notifying the presiding judge.

We are concerned about the scope of this problem and the need for enhanced access to financial disclosure forms. At the same time, we understand there are legitimate concerns regarding security and potential harassment suits. However, we believe these concerns can be addressed.

We would appreciate your input concerning how widespread non-compliance with the financial conflict of interest laws has been. We would also like your opinion concerning the procedural reforms introduced in the Western District of Missouri and whether those reforms could serve as a model for a nationwide solution to this problem. Finally, we would appreciate your opinion as to the feasibility of making some information available on-line or using the Internet to facilitate the processing of requests for disclosure forms.

Thank you for your attention to these matters.

THE KANSAS CITY STAR.

FRIDAY, June 12, 1998

Judges vow to act on ethical lapses

Reforms enacted in KC
to be studied as model,
House committee told.

By JOE STEPHENS
Staff Writer

WASHINGTON — Federal judges testifying before a House subcommittee on Thursday promised to investigate widespread ethical violations in the judiciary and to consider broader disclosure of judges' assets.

In particular, they pledged to study whether reforms enacted in

Kansas City last month should be extended to federal courthouses across the nation.

"We recognize there could be a problem in this area," testified W. Terrell Hodges, chairman of the executive committee of the U.S. Judicial Conference.

Hodges fielded complaints from members of the House Judiciary Committee's subcommittee on courts, including Rep. Zoe Lofgren. The California Democrat criticized judges for financial conflicts and for accepting free trips to

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rt locations.

"There is nothing more damaging to citizens' faith in the country and in the due process of law than the belief, even if inaccurate, that those who are trusted to judge have been influenced by financial connections," Lofgren said.

The hearing follows a series on judicial ethics published in April by *The Kansas City Star*. The articles revealed that federal judges in Kansas City and elsewhere presided over dozens of lawsuits against companies in which they owned stock, despite laws forbidding such conflicts.

See **JUDGES, A-19**, Col. 1

Judges vow to consider wider disclosure of assets

The series also showed that few people see judges' financial disclosure statements because the judiciary imposes tight restrictions on their release. And it showed that when judges break ethics laws, they rarely face so much as a private reprimand.

Sens. John Ashcroft of Missouri and Charles Grassley of Iowa last week wrote to the court system's top administrator, arguing that sweeping reform was needed to combat an alarming number of ethical lapses.

On Thursday, the debate moved to the other side of Capitol Hill. A routine oversight hearing in the House gave congressmen an opportunity to pose questions about the violations to Hodges, one of the nation's highest-ranking judges.

Hodges stressed that the judicial conference, which sets policy for federal courts nationwide, had already written to judges across the nation to highlight the violations uncovered by *The Star*. The letters reminded judges that they must withdraw from any case in which they have a financial interest, however small.

Hodges said the newspaper series also raised "provocative issues" by suggesting that judges' financial disclosure statements should be more easily available. Currently, the statements are available only in Washington, and anyone reviewing them must sign a notarized statement and pay a fee. In addition, judges are notified if someone requests their disclosure statement.

Rep. Howard Coble, a North Carolina Republican, pointed out that it is far easier to obtain disclosure statements filed by members of Congress than by federal judges. Hodges agreed.

"That's not as easy an issue (to fix) as it might seem, because of security concerns," Hodges said.

He testified that inmates had misused the financial information filed by judges, but he did not say how or offer any examples. Reached later, court spokesmen

could not document any instances in which disclosure forms had been used to harm a judge.

Kansas City judges last month voted to make lists of their stock investments available for public review at the local clerk of courts office. Unlike the system in place elsewhere in the country, anyone may review the lists without providing identification, and no one warns a judge about who is scrutinizing his or her finances.

"That might be a very useful idea," Hodges said of the Kansas City system, "and our committees will be considering that."

Coble asked the judges to keep Congress informed.

Judge Rya W. Zobel, director of the Federal Judicial Center, testified that the center is using the newspaper's series to train new judges about their ethical responsibilities. At a recent conference, Zobel said, each of the nation's chief judges gathered to discuss the series' findings and explore solutions.

The congressionally funded center is responsible for the continuing education of federal judges.

William H. Rehnquist, U.S. chief justice and head of the Judicial Conference, did not attend Thursday's hearing. In a letter to *The Star* this week, he declined to comment on the ethical lapses by judges.

Rehnquist wrote, however, that "it is my understanding that the Codes of Conduct committee and the Financial Disclosure Committee of the Judicial Conference of the United States are reviewing the matters raised in *The Star's* articles."

Also on Thursday, the consumer organization HALT wrote to the subcommittee, calling for more congressional hearings into the "very serious" violations.

"It is difficult to imagine a more fundamental breach of judicial integrity and the rights of litigants than the failure to ensure that impartial, disinterested judges preside in matters before the federal

courts," said the letter, signed by James C. Turner, executive director of HALT, which lobbies for legal reform.

"On behalf of HALT's 50,000 members, I am requesting an immediate congressional investigation."

Turner wrote that judges make it unusually difficult to obtain their disclosure reports.

"These burdensome and unnecessary requirements seem to be designed to discourage access to financial information about federal judges," Turner wrote, "and are in marked contrast to the open access that ethics laws require for members of Congress and senior officials in the executive branch."

The letter said the Washington-based organization was "deeply concerned" by the pattern of violations and by the judiciary's failure to unearth them itself.

"We hope you will share our concern," Turner wrote to the committee, "and will act promptly to correct this very serious situation."

Few check on judges' disclosures

Some jurists respond to examination requests by investigating source.

By JOE STEPHENS
Staff Writer

WASHINGTON — Congress is complaining that federal judges make it difficult for lawyers and litigants to see judges' financial disclosure reports. But critics say recent revelations show that the problem is worse than imagined.

Newly released federal documents reveal for the first time how many of the nation's law firms reviewed the reports last year. The grand total?

Seventeen.

Add in curious individuals and reporters, and the total inches up to 78.

"That's tiny," said Steven Lubet, a leading judicial ethicist and a professor at Northwestern University in Evanston, Ill. "I would have expected more."

By comparison, thousands of people last year examined similar reports filed by members of Congress.

Many lawyers blame the disparity on fear. Unlike Congress, the judicial branch responds to each request by sending written notice to the judge, re-

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reporting exactly who wants to look into those assets. The warning gives the requester's address, occupation and even his employer.

"That's really intimidating," said U.S. District Judge Scott O. Wright of Kansas City, an advocate for reform.

The warnings prompt some judges to launch investigations into the requesters and their motives. At times they call in the U.S. Marshals Service for help.

Critics called the practice troubling and likened it to the FBI's old and widely condemned practice of investigating political opponents.

Most lawyers interviewed said they would never review the reports for fear of angering the judge who would decide their lawsuits. Other lawyers were discouraged by the time-consuming process involved in getting the reports, which are stored only in Washington.

"The judiciary has managed to hide its disclosures out of sight," said James C. Turner, executive director of the legal reform group HALT. "But they are public documents, and the people have a right to see them."

The top ranks of the judiciary are looking into making the reports more widely available. Yet court administrators argue that wider release of the asset lists could endanger judges, three of whom have been murdered in the last two decades.

"Members of Congress don't sentence dangerous drug kingpins to life in prison," federal courts spokesman David Sellers said in a written statement. "When (judges) put a person behind bars for life, they sometimes are left with a courtroom full of ruthless and angry friends and family."

Sellers could not cite an instance in which someone used the lists, which do not divulge judges' addresses, to harm a judge. Even so, Sellers said that the asset lists could be used maliciously and that the first instance of harm would be one too many.

The debate over disclosure erupted in April after *The Kansas City Star* published a series of articles that revealed dozens of financial conflicts among federal judges. The articles also showed how the court system's restrictions discouraged lawyers and litigants from reviewing the those asset lists.

The series sparked protest from Congress and became the focus of a House subcommittee hearing. Two senators suggested posting judges' assets on the Internet.

Despite the debate, court officials said they could not provide detailed statistics on how often the

■ Financial disclosure reports for federal district judges from the Kansas City area are available on *The Star's* Web site at <http://www.kcstar.com/judges>. The site also features the full text of the investigative series, "On Their Honor."

public reviewed the reports.

So *The Star* used public-records laws to obtain copies of every Form AO-10a filed in the last year. The forms, never before examined outside the judiciary, must be filled out by anyone reviewing the reports.

Critics said the story they revealed was disturbing.

Roughly 2,000 judges filed disclosure reports in 1997. Yet the judicial branch logged only about 100 requests for the reports. The requests were made on behalf of 78 individuals and companies, many of whom reviewed reports filed by several judges.

More than a third of the requests came from journalists, who often looked solely at the assets of Supreme Court justices. Thirty-three of the requesters were individuals, ranging from congressional researchers to prisoners checking on their trial judges. The remaining requests came from lawyers or legal assistants.

The judiciary's totals pale in comparison with those of other public officials.

Federal judges outnumber U.S. representatives by a 4-to-1 ratio. Yet House staffers last year released 1,600 copies of the reports filed by members of Congress. They also published the House reports in a book distributed nationwide.

Federal judges outnumber U.S. senators 20-to-1. Yet Senate staffers fielded roughly 450 requests.

Even those statistics understate the vast disparity in disclosure. Unlike the judiciary's reports, the public viewed those filed by Congress thousands of times last year on the Internet and through online services such as Lexis-Nexis.

Sellers, the courts spokesman, said judges' disclosure reports *should* be less accessible than those filed by legislators because of security concerns.

"It's apples and oranges," he said of comparing judges with senators. "Is the goal to have 1,600 requests for judges' forms, just because there are 1,600 requests for members of the House?"

Wright dismissed Seller's arguments. "Every time they don't want to do something, they raise security," Wright said.

Indeed, the disclosure reports do not divulge judges' home addresses. (Local telephone directories, on the other hand, list the addresses of at least three Kansas City judges.)

Critics say the court system's attitude is apparent at the judiciary's administrative office in Washington, where the reports are stored.

Unlike Congress and most federal agencies, the office lacks a public reading room or even a walk-up counter. In fact, workers there ask visitors to give two weeks' notice and to arrive only between 1 p.m. and 3 p.m.

"You would think they would try to make some accommodation to the public," said Doug Kendall, one of the few lawyers who have visited the office. "It is, after all, a financial disclosure office."

Sellers said workers there "do the best they can" with a small staff and tight budget.

In response to the newspaper's findings, judges in western Missouri voted in May to make lists of their assets available for anonymous review at the Kansas City courthouse. National court officials are considering the system for a national model.

But that might be a hard sell to some judges.

In fact, judges often grow agitated when warned that someone is reviewing their reports, said John Howell, a financial disclosure lawyer for the U.S. Judicial Conference.

Judges routinely telephone to ask, "Who is this person? Why have they requested (the reports)?" Howell said.

In one case, a housewife requested a judge's reports, prompting him to comb a list of all litigants in his courtroom.

"I am very concerned," the judge told Howell. "Why would she want to know what my holdings are?"

Howell agreed that the situation was a security risk and urged the judge to talk to a U.S. marshal. "We work very closely with the Marshals Service," Howell told the judge, "and they have other resources that can assist you."

Lubet, the law professor, was astounded at Howell's account.

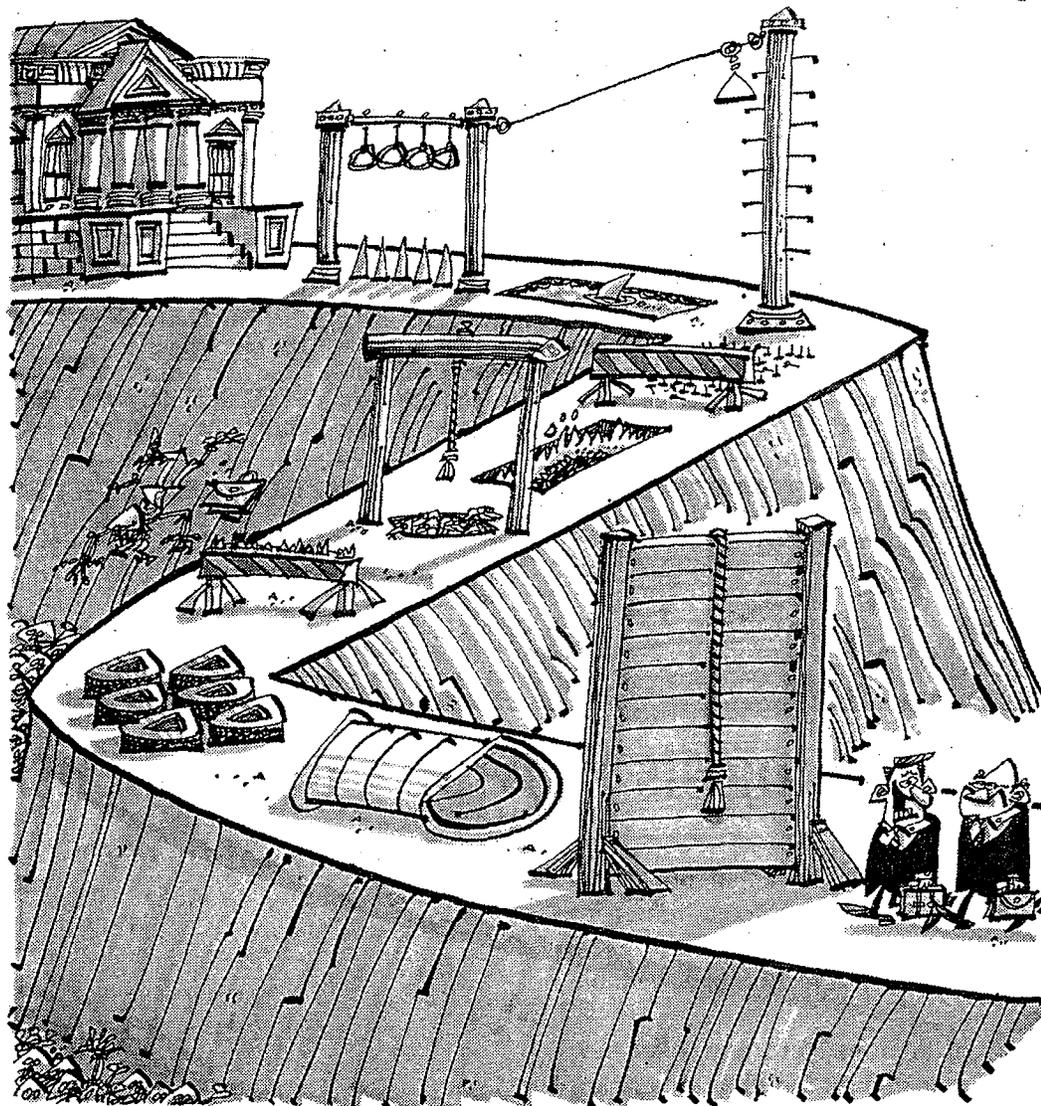
"You shouldn't be investigating the background of someone who requests public information," Lubet said.

Turner agreed that the practice was troubling.

"This is the kind of stuff that was supposed to be buried with J. Edgar Hoover," Turner said, referring to the late FBI director. "Members of the federal judiciary do not appreciate how chilling and intimidating those kinds of actions can be to ordinary Americans — who have done nothing wrong."

Judge's opinion

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"SO, JUST HOW TOUGH IS IT TO SEE A FEDERAL JUDGE'S FINANCIAL DISCLOSURE RECORDS?"

Conflicts disappear in flawed reports

Financial information often is incomplete, survey of disclosures shows.

By JOE STEPHENS
Staff Writer

Revelations that federal judges routinely violate ethics laws have the judiciary working to make their financial disclosure reports more available. But that may not solve the problem.

Newly released reports show that judges often leave key assets off the statements. That makes it impossible to identify conflicts of interest — no matter how easy it is to get the reports.

A *Kansas City Star* review of 1998 reports filed by 33 judges in four states shows one-third include information that, by law, they should have disclosed earlier.

Several judges belatedly reveal stock holdings. One discloses a loan for the first time. Others report old investments in bonds and mutual funds.

In three instances the belated disclosures show that judges presided over lawsuits against companies in which they had a financial interest.

Why the new openness? Several judges acknowledged making their reports more comprehensive this year as a result of increased scrutiny of their finances.

In April, *The Star* used reports from earlier years to show that federal judges presided over dozens of lawsuits against companies in which they owned stock, despite laws forbidding such conflicts.

Since the articles, Congress has been pushing for wider distribution of the dis-

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closure reports to help the public identify conflicts. Judicial officials have proposed reforms, too.

No one, however, has tried to determine the accuracy of the reports.

Federal law makes it a crime for a judge to deliberately leave information off the statements. Yet experts say they are unaware of a judge ever being prosecuted for a reporting lapse.

The judges say they are just forgetful. Judge Ancer Haggerty of Oregon, for example, said that for years he simply did not remember to report up to \$65,000 worth of investments.

"It's just one of those things," he said.

Critics said judges would never accept such excuses from defendants in their courtrooms. They say judges' financial reports should be as accurate as those they file with the Internal Revenue Service.

"There is really no excuse for not filling them out completely," said Stephen Gillers, a judicial ethicist at New York University. "The disclosure forms are intended to let the public, litigants and the bar know the full financial interests of the judge."

Last year the Administrative Office of the U.S. Courts mailed out 1,800 letters to federal judges, questioning discrepancies and offering help with the forms. But a spokesman pointed out that if a judge never lists a stock holding, the office has no way of knowing something is amiss.

The Star found the missing investments by reviewing the new disclosure forms filed by federal district judges in four cities: Kansas City; Kansas City, Kan.; Pittsburgh; and Portland, Ore. The cities, each in a different judicial circuit, were selected to provide a core sample of judges nationwide.

Some of the just-released reports, which cover calendar year 1997, include notes revealing the previous omissions. In other cases the newspaper identified the omissions only by comparing the new reports with those from earlier years.

Among the findings:

■ For years Judge Fernando J. Gaitan Jr. reported owning stock

in just one corporation, AT&T. Shortly after the newspaper series, however, the Kansas City judge amended his latest filing to show he also owned stock in six additional telecommunications companies.

Gaitan said in a letter to *The Star* that he never realized he had to report the stock until he read the newspaper articles.

The judge said he believed, but was not sure, that he received stock in the Baby Bell companies when they separated from AT&T — which AT&T said occurred in 1984. He called the amounts insubstantial; his report identifies them each as worth up to \$15,000.

"I have always treated them as one, AT&T," he wrote.

In 1991, Gaitan issued eight court orders in a \$10 million lawsuit against a subsidiary of one of the companies, U.S. West Inc. At the time, Gaitan explained, he did not realize he was a U.S. West shareholder and he did not know federal law required him to withdraw if he was.

"Most of my rulings were perfunctory," Gaitan wrote. "And ultimately the case was transferred to yet another judge."

■ *The Star* series questioned whether Haggerty had fully disclosed his assets. At the time Haggerty declined to be interviewed or to clarify his investments.

Three weeks after publication, however, Haggerty wrote to court officials to disclose for the first time that he owned stock in American Express Co. and held an American Funds mutual fund. Together the investments were worth \$15,000 to \$65,000.

Haggerty acknowledged in an interview that he presided over a lawsuit against an American Express subsidiary last year and that he eventually threw the case out of court. He said the "disjointed" lawsuit made no actual claims against the company and told court administrators he did not know if his actions violated ethics laws.

■ Judge Donetta Ambrose of Pittsburgh disclosed to court officials for the first time that her husband co-owned an interest in Mellon Bank in 1995 and 1996. In that time Ambrose presided over a million-dollar racketeering lawsuit that named Mellon Bank as a de-

fendant.

Ambrose said she was unaware of the conflict until questioned by *The Star*, and she vowed to make fuller disclosure in the future.

■ G. Thomas Van Bebber, chief district judge for Kansas, disclosed that he wrongly reported that his wife closed an individual retirement account worth up to \$15,000 in October 1996. The account at New York Life Insurance Co. remains open.

Van Bebber also disclosed for the first time that in 1996 he and his wife invested in a Glenbrook Life mutual fund worth as much as \$50,000.

Van Bebber called the omissions an accident.

■ Judge Kathryn Vratil of Kansas City, Kan., disclosed that in her 1996 report she failed to list stock worth up to \$15,000 in Kansas City Power & Light Co. The investment was made on behalf of her children, she said, and is controlled by her ex-husband.

Vratil described the oversight as unintentional.

■ Judge Nanette Laughrey of Kansas City reported that in previous years she inadvertently omitted an outstanding loan to her husband and an unpaid medical bill, totaling up to \$65,000.

■ Judge Ortrie D. Smith of Kansas City disclosed that in 1996 he sold his interest in a Colonial mutual fund worth up to \$50,000 and redeemed another investment worth up to \$15,000. He called the omission an accident.

■ Judge Gary A. Fenner of Kansas City sent a letter to court officials reporting that in 1996 he failed to report that he collected cash from a bond trust on four occasions. He said he left out the distributions, worth up to \$15,000, because of an oversight.

■ At least three judges, all from western Pennsylvania, disclosed that in earlier reports they left out stock and bond investments or failed to disclose financial transactions.

Some judges' reports left important questions unanswered. For example, Judge Michael Hogan of Oregon disclosed that he receives 17 percent of capital gains and dividends accrued by the Hogan Family Partnership. Yet he did not disclose which stocks the partnership

owns.

"As far as I know, what I've done is acceptable," Hogan said.

Some of the most striking information in the new reports comes on their final pages. That is where the judges attest that they performed no judicial function in any lawsuit in which they had a financial interest.

Three of the judges signed the certification but then appended statements showing that they had, indeed, run afoul of the conflict laws. In previous years none of the reports reviewed by *The Star* included such a statement — even reports from judges who had violated the law.

Haggerty, who threw out the American Express lawsuit, included a note in his 1998 report that explained the conflict. He also altered the standard certification from "I did not ..." to read "I do not believe I" violated an ethical canon.

Judge Gustave Diamond of Pittsburgh disclosed that since 1995 he had presided over four lawsuits in which his wife owned stock in a litigant. He said the conflicts "escaped detection" until identified by *The Star*.

Judge H. Dean Whipple of Kansas City reported that he issued an injunction and other orders in a lawsuit involving a brewery and only later realized he owned stock in one litigant's parent. Whipple sold the stock before taking further action in the lawsuit.

In contrast, Judge D. Brook Bartlett signed the certification without comment.

Yet records show that Bartlett last year presided over a lawsuit against the Stryker Sales Corp. Bartlett's report shows he owns stock worth up to \$15,000 in the company's parent, the Stryker Corp.

Bartlett, chief district judge for Western Missouri, said in an interview he was astounded that he overlooked the conflict. He stressed that no one opposed any of his orders but added that he was not making excuses.

"It's certainly my fault," Bartlett said. "I had not the foggiest idea about it."

Disclosure methods get an upgrade

By JOE STEPHENS
Staff Writer

Efforts to improve public disclosure by judges are pushing ahead on both the state and national level.

In Kansas the president of the state bar has recommended requiring state judges to reveal their assets. Kansas judges currently report only sources of income.

"Our Kansas judiciary has no significant reporting of the financial interests of its member judges," John Tillotson, immediate past president of the bar, wrote in the association's journal.

"There is no possible way for litigants, lawyers or the public to assess whether they have improper conflicts. We should take immediate steps to require the reporting of state judges' investments and make this information publicly and easily accessible."

The new president, David Waxse, agrees. Waxse heads the Kansas Commission on Judicial Qualifications, which soon will decide whether to recommend changes to the Kansas Supreme Court.

In Missouri judges already report stock investments of \$10,000 or more. The reports are available to the public in Jefferson City, where court officials compile a list of who has looked at them.

In June, Jackson County judges voted to become the first in the state to also make the reports available at the local courthouse. The public can review the reports without providing identification.

On the national level a committee of the U.S. Judicial Conference discussed financial conflicts at length in July. The meeting of the codes of conduct committee was secret, and committee members declined to detail the recommendations approved.

But Circuit Judge A. Raymond Randolph of Washington, D.C., said he is preparing a report for consideration by the full judicial conference in September. A second committee, which focuses on disclosure, is expected to debate the issue next week.

Any nationwide changes in disclosure procedures would have to



Beginning today the 1998 financial disclosure reports for federal judges from the Kansas City area are available on *The Kansas City Star* web site at www.kcstar.com/judges.

The newly updated Web page includes reports just released from Washington for four levels of judges: circuit, district, bankruptcy and magistrate. District judge reports from 1997 are there, too.

The reports list investments, corporate board memberships, gifts and free trips from the previous year. The web site also features the full text of the investigative series "On Their Honor" and other material available only on *The Star* Internet site.

If you want to order disclosure reports for other federal judges, you will find instructions and request forms on the site.

be approved by the full conference, which is headed by Chief Justice William H. Rehnquist.

Conference officials told a U.S. House subcommittee in June that they would consider adopting reforms pioneered in Kansas City. Federal district judges here voted in May to begin filing lists of their assets at the downtown courthouse, in addition to those they already file in Washington.

"Anybody can go in, and there will be no questions asked," Chief District Judge D. Brook Bartlett said after the vote.

All the changes come in the wake of "On Their Honor," an investigative series published by *The Kansas City Star* in April. The series reported that federal district judges had repeatedly presided over lawsuits against companies in which they owned stock, despite laws forbidding such conflicts.

In Kansas City alone, nine district judges entered more than 200 problem orders in recent years.

The series also showed that federal judges made it uncommonly difficult for the public to review their finances. Judges filed the reports only in Washington, and court officials warned judges before sending anyone a list of their assets.

Nationwide last year only 17 law firms checked a judge's disclosure.

Two judges took free trips but left them off their reports

Critics contend the sessions in Montana are potential conflicts.

By JOE STEPHENS
Staff Writer

Two federal judges accepted free trips to Montana dude ranches from a conservative foundation but failed to list the gifts on their public disclosure reports.

Joseph E. Stevens Jr., a district judge from Kansas City, and James T. Turner, a claims judge from Washington, D.C., traveled to five-

day seminars at resorts near Yellowstone National Park.

When questioned by *The Kansas City Star*, Turner said that he made

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a mistake and Stevens argued that he had no legal responsibility to disclose the trip. But both judges added the gifts to their reports.

The disclosure reports are designed to help the public sniff out conflicts of interest. Critics say the Montana seminars, which are sponsored by the Foundation for Research on Economics and the Environment, present serious potential conflicts for the scores of judges who have taken part.

Judges who acknowledge taking the trips have been attacked for ac-

cepting what critics say are unethical junkets designed to seduce judges into favoring property rights over environmental protection.

"It is just totally, totally inappropriate for a judge to accept a freebie trip," Rep. Zoe Lofgren, a California Democrat, said at a recent congressional hearing.

Judges countered that they saw no conflicts and said that the legal seminars presented balanced discussions about interpreting environmental law. Foundation officials agreed.

The Star identified the unreported trips, which Turner valued at \$1,700 a person, after obtaining a list of seminar participants. The discovery comes at a time when judicial disclosure is under increasing scrutiny.

In April *The Star* used disclosure reports to show that federal judges across the nation violated ethics laws by presiding over lawsuits against companies in which they owned stock. The articles also showed that the judiciary makes it uncommonly difficult for lawyers and litigants to obtain the reports.

Last Sunday *The Star* reported that judges routinely fail to disclose some investments. News of the unreported Foundation for Research on Economics and the Environment trips shows that judges also leave other important information off their reports.

Although federal law makes it a crime to deliberately drop information from the statements, experts said they were unaware of a judge ever being prosecuted.

The foundation's seminars emphasize a libertarian interpretation of property rights and environmental law, along with recreation in the Rockies.

"Conference and travel expenses are paid," a letter from the foundation says, "and time is provided for cycling, fishing, golfing, hiking and horseback riding."

Stevens acknowledged that four

years ago the foundation paid for him and his wife to visit the Diamond J Ranch.

Stevens declined an airline ticket and instead drove the 2,000 miles to Bozeman, Mont., and back. The foundation paid for mileage, lodging and Stevens' meals; it also may have paid board for his wife.

"Honestly, I don't remember that far back," he said.

Stevens did not believe federal law required him to list the trip on his annual report. "That was a business trip, and I'm not required to disclose it," he said.

Stevens added that he had taken other free trips he never disclosed. Those trips probably were paid for by taxpayers, he said, not private interest groups. Federal law does not distinguish between trips taken for business and pleasure.

Filing instructions direct judges to "provide the identity of the source and a brief description of reimbursements such as transportation, lodging, food or entertainment.... A reimbursement means any payment...to cover travel-related expenses."

An example included in the instructions is remarkably similar to Stevens' situation. It shows a judge disclosing a free trip to a meeting underwritten by a foundation.

Four days after being contacted by *The Star*, Stevens filed an amended report disclosing the trip. He said he remained convinced he was not required to do so under federal law.

That argument puzzled legal ex-

perts.

"Virtually every other federal judge understands that travel reimbursements must be reported," said Steven Lubet, a judicial ethicist at Northwestern University in Illinois. "It appears Judge Stevens is a minority of one."

Stevens said he also was confident that he had no investments that must be disclosed on his annual report. Although he earns almost \$150,000 a year, Stevens has reported for the past eight years that he owns no reportable assets worth \$1,000 or more. Judges need not disclose some investments, such as their homes.

The Star examined scores of reports from judges across the nation and found no other judge who reported owning no assets. The judges disclosed stocks, checking accounts, life-insurance policies, mutual funds, pensions and retirement accounts.

Under federal law, judges also must disclose investments held by their spouses and dependent children.

"I have declared everything that in my view is appropriate under the statute and the rules," Stevens said, "and I'm not going to disclose my personal life any further."

While experts said it is technically possible for a judge to own no reportable assets, a leading textbook on judicial ethics notes: "Short of keeping money under the mattress, every judge engages in some sort of regulated financial activity."

Editorials

Courts need ethics enforcement

Federal judges often preside over litigation well beyond the limelight of public attention. Implicit, however, is an unwritten contract between them and the public:

Judges are to be independent of influences that could bias their decisions. Their actions must be based on the law and the facts of a case without the slightest hint of judicial misconduct or any suggestion of wrongdoing.

In return for this uncompromised independence, the public supports the justice system. The people accept decisions with which they may not wholeheartedly agree, believing the judges are acting in the best interests of the litigants and the public.

One part of that bargain was found to be faulty last spring when *The Star* published a series of articles showing federal judges had violated ethics rules.

Some judges here and elsewhere had conducted cases involving companies in which they owned stock. It was a disturbing revelation, even though there was no evidence that judges had benefited from the ethically troubling arrangements.

More recently, *The Star* disclosed that two federal judges had accepted complimentary trips that they did not report on their public disclosure statements. One of them is Judge Joseph E. Stevens Jr., of the U.S. District Court here. He later added it to his disclosure report, as did the other judge, who is from the Washington, D.C., area.

The federal judiciary should take these disclosures by *The Star* very seriously. Activities that violate or appear to break ethics rules invite intervention. The result could be attempts to deprive federal judges of life tenure and other changes that could threaten an independent judiciary. Numerous bills on judicial issues have been introduced in Congress.

One proposal would create an inspector general to conduct financial and performance audits for the federal courts.

Some auditing occurs now, but an IG would have specific authority to propose methods of preventing waste, fraud and abuse. The IG also could deal with complaints and propose administrative reforms as well as investigate alleged judicial misconduct.

The IG proposal is one alternative. The judiciary can either take the initiative and install reforms from within, or face the possibility of having changes imposed by Congress.

The federal courts should remain independent. But they will be vulnerable to losing their autonomy if judges do not balance that protection with ethical conduct that gives assurance of unbiased, fair decisions.

*The voice
of The
Kansas
City Star*

THE KANSAS CITY STAR.

WEDNESDAY, September 16, 1998

Judicial reforms involve assets

**Conflict of interest,
financial disclosures
will be modified.**

By JOE STEPHENS
Staff Writer

WASHINGTON — The nation's top judges on Tuesday approved reforms aimed at reducing conflicts of interest and increasing access to judges' financial disclosure reports.

The U.S. Judicial Conference voted to slash charges for copies of the reports by 60 percent and to lower other administrative obstacles to the public. It also unveiled a series of ethics training programs for judges.

And the policy-making conference, headed by Chief Justice William H. Rehnquist, directed two committees to study allowing the public to review judges' financial holdings at their local courthouses. Currently, that option is available only in Kansas City.

The judges called those and other reforms "positive steps in improving public access to financial disclosure reports without compromising the security of judges."

Judicial critics were heartened but stressed the changes should not stop here.

"The Judicial Conference took long-overdue first steps," said James C. Turner, a Washington lawyer and legal-system reformer. "But these are only first steps.

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Full, local disclosure at the courthouse is the obvious solution."

The conference's 27 members enacted the changes during a secret, daylong meeting at the U.S. Supreme Court. They acted in response to a series published this spring in *The Kansas City Star*.

The newspaper reported that federal judges in Kansas City and elsewhere presided over scores of lawsuits against companies in which they owned stock, despite laws forbidding such conflicts.

The newspaper's study of cases in four states identified more than 300 court orders entered in violation of federal law. The judges set hearings, granted motions, conducted trials and threw out legal claims. At the same time, the judges owned as much as \$250,000 in stock in the companies being sued.

The articles showed that few people look at judges' disclosure reports because the judiciary places tight restrictions on their release. The reports are stored only in

Washington, the judiciary releases them only after a lengthy administrative process and each request sparks a warning to the judge about who is investigating the holdings.

The Star also found that more than a third of the reports were incomplete or contained errors.

In response, the Judicial Conference and its committees on Tuesday announced a range of reforms. The judges:

- Slashed charges for copies of the disclosure reports from 50 cents a page to 20 cents a page.

- Dropped a requirement that

each request to review the reports be signed by a notary public. William Terrell Hodges, chairman of the conference's executive committee, said judges could not determine why notarization had ever been required.

- Agreed to post special order forms, required to obtain the reports, on the Internet and at every federal courthouse. Currently, the forms are available only in Washington.

- Intensified and expanded ethics training for judges. Court officials also will supply each of the nation's 2,000 federal judges with standardized checklists to ensure that the judges accurately complete disclosure reports and identify all financial conflicts.

- Ordered development of computer systems to help judges and their clerks compare their stock holdings with the names of litigants in their courtrooms.

- Ordered a committee to consider requiring each corporation involved in litigation to list all its parent and affiliated companies as a way to help judges identify con-

flicts.

The most far-reaching reform still under consideration — posting all of a judge's assets at the local courthouse for anyone to see — was not immediately approved. Hodges said two committees will study the issue and the conference could act on the plan at its next meeting in March.

The final proposal might include more than financial holdings, he said. For example, a judge might list law firms at which relatives and close friends work.

Hodges said he hopes the conference's actions satisfy congressional critics that the judiciary is serious about reform.

In June, Sen. John Ashcroft and Sen. Charles Grassley accused the judiciary of a "disturbing pattern" of ethical violations and of blocking public access to the disclosure reports.

"When federal judges fail to obey

the laws that govern their conduct, they send a terrible message to the public," the senators said in a letter to judicial administrators.

That same month, a House subcommittee chastised judges for their ethical lapses and said it would consider legislation if the judicial conference did not act.

Federal lawmakers contacted on Tuesday said they wanted to study the conference's actions before commenting.

The conference also was swayed by Kansas City judges, who took the lead in reform.

In April, District Judge Scott O. Wright filed a list of his investments with the clerk at the Kansas City courthouse. Soon, all other judges in Western Missouri followed his example.

"Anybody who wants to come in and see it, they are free to do so," Wright said at the time. "It is clearly the right thing to do."

Missouri state judges quickly decided to do the same. Now judicial officials in Kansas are hammering out details for that state's first system of judicial disclosure.

Wright also campaigned for reform nationwide. He mailed letters to more than 30 ranking federal judges, urging that they vote to enact disclosure rules at all federal courthouses.

"It is my belief that if the judiciary does not face this issue, Congress will step in with some sort of legislation," Wright warned in the letters. "I would much prefer that the judiciary take care of the problem on its own."

The Judicial Conference, which meets twice a year, includes chief judges of the 13 federal circuits, a district judge from 12 geographic regions and chief judge of the Court of International Trade. It is the top rule-making body for the federal courts.

THE KANSAS CITY STAR.

THURSDAY, September 17, 1998

Federal judges agree to ethics reforms at conference

Changes address disclosure of judiciary investment records.

By JOE STEPHENS
Staff Writer

WASHINGTON — Critics consider the federal judiciary to be a vast immovable object. But this week that object moved — and moved fast.

That's how experts described Tuesday's announcement that the nation's top judges had approved a range of ethics reforms. Each change is aimed at reducing conflicts of interest and improving public disclosure of judges' financial investments.

The policy-making U.S. Judicial Conference defied its image by approving the reforms at its semiannual meeting, the first since *The Kansas City Star* began reporting on ethical violations earlier this year.

"It was great," said Steven Lubet, a leading judicial ethicist and a professor at Northwestern Univer-

sity.

"The judiciary is the most ponderous branch of government. They are not accustomed to concerted action."

But Lubet and others, including some in Congress, said Wednesday that the judges still have far to go before reaching full public accountability.

"It looks like the Judicial Conference has taken some positive first steps toward reform," said Sen. Charles Grassley, an Iowa Republican who is chairman of the Senate subcommittee that oversees cou-

"I want to review these new policies and procedures in practice to see how effective they are in opening up the financial disclosure process to the public as well as assisting judges in complying with the law."

Some legal experts favor placing all judges' investments on the Internet for everyone to see.

As yet, that's not on the judges' agenda. But the conference, head-

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ed by Chief Justice William Rehnquist, is debating whether to allow the public to review judges' financial holdings at their local courthouses. Currently, that option is available only in Kansas City.

Reforms the conference approved this week include slashing charges for copies of judges' financial disclosure reports and lowering other administrative obstacles to the public. It waived a requirement that all requests to see the reports be signed by a notary public, and it unveiled a series of ethics training programs for judges.

The conference may have had little choice, said Kansas City lawyer Dennis Egan. Reports of widespread ethical violations by judges damaged their public image and

sparked congressional criticism.

"What they have done is laudable," Egan said, "but I thought maybe they would do a little more."

District Judge Scott O. Wright of Kansas City said he is convinced more reform is on the way. He has been lobbying for national change, and he helped convince Kansas City judges to post lists of their stock holdings at the local courthouse.

"What we did here makes so much sense," Wright said. "I can't believe they won't do something (similar)."

If the conference does not, Wright predicted Congress will draft its own reforms — something

the judiciary would like to avoid.

Lawyer Doug Kendall of Washington was more critical than most, saying the restrictions lifted on Tuesday were outrageous and possibly violated disclosure laws. "The conference took no more action than was absolutely necessary," he said.

He complained that the judges sidestepped other issues, such as whether judges should take free trips from special-interest groups.

The conference's actions were sparked by articles in *The Star*. The newspaper reported in April that federal judges in Kansas City and elsewhere presided over scores of lawsuits against companies in which they owned stock, despite laws forbidding such conflicts.

The articles also showed that few people look at judges' disclosure reports because the judiciary places tight restrictions on their release. The reports are stored only in Washington, the judiciary releases them only after a lengthy administrative process and each request sparks a warning to the judge about who is investigating the holdings.

Nancy Powell, whose lawsuit against Sprint was handled by a judge who owned Sprint stock, said she felt vindication upon hearing of the conference's actions.

"It's a start," she said. "The reforms announced yesterday put every federal court judge in the country on notice that their conduct is not above the law."

THE KANSAS CITY STAR.

Thursday, December 24, 1998

More disclosure of judges' stock holdings sought

By JOE STEPHENS
Staff Writer

Two lawyers' groups, one local and one national, are asking the American Bar Association to throw its weight behind proposals to reform the federal judiciary's financial-disclosure rules.

The groups want judges to file lists of their stock holdings at each

federal courthouse across the nation, and to allow anyone access to the lists without providing identification. The lawyers contend that such reforms would encourage judges to avoid ethical lapses and would help the public root out conflicts of in-

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terest.

The proposals stem from an investigation by *The Kansas City Star*. The newspaper found that judges here and in other cities issued hundreds of orders in lawsuits against companies in which they owned stock, despite laws barring such conflicts.

Kansas City lawyer Kent R. Erickson crafted the nine-page proposal

that was endorsed this month by the young attorneys section of the Lawyers Association of Kansas City. Erickson is president of the section, which comprises more than 300 area attorneys, most under age 37.

"I raised the issue several months ago and everybody seemed to be in favor," Erickson said.

The reforms also are endorsed by an ethics committee of the young

lawyers section of the American Bar Association.

The association's young lawyers board will consider the proposal at a national conference in February. If the board approves, the recommendation will move on to the directors of the full bar association.

"Public confidence in the impar-

tiality of the judiciary is crucial to the effective administration of justice," the recommendation says. Local disclosure of judges' stock interests, it contends, "should cause judges to be more vigilant of possible conflicts and help maintain public confidence in the impartiality of the judiciary."

Currently, judges file lists of their assets only in Washington.

Obtaining copies is a complicated, time-consuming process, and court officials warn each judge about who is examining their holdings.

In response to the investigation by *The Star*, the policy-making U.S. Judicial Conference is considering making lists of judges' assets available at local courthouses to litigants who identify themselves and file written requests. Erickson's proposal contends that system would scare off many would-be requesters who fear angering a judge.

"Making the conflicts list available to the public at large, including the media, increases the potential of early identification of potential conflicts missed by the judges and their staffs," according to the recommendation.

Although some judges complain that making personal information so widely available could lead to security problems, the recommendation dismisses those fears as unfounded.

"It is not readily apparent how providing access to a listing of companies in which the judge owns a financial interest could be used to readily harass the judge," the proposal says.

EDITORIALS

The voice of The Kansas City Star

Monday, January 4, 1999

Judicial ethics

Attempts to reform the financial disclosure rules for the federal judiciary are being undertaken in Kansas City and in a national lawyers' organization. That is a good sign; high ethical standards for judges are essential.

Alarms over judicial conflicts of interest were raised last year in a series of articles in *The Star*. Federal judges in Kansas City and elsewhere were found to be presiding over cases involving companies in which they had financial interests.

The stories also revealed a disturbing lack of easy access to the financial records of the judges. The reports were available only in Washington. The process to obtain them was extremely complicated. And the names of individuals or companies seeking the information were sent to the judges.

The problems were eased a bit last fall by the U.S. Judicial Conference, the policy-making agency of the federal judiciary. But the rules still do not provide sufficient availability of the records.

In recent days, a local organization declared it will seek stronger regulations. The group, the young attorneys section of the Lawyers Association of Kansas City, wants a requirement that the financial reports be made available at every federal courthouse in the country. The group also advocates allowing the records to be examined anonymously.

These and other changes are supported by an ethics committee of the young lawyers division of the American Bar Association. The association's young lawyers board will study the proposals at a national meeting next month.

While this action by the youthful side of the organized bar is laudable, the U.S. Judicial Conference should not be lagging behind such reform efforts.

The conference needs to seize the initiative. It should amend the rules to provide easy and complete access to financial reports, and to remove the specter of judicial intimidation. Only then can full public confidence in the federal judiciary be restored.

NATION

Memo again warns judges to avoid conflicts of interest

By JOE STEPHENS
The Kansas City Star

Federal judges are getting another not-so-subtle warning that U.S. law requires them to avoid conflicts of interest.

A four-page "Ethics Update" from a committee of the U.S. Judicial Conference urges that judges compile exhaustive lists of potential conflicts.

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have an interest — even investments of less than \$1,000, which judges need not include on disclosure reports filed in Washington.

Although the memo identifies no one by name, it includes language aimed squarely at past conflicts of interest involving individual judges in the Kansas City area.

"Each judge bears responsibility for ensuring his or her compliance with these financial conflict-of-interest rules," the memo emphasizes.

Court officials have shipped the memos to each federal judge in the 8th Circuit, which encompasses Missouri and six other states. The committee is encouraging its members to send a copy to each of the nation's 2,000 federal judges.

The mass mailing is the latest prompted by a series in *The Kansas City Star*, which last year revealed that judges in the Kansas City area and elsewhere routinely presided over lawsuits against companies in which they had a financial interest.

In May court officials sent each federal judge a warning that such conflicts were illegal. Since then, officials have handed out copies of *The Star's* series at judicial training sessions, court conferences and administrative meetings.

The most recent memo was prepared by the Judicial Conference's Codes of Conduct Committee. The conference, which is headed by Chief Justice William H. Rehnquist, acts as the judiciary's top policy-making body.

The memo says *The Star's* series "prompted the judiciary to examine ways of assisting judges to avoid financial conflicts of interest." The memo quotes liberally from federal ethics statutes and urges judges to read the judicial Code of Conduct.

"Ownership of as little as a single share of stock in a corporate party is disqualifying," the memo stresses. "The judge cannot handle the case even with the parties' consent."

The committee recommends that the lists prepared by the judges include nonfinancial conflicts, such as companies that employ close relatives. The committee is developing a model checklist to help judges compile thorough lists of potential conflicts, and it recommends that judges use computer software to compare the lists with the plaintiffs in their courtrooms.

Without naming names, the memo highlights a series of legal violations identical to those committed by Kansas City judges and then debunks those judges' defenses:

■ Several local judges said that they instructed their staffs to look for conflicts daily but that the clerks failed to keep up with the judges' changing investments.

The committee, however, advises the judges personally to "keep your recusal lists up-to-date."

■ Some judges said last year that financial conflicts should not stop them from issuing mundane court orders that have little effect on the outcome of a lawsuit.

The memo, however, directs judges to "make certain that even routine scheduling orders are not issued in your name before a conflicts-of-interest check is completed."

■ One judge told *The Star* last year that an investment manager handled her stock portfolio, along with securities owned by other investors, so she considered her interest in various companies to be "sort of technical."

The committee, however, stresses that while such arrangements may resemble mutual funds, the stock ownership nonetheless creates bona fide conflicts. The investments, it concludes, "are automatically disqualifying."

■ *The Star* reported last year that special-interest groups gave some judges free trips to seminars in resort areas and that the judges failed to disclose the gifts on annual reports, as required by law. One local recipient argued that federal law did not require him to make the gifts public.

The memo says: "Seminar-related gifts and reimbursements should be reported, as necessary, on your annual financial disclosure report."

The committee has embarked on a long-term initiative to create automated systems that can sniff out conflicts of interest, the memo says. That could lead to nationwide changes in how clerks assign cases to judges.

The committee is meeting this week to consider a variety of reforms designed to make the judiciary more open, including ways to make judges' financial disclosure reports more available. As is customary in the federal judiciary, the meeting is closed to the public.

The conference membership includes Rehnquist, the chief judges of the 13 federal circuits, a district judge from the 12 geographic regions and the chief judge of the Court of International Trade.

To reach Joe Stephens, investigative reporter for *The Star*, call (816) 234-4427 or e-mail stephens@kcstar.com

Bar group to vote on disclosure rules

Federal judges would file holdings at courthouses

By JOE STEPHENS
The Kansas City Star

The American Bar Association is expected to vote on a plan to reform the federal judiciary's financial disclosure rules at the association's annual conference this summer in Atlanta.

The proposal, approved Friday by a major division of the association, calls for judges to file lists of their stock holdings at federal courthouses across the nation. Anyone could review the lists without providing identification.

Plan advocates say broader disclosure would encourage judges to avoid ethical lapses and would help the public sniff out conflicts of interest.

Kansas City lawyer Kent R. Erickson drafted the nine-page proposal

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after reading a series on judicial ethics last year in *The Kansas City Star*. The articles revealed that judges here and in other cities issued hundreds of orders in lawsuits against companies in which they owned stock, despite laws barring such conflicts.

Erickson's resolution was approved by a one-vote margin, 73 to 72, at a national meeting of the association's young lawyers division. The proposal now moves to the bar's full House of Delegates, where

it is expected to face a final vote in August.

"I think it will be easier to pass the larger body," said U.S. District Judge Scott O. Wright of Kansas City, an advocate of reform. "I just can't believe the American Bar Association wouldn't get onto this thing. It gets down to the confidence that people have in their judicial system."

At Wright's urging, federal judges in Kansas City already have adopted the changes. Judges elsewhere, however, file lists of their assets only in Washington. Obtaining copies is a complicated, time-consuming process, and court officials warn judges about who is examining their holdings.

"Making the conflicts list available to the public at large, including the media, increases the potential of early identification of potential conflicts missed by the judges and their staffs," according to the bar resolution.

Connecticut lawyer David M. Moore argued against the proposal

last week, saying it goes too far and fails to call for stricter enforcement of existing ethics laws.

"There's no doubt that something needs to be done," Moore acknowledged. "But why force judges to be more in a fish bowl than they ever have been before?"

He and other bar members said the House of Delegates generally approves resolutions endorsed by the young lawyers division, made up of more than 1,000 members under age 37.

The U.S. Judicial Conference, which sets policy for the federal court system, also is considering reform. The conference, overseen by Chief Justice William Rehnquist, plans to vote in March on a similar plan to make lists of judges' assets available at local courthouses.

Final details of that plan have not been made public.

To reach Joe Stephens, investigative reporter, call (816) 234-4427 or e-mail stephens@kcstar.com.

THE KANSAS CITY STAR.

Thursday, March 18, 1999

Push for disclosure continues

Congress still wants federal judges to publicly list assets

By JOE STEPHENS
The Kansas City Star

Congressional leaders vowed Wednesday to continue pushing for broader disclosure of the assets of federal judges despite opposition by the judiciary.

Legislators were surprised and dismayed that the U.S. Judicial Conference this week rejected a plan calling for judges to post lists of their stock holdings at their local courthouses, for anyone to see. Reformers had promoted the plan as a way to reduce illegal conflicts of interest.

"Judges should join lawmakers and other high-level government officials in disclosing their financial holdings," said Sen. Charles Grassley, an Iowa Republican and chairman of a subcommittee that oversees federal courts.

"It is important to let the sun shine in on our system of government. I'd like to see the judicial conference revisit this issue as part of their commitment to accountability in the judicial system."

Other lawmakers said they were considering a second round of hearings on the issue, but added it is too soon to set a course of action.

The conference is the principal policy-making body for the federal courts. Although it approved some ethics reforms Tuesday, the conference voted against broader financial disclosure, saying judges considered it an invasion of privacy.

"It was felt this was just another imposition on judges," said Judge W. Terrell Hodges, chairman of the conference's executive committee.

The plan arose in response to a series published last year in *The Kansas City Star*.

The series, "On Their Honor," showed that federal judges in Kansas City and elsewhere presided over scores of lawsuits against companies in which they owned stock. The newspaper's investigation identified more than 300 court orders entered by judges who had a financial interest in the outcome.

In the Kansas City area alone, two-thirds of the federal judges had presided over at least one lawsuit involving a company in which they owned stock.

Although judges list their investments on annual disclosure reports, the series showed how the judiciary

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only after a lengthy administrative process and each request sparks a warning to the judge about who is investigating the holdings.

The Star also found that more than a third of the reports were incomplete or contained errors.

Sen. John Ashcroft, a Missouri Republican and a ranking member of the judiciary committee, was a vocal supporter of the reform plan.

"I was terribly disappointed," Ashcroft said Wednesday of the conference's actions. "The current policy governing disclosure of judges' financial information makes it difficult and intimidating for the public to help monitor judges' compliance with ethics rules.

"Only when the public has full access to this information can we be

placed tight restrictions on their release. The reports are stored only in Washington, the judiciary releases them

confident that judges will be held to the highest and best standard possible."

Judges in western Missouri agree. After *The Star's* series, they decided to file lists of their investments at the courthouse in Kansas City. They will continue to do so despite the conference's vote Tuesday.

Across Capitol Hill, Rep. Howard Coble said he was weighing whether his committee should re-examine the issue. The North Carolina Republican heads a subcommittee on court oversight that questioned Hodges about the conflicts at a hearing last year.

"I think that was a mistake," Coble said of the conference's decision. "This seemed to me a perfect opportunity for them to have come forward and said, 'It's been wrong

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To read *The Star's* series On Their Honor: Judges and their assets, visit our Web site.

in the past, and the perception is we have something to hide. We are going to open the door.' The public is innately suspicious when you attempt to conceal information this is, in fact, their business."

Consumer advocates called on Congress to hold new hearings and consider remedial legislation. James C. Turner, a Washington lawyer and legal reformer, argued it is important to demonstrate that judges are accountable to the public.

"These are supposed to be publicly available records," Turner said of the disclosure reports. "To ignore the clear intent of the law, especially when you are a judge, raises questions about their ability to interpret the law in other areas."

The judicial conference meets twice a year at the Supreme Court.

The Star's Kevin Murphy contributed to this report.
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Few check on judges' disclosures

Some jurists respond to examination requests by investigating source.

By JOE STEPHENS
Staff Writer

WASHINGTON — Congress is complaining that federal judges make it difficult for lawyers and litigants to see judges' financial disclosure reports. But critics say recent revelations show that the problem is worse than imagined.

Newly released federal documents reveal for the first time how many of the nation's law firms reviewed the reports last year. The grand total?

Seventeen.

Add in curious individuals and reporters, and the total inches up to 78.

"That's tiny," said Steven Lubet, a leading judicial ethicist and a professor at Northwestern University in Evanston, Ill. "I would have expected more."

By comparison, thousands of people last year examined similar reports filed by members of Congress.

Many lawyers blame the disparity on fear. Unlike Congress, the judicial branch responds to each request by sending written notice to the judge, re-

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reporting exactly who wants to look into those assets. The warning gives the requester's address, occupation and even his employer.

"That's really intimidating," said U.S. District Judge Scott O. Wright of Kansas City, an advocate for reform.

The warnings prompt some judges to launch investigations into the requesters and their motives. At times they call in the U.S. Marshals Service for help.

Critics called the practice troubling and likened it to the FBI's old and widely condemned practice of investigating political opponents.

Most lawyers interviewed said they would never review the reports for fear of angering the judge who would decide their lawsuits. Other lawyers were discouraged by the time-consuming process involved in getting the reports, which are stored only in Washington.

"The judiciary has managed to hide its disclosures out of sight," said James C. Turner, executive director of the legal reform group HALT. "But they are public documents, and the people have a right to see them."

The top ranks of the judiciary are looking into making the reports more widely available. Yet court administrators argue that wider release of the asset lists could endanger judges, three of whom have been murdered in the last two decades.

"Members of Congress don't sentence dangerous drug kingpins to life in prison," federal courts spokesman David Sellers said in a written statement. "When (judges) put a person behind bars for life, they sometimes are left with a courtroom full of ruthless and angry friends and family."

Sellers could not cite an instance in which someone used the lists, which do not divulge judges' addresses, to harm a judge. Even so, Sellers said that the asset lists could be used maliciously and that the first instance of harm would be one too many.

The debate over disclosure erupted in April after *The Kansas City Star* published a series of articles that revealed dozens of financial conflicts among federal judges. The articles also showed how the court system's restrictions discouraged lawyers and litigants from reviewing the those asset lists.

The series sparked protest from Congress and became the focus of a House subcommittee hearing. Two senators suggested posting judges' assets on the Internet.

Despite the debate, court officials said they could not provide detailed statistics on how often the

■ Financial disclosure reports for federal district judges from the Kansas City area are available on *The Star's* Web site at <http://www.kcstar.com/judges>. The site also features the full text of the investigative series, "On Their Honor."

public reviewed the reports.

So *The Star* used public-records laws to obtain copies of every Form AO-10a filed in the last year. The forms, never before examined outside the judiciary, must be filled out by anyone reviewing the reports.

Critics said the story they revealed was disturbing.

Roughly 2,000 judges filed disclosure reports in 1997. Yet the judicial branch logged only about 100 requests for the reports. The requests were made on behalf of 78 individuals and companies, many of whom reviewed reports filed by several judges.

More than a third of the requests came from journalists, who often looked solely at the assets of Supreme Court justices. Thirty-three of the requesters were individuals, ranging from congressional researchers to prisoners checking on their trial judges. The remaining requests came from lawyers or legal assistants.

The judiciary's totals pale in comparison with those of other public officials.

Federal judges outnumber U.S. representatives by a 4-to-1 ratio. Yet House staffers last year released 1,600 copies of the reports filed by members of Congress. They also published the House reports in a book distributed nationwide.

Federal judges outnumber U.S. senators 20-to-1. Yet Senate staffers fielded roughly 450 requests.

Even those statistics understate the vast disparity in disclosure. Unlike the judiciary's reports, the public viewed those filed by Congress thousands of times last year on the Internet and through online services such as Lexis-Nexis.

Sellers, the courts spokesman, said judges' disclosure reports *should* be less accessible than those filed by legislators because of security concerns.

"It's apples and oranges," he said of comparing judges with senators. "Is the goal to have 1,600 requests for judges' forms, just because there are 1,600 requests for members of the House?"

Wright dismissed Seller's arguments. "Every time they don't want to do something, they raise security," Wright said.

Indeed, the disclosure reports do not divulge judges' home addresses. (Local telephone directories, on the other hand, list the addresses of at least three Kansas City judges.)

Critics say the court system's attitude is apparent at the judiciary's administrative office in Washington, where the reports are stored.

Unlike Congress and most federal agencies, the office lacks a public reading room or even a walk-up counter. In fact, workers there ask visitors to give two weeks' notice and to arrive only between 1 p.m. and 3 p.m.

"You would think they would try to make some accommodation to the public," said Doug Kendall, one of the few lawyers who have visited the office. "It is, after all, a financial disclosure office."

Sellers said workers there "do the best they can" with a small staff and tight budget.

In response to the newspaper's findings, judges in western Missouri voted in May to make lists of their assets available for anonymous review at the Kansas City courthouse. National court officials are considering the system for a national model.

But that might be a hard sell to some judges.

In fact, judges often grow agitated when warned that someone is reviewing their reports, said John Howell, a financial disclosure lawyer for the U.S. Judicial Conference.

Judges routinely telephone to ask, "Who is this person? Why have they requested (the reports)?" Howell said.

In one case, a housewife requested a judge's reports, prompting him to comb a list of all litigants in his courtroom.

"I am very concerned," the judge told Howell. "Why would she want to know what my holdings are?"

Howell agreed that the situation was a security risk and urged the judge to talk to a U.S. marshal. "We work very closely with the Marshals Service," Howell told the judge, "and they have other resources that can assist you."

Lubet, the law professor, was astounded at Howell's account.

"You shouldn't be investigating the background of someone who requests public information," Lubet said.

Turner agreed that the practice was troubling.

"This is the kind of stuff that was supposed to be buried with J. Edgar Hoover," Turner said, referring to the late FBI director. "Members of the federal judiciary do not appreciate how chilling and intimidating those kinds of actions can be to ordinary Americans — who have done nothing wrong."