

US Supreme Court Should Learn From New Jersey

By Ellen L. Koblitz and Kim D. Ringler

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U.S. Supreme Court Justice Clarence Thomas has been roundly criticized for accepting luxury gifts and trips from Harlan Crow, an extraordinarily wealthy Republican donor, as originally reported by Pro Publica. According to The New York Times, for more than 20 years Crow bestowed lavish gifts upon Thomas and his wife Virginia, including trips on Crow's private jet and superyacht, tours through Indonesia, commissioning a portrait of himself and Thomas smoking cigars in Adirondack chairs, financing a documentary about Thomas, and donating \$500,000 to Liberty Central, an advocacy group Virginia Thomas founded. Although justices are required to report gifts on annual public forms, Thomas failed to report these gifts for the past 19 years. In addition, according to press reports, in 2014 Crow bought Thomas' mother's home and allowed her to live there rent-free, and he paid for the education of Thomas' great-nephew, whom Thomas raised since the young man was 6 years old. Tens of thousands of dollars were also paid to Virginia Thomas by conservative activist Leonard Leo. Thomas failed to report these transactions.

Supreme Court Justice Neil Gorsuch reportedly sold a \$1.8 million property to the CEO of a major law firm that has been active in many cases before the court and did not divulge the name of the CEO in his financial reporting or recuse himself from deciding those cases. Some Supreme Court justices over the years received hefty payments from Scalia Law School, including luxurious all-inclusive trips around the world for short-term teaching or conferences. None of these financial handouts triggered any consequences for the justices. No formal code of conduct exists for the Supreme Court.

Recently, Chief Justice John Roberts submitted to Congress—in lieu of his testimony—a list of general ethical



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principles unanimously agreed to by the entire current court. These principles are apparently merely aspirational.

In contrast, all New Jersey judges are clearly obligated to abide by a robust and comprehensive code of conduct. Seven Canons of Judicial Conduct regulate judicial activity, and they are supplemented by numerous explanatory rules and official comments. Together these authorities form among the most stringent, if not the toughest, judicial regulations in the country. The New Jersey Code of Judicial Conduct, revised Sept. 1, 2016, now requires that "strict and exacting compliance with the Canons is mandatory in every case. This strict compliance requirement is unique to New Jersey," 46A N.J. Practice, New Jersey Judicial Discipline Section 1:4 (Robert Ramsey) (rev. Sept. 2022). Although the duty to avoid the appearance of impropriety no longer applies to practicing lawyers since the Rules of Professional Conduct removed that obligation in 2004, New Jersey judges must avoid even the appearance of impropriety in both their personal and professional lives, and they may not receive any active income from any source other than their salaries while they are on the bench. New Jersey judges have taught courses and even written books for no remuneration whatsoever, as the judicial code forbids any payment for outside work. With respect to conflicts of interest and the duties that arise from any conflict between the duty to decide a case fairly and

impartially and even an appearance of bias or self-interest, judges are obliged to step away from presiding over cases that implicate or appear to undermine impartiality. In New Jersey, judges must, for example, disqualify themselves if the “judge has a social relationship with a party or a lawyer for a party of a nature that would give rise to partiality or the appearance of partiality.” Judges may serve as executors only for their immediate family. New Jersey does not tolerate any circumstances supporting a fair inference that the judge is biased for or against any party or lawyer or interest before their court.

These guidelines and rules are not empty words. The standards are enforceable and are, in fact, enforced. The allegations of judicial misconduct must be proven by clear and convincing evidence to result in disciplinary action. The Advisory Committee on Judicial Conduct (ACJC) will dismiss a meritless allegation—such as a claim that a judge made the wrong decision or shouldn’t hear a second case after finding a litigant incredible on a related matter. If the ACJC deems the conduct improper, but not so egregious to merit public discipline, private discipline may be imposed. Once probable cause is found that a complaint is sufficiently serious to merit public discipline, however, the proceedings generally proceed publicly. Even when the judge is eventually exonerated, the details of the allegations are spread before the world, with the attendant publicity in the legal and general press. Complaints are generally prosecuted by the attorney general’s office. The Supreme Court may order the temporary suspension of the judge and has the statutory authority to remove a judge for misconduct. Judges who face charges prior to obtaining reappointment (which occurs after seven years) might not be reappointed even if they are exonerated of any ethical violations. A judge may also be disciplined, or barred from future judicial service, even after the judge leaves the bench.

Other rules are designed to keep the conduct of New Jersey judges above rebuke. Judges may not engage in partisan or nonpartisan political activities. Judicial Canon Rule 6 prohibits payment for permitted quasi-judicial and extrajudicial activities, and only allows reimbursement of reasonable expenses “provided that the source or amount of such reimbursement, or the location of the activity, does not give the appearance of influencing the judge in the exercise of judicial duties or otherwise create an appearance of impropriety.”

Neither New Jersey judges nor family members residing in the same household may accept a gift unless “the donor is not a party or other person whose interests have come or are likely to come before the judge.” Judges, as public servants receiving salaries from public monies, must also complete a financial reporting form every year that is available for public inspection.



Even retired New Jersey Superior Court judges receiving a pension, who must retire at age 70, are carefully regulated. They may not practice law, have their name on any legal papers, nor appear as an expert witness in New Jersey state courts. And they may not appear before administrative agencies or in attorney ethics matters. They may not testify as an expert witness in legal malpractice cases in any court.

Just a cursory review of the New Jersey Code of Judicial Conduct for active and retired judges demonstrates that the flurry of recently revealed controversial conduct by U.S. Supreme Court justices would be strictly prohibited in the state of New Jersey, as well as severely punished after public prosecution.

The activity of a judge in New Jersey is regulated and scrutinized to instill and maintain public confidence in the judiciary. Judges at the municipal level through the highest court must avoid even the appearance of impartiality. Some examples of activity that the Supreme Court of New Jersey found unacceptable include, simultaneously serving as a judge while performing stand-up comedy that mocked various segments of the population, and serving as a judge in a municipality in which the judge’s adult child was employed as a police officer.

The U.S. Supreme Court would be wise to take a page from New Jersey’s regulatory framework in order to buttress public confidence and avoid public suspicion that bias influences its judicial decisions.

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