

Guide to Judiciary Policy

Vol 2: Ethics and Judicial Conduct

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§ 1010 Statutory Texts on Outside Earned Income, Honoraria, and Employment

The following statutes relate to Outside Earned Income, Honoraria, and Employment

- Government-Wide Limitations on Outside Earned Income and Employment ([5 U.S.C. App. §§ 501-505](#));
- Outside Earned Income Limitation ([5 U.S.C. App. § 501](#));
- Limitations on Outside Employment ([5 U.S.C. App. § 502](#));
- Administration ([5 U.S.C. App. § 503](#));
- Civil Penalties ([5 U.S.C. App. § 504](#));
- Definitions ([5 U.S.C. App. § 505](#)); and
- Tax Treatment of Honoraria Donated to Charity ([26 U.S.C. § 7701\(k\)](#)).

§ 1020 Judicial Conference Regulations on Outside Earned Income, Honoraria, and Outside Employment

§ 1020.10 Authority

Ethics Reform Act of 1989, Pub. L. No. 101-194, §§ 601-603, 103 Stat. 1716, 1760-1763 (1989), as amended. These regulations are promulgated by the Judicial Conference of the United States under the authority of [5 U.S.C. App. § 503\(3\)](#). See [JCUS-SEP 90](#), p. 64.

§ 1020.15 Purpose and Scope

- (a) These Regulations of the Judicial Conference of the United States Under Title VI of the Ethics Reform Act of 1989 Concerning Outside Earned Income, Honoraria, and Outside Employment implement Title VI of the Ethics Reform Act of 1989, [5 U.S.C. App. §§ 501-505](#), by prescribing:
 - (1) limitations on:
 - (A) the amount of outside earned income that certain officers and employees of the judiciary may receive, and
 - (B) the types of outside employment activities in which such officers and employees may engage; and
 - (2) a prohibition against the acceptance of honoraria for any appearance, speech, or article by certain officers or employees of the judiciary.
- (b) Nothing in these regulations alters any other standards or Codes of Conduct adopted by the Judicial Conference of the United States.
- (c) Any violation of any provision of these regulations will make the officer or employee involved subject to appropriate disciplinary action, which may be in addition to any penalty prescribed by statute or regulation.

§ 1020.20 Definitions

- (a) A “judicial officer or employee” means any
 - (1) United States circuit judge,
 - (2) district judge,

- (3) judge of the Court of International Trade,
 - (4) judge of the Court of Federal Claims,
 - (5) judge and special trial judge of the Tax Court,
 - (6) judge of the Court of Appeals for Veterans Claims,
 - (7) bankruptcy judge,
 - (8) magistrate judge,
 - (9) commissioner of the Sentencing Commission, and
 - (10) any employee or officer of the judicial branch other than a part-time magistrate judge, or an officer or employee of the Supreme Court of the United States or the Federal Judicial Center.
- (b) A “covered senior employee” means an individual who is a noncareer officer or employee (defined for these purposes as the following officers and employees):
- (1) circuit judges,
 - (2) district judges,
 - (3) judges of the Court of International Trade,
 - (4) judges of the Court of Federal Claims,
 - (5) judges and special trial judges of the Tax Court,
 - (6) judges of the Court of Appeals for Veterans Claims,
 - (7) bankruptcy judges,
 - (8) full-time magistrate judges,
 - (9) the commissioners and staff of the Sentencing Commission,
 - (10) the Director of the Administrative Office of the United States Courts,

- (11) the Deputy Director of the Administrative Office of the United States Courts, or
- (12) employees of the Administrative Office of the United States Courts appointed by the Director to a position exempted under the Administrative Office of the [United States Courts Personnel Act of 1990, § 3\(a\)\(5\)\(B\)](#), or to a position paid under [28 U.S.C. § 603](#);

— and whose rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule.

- (c) The terms “judicial officer or employee” and “covered senior employee” set forth in § 1020.20(a) and § 1020.20(b) do not include any special government employee as defined in [18 U.S.C. § 202](#).

§ 1020.25 Outside Earned Income Limitation

- (a) No covered senior employee may have outside earned income attributable to a calendar year which exceeds 15 percent of the annual rate of basic pay for Level II of the Executive Schedule under [5 U.S.C. § 5313](#) as of January 1 of that calendar year.
- (b) “Outside earned income” means all wages, salaries, commissions, professional fees, and payments and compensation of any kind for services rendered or to be rendered by the covered senior employee, less the ordinary and necessary expenses paid or incurred in producing the income, provided, however, that the following shall not constitute outside earned income:
 - (1) Funds received for services rendered to or for the United States government and income attributable to service with the national guard;
 - (2) Pensions, annuities, deferred compensation (whether qualified or nonqualified) and other funds received for services rendered by the reporting individual before becoming a covered senior employee, or before January 1, 1991;
 - (3) Funds received from investments to the extent not attributable to significant personal services of the covered senior employee;
 - (4) Funds received from a business totally owned by the covered senior employee, or his or her family, as defined in Canon 4D(2) of

the Code of Conduct for United States Judges, to the extent that such funds do not result from significant personal services of the covered senior employee;

- (5) Royalties, fees, and their functional equivalent, from the use or sale of copyright, patent, and similar forms of legally recognized intellectual property rights, when received from established users or purchasers of those rights;
 - (6) Anything of value earned or received for services rendered which is not included as gross income in the relevant calendar year under controlling provisions of the Internal Revenue Code; and
 - (7) Compensation received by a senior judge for approved teaching under § 1020.35(a)(5) if the senior judge –
 - (A) retired from regular active service under [§ 371\(b\)](#) and is certified as having met the requirements of [28 U.S.C. § 371\(e\)](#); or
 - (B) retired from regular active service on permanent disability under [28 U.S.C. § 372\(a\)](#).
- (c) “Outside earned income” is attributed solely to the actual earner, even though under applicable community property law one-half of any personal service income earned by a covered senior employee may be deemed to belong to a spouse.

§ 1020.30 Prohibition on Receipt of Honoraria

- (a) No judicial officer or employee shall receive any honorarium while that individual is a judicial officer or employee.
- (b) “Honorarium” means a payment of money or anything of value (excluding or reduced by travel expenses as provided in [5 U.S.C. App. §§ 505\(3\) and \(4\)](#)) for an appearance, speech or article by a judicial officer or employee, provided that the following shall not constitute an honorarium:
 - (1) Payment for a series of related appearances, speeches or articles, provided that the subject matter is not directly related to the officer's or employee's official duties and that the payment is not made because of the officer's or employee's status with the Government.

- (2) Compensation received for teaching activity, provided that in the case of covered senior employees such teaching activity is approved pursuant to § 1020.35 hereof.
 - (3) Awards for artistic, literary or oratorical achievement made on a competitive basis under established criteria.
 - (4) Compensation for any performance using an artistic, athletic, musical, or other skill or talent or any oral presentation incidental thereto, provided that the subject matter is not directly related to the officer's or employee's official duties and further provided that the opportunity is not extended because of the officer's or employee's official position.
 - (5) Compensation for any writing more extensive than an article.
 - (6) Compensation for works of fiction, poetry, lyrics, script or other literary or artistic works.
 - (7) A suitable memento or other token in connection with an occasion or article, provided that it is neither money nor of commercial value.
- (c) Any honorarium which, except for § 1020.30(a) hereof, might be paid to a judicial officer or employee, but which is paid instead on behalf of such officer or employee to a charitable organization described in section 170(c) of the Internal Revenue Code of 1986, shall be deemed not to be received by such individual for purposes of that subsection so long as such payment does not exceed \$2,000 and is not made to a charitable organization from which such individual or a parent, sibling, spouse, child, or dependent relative of such individual derives any direct financial benefit separate from and beyond any general benefit conferred by the organization's activities. However, no payment may be made to a charitable organization under this subsection if the judicial officer or employee would be prohibited from receiving and retaining the honorarium by any applicable standards of conduct other than § 1020.25(a) or § 1020.30(a) (for example, where an appearance, speech or article is prepared as part of official duties).

§ 1020.35 Limitations on Outside Employment

- (a) No covered senior employee shall:

- (1) affiliate with or be employed by a firm, partnership, association, corporation, or other entity to provide professional services which involve a fiduciary relationship for compensation;
 - (2) permit the use of his or her name by any such firm, partnership, association, corporation, or other entity;
 - (3) practice a profession which involves a fiduciary relationship for compensation;
 - (4) serve for compensation as an officer or member of the board of any association, corporation, or other entity; or
 - (5) receive compensation for teaching, without the prior notification and approval as herein provided.
- (b) “Teaching” in these regulations includes teaching a course of study at an accredited educational institution or participating in an educational program of any duration that is sponsored by such an institution and is part of its educational offering. Examples of the latter are a lecture, lecture series or symposia sponsored by a law school or college. Teaching also includes participation in continuing legal education programs for which credit is given by licensing authorities or programs which are sponsored by recognized providers of continuing legal education.
- (c) A covered senior employee who obtains prior approval from the chief judge of the circuit, or in the case of the chief judge from the judicial council, may engage in part-time teaching for compensation.
- (1) Covered senior employees of the Court of International Trade or the Court of Federal Claims shall obtain approval from the chief judges of those courts.
 - (2) Covered senior employees of the Tax Court shall obtain approval from the chief judge of the Tax Court.
 - (3) Covered senior employees of the Court of Appeals for Veterans Claims shall obtain approval from the chief judge of the Court of Appeals for Veteran Claims.
 - (4) Covered senior employees of the Sentencing Commission shall obtain approval from the Chairman of the Sentencing Commission.

- (5) Covered senior employees of the Administrative Office of the United States Courts must obtain approval from the Director of the Administrative Office.
- (d) The procedures for obtaining prior approval of teaching activities are as follows:
 - (1) A request for approval for compensated teaching shall be made –
 - (A) prior to the commencement of any compensated teaching;
 - (B) during the performance of a previously approved teaching commitment, prior to any material increase in the compensation or the time required; and
 - (C) during the performance of a previously approved long-term teaching commitment, prior to the commencement of teaching in any new academic year (i.e., the Fall semester).
 - (2) A request for approval for compensated teaching shall state the institution for which the teaching will be done, the source and amount of compensation, and the time required, including travel. The requester shall represent that the proposed activity will be consistent with the relevant Code of Conduct.
 - (3) The chief judges of the circuits, the Court of International Trade, the Court of Federal Claims, the Tax Court, and the Court of Appeals for Veterans Claims shall approve or disapprove a request based on whether
 - (A) the proposed activity will be consistent with the Codes of Conduct,
 - (B) the requester is current in his or her judicial work, and
 - (C) the proposed activity is unlikely to affect adversely the ability of the court in which the requester serves to conduct its operations efficiently.

In the case of a request by the chief judge of the circuit, the judicial council of that circuit shall approve or disapprove the request. A request by the chief judge of the Court of Appeals for the Federal Circuit, the Court of International Trade, the Court of Federal Claims, the Tax Court, or the Court of Appeals for Veterans Claims

shall be approved or disapproved by majority vote of their respective courts.

In the case of a covered senior employee of a district court, the chief judge of the circuit shall consult with the chief judge of the district court and, where appropriate, the chief judge of the bankruptcy court before making the decision.

In the case of a senior judge, the chief judge shall make adjustments in the criteria for approval to take account of the senior judge's status and decreased work assignments.

- (4) The decision by the chief judge may be appealed to the judicial council, or the Court of Appeals for the Federal Circuit, the Court of International Trade, the Court of Federal Claims, the Tax Court, or the Court of Appeals for Veterans Claims as appropriate. A majority vote to approve or disapprove the request shall be final.
- (e) Reports of teaching requests and rulings covering the 12-month period ending June 30 shall be sent by chief judges or others authorized to approve such requests to the Judicial Conference Committee on Codes of Conduct by July 31 of each year. That committee shall monitor these submissions and report to the Judicial Conference.

§ 1020.40 Advisory Opinions

The Committee on Codes of Conduct of the Judicial Conference of the United States is authorized to render advisory opinions interpreting Title VI of the Ethics Reform Act of 1989 ([5 U.S.C. App. §§ 503\(3\), 504\(b\)](#)) and these regulations ([JCUS-MAR 90](#), pp.14-15). Any person covered by the Act and these regulations may request an advisory opinion by writing to the Chairman of the Committee on Codes of Conduct, in care of the Administrative Office of the United States Courts, Washington, D.C. 20544.

§ 1020.45 Effective Date

These regulations will become effective on January 1, 1991, if, but only if, the provisions of [5 U.S.C. App. §§ 501, 502, 503, 504, and 505](#) are then in effect.

§ 1020.50 Commentary on Regulations

- (a) Judges and judicial employees who are covered by Codes of Conduct promulgated by the Judicial Conference of the United States may receive outside earned income, make speeches and appearances, write articles,

and engage in extrajudicial activities only in conformity with the provisions of both the Codes of Conduct and these regulations.

- (b) Title VI of the Ethics Reform Act of 1989 (the Act) applies to officers and employees of the judicial branch. However, the Judicial Conference has delegated its administrative and enforcement authority under the Act for officers and employees of the Supreme Court of the United States to the Chief Justice of the United States and for employees of the Federal Judicial Center to its Board ([JCUS-MAR 90](#), pp. 14-15). For this reason, the definitions of “judicial officer or employee” and “covered senior employee” exclude the judicial officers and employees of the Supreme Court and the Center. For purposes of Title VI and these regulations, employees of the Tax Court and the Court of Appeals for Veterans Claims are employees of the judicial branch.
- (c) “Outside earned income” includes anything of value received in consideration for the provision of services by a covered senior employee with the exceptions specified in § 1020.25(b). Under § 1020.25(b)(5), the advance payment of permissible royalties, fees, or the functional equivalent thereof, is not outside earned income if it must be deducted from amounts that subsequently become payable. A covered senior employee may, under § 1020.25(b)(6), determine outside earned income in a manner consistent with his or her income tax return, or may allocate any amount received in a calendar year over two or more years pursuant to a good faith allocation reflecting the work done. The outside earned income limitation that applies to an individual who becomes a covered senior employee during a calendar year is determined on a pro rata basis by dividing the annual income limitation by 365 and multiplying it by the number of days during that calendar year that the individual serves as a covered senior employee. Income earned before an individual becomes a covered senior employee is not subject to this limitation.
- (d) A covered senior employee, in planning for compliance with the limitation on outside earned income, may be required to estimate in advance income producing expenses for a calendar year. Should the actual expenses turn out to be less than anticipated, causing the outside earned income to exceed the statutory limitation, the requirements of § 1020.25 are satisfied if the resulting excess is refunded to the payor promptly after the close of the year.
- (e) The Act prohibits a judicial officer or employee from accepting any “honorarium” and defines “honorarium” as “a payment of money or any thing of value for an appearance, speech or article (including a series of appearances, speeches, or articles if the subject matter is directly related

to the individual's official duties or the payment is made because of the individual's status with the Government)." The ban on the receipt of honoraria does not preclude a judicial officer or employee from accepting compensation for a series of thematically connected presentations, works, or articles not directly related to his or her official duties so long as the compensation is not being paid because of the individual's status with the judicial branch. Also, payments for artistic and literary works or performances generally are not considered honoraria and are excluded from the ban. Nor does the ban prohibit reimbursement of actual expenses such as typing, editing, and reproduction costs incurred in connection with an appearance, speech or article.

- (f) The general prohibition standing alone could be read to foreclose the receipt of compensation for appearances, lectures, and speeches in the context of a *bona fide* educational program. This was clearly not the intent of Congress, however, since Title VI specifically approves teaching for compensation by judicial officers and senior employees so long as an appropriate entity designated by the Judicial Conference gives prior approval to such teaching and so long as the compensation received, together with other outside earned income, does not exceed the 15% limit on outside earned income. (Compensation received by senior judges for teaching is excluded from the 15% limit on outside earned income if the judge retired from regular active service under [28 U.S.C. § 371\(b\)](#) and is certified as having met the requirements of [28 U.S.C. § 371\(e\)](#) or retired on permanent disability under [28 U.S.C. § 372\(a\)](#).) Thus, the prohibition on receipt of honoraria does not foreclose teaching for compensation.
- (g) Compensation received from a law school for writing a law review article is an example of an honorarium. On the other hand, compensation received as the author or co-author of a *bona fide* legal treatise or book is an example of compensation for scholarly writing more extensive than an article and therefore is not an honorarium. Of course, compensation for writing more extensive than an article is excluded from the definition of an honorarium only if it is *bona fide* compensation for the writing, e.g., compensation received from an established publisher pursuant to usual and customary contractual terms.
- (h) The same rules apply whether the writing is legal or nonlegal, scholarly or otherwise. For example, compensation received for writing a nonlegal article for a newspaper or magazine is an honorarium. On the other hand, compensation received as the author or co-author of a nonlegal book is not an honorarium.

- (i) The definition of a prohibited “honorarium” excludes a suitable memento or other token in connection with an occasion or article, provided it is neither money nor of commercial value. The test for commercial value is whether the memento would have commercial value in the hands of the recipient. Examples of suitable mementos include a plaque or letter opener. Examples of “other tokens” that are not honoraria include benefits incidental to attending the occasion or to the publication of an article such as food and beverages consumed, waiver of a registration fee, copies of publications containing articles, reprints of a law review article, a free subscription provided to the author of the article, or tapes of appearances or speeches and similar items that provide a record of the event.
- (j) The prohibition against practicing a profession that involves a fiduciary relationship includes the providing of legal, real estate, consulting and advising, insurance, medicine, architectural, or financial services when those services involve such a relationship. The prohibition does not apply to service by a covered senior employee as an executor or trustee of a family estate or trust as permitted by the Codes of Conduct where the covered senior employee does no more than provide the service that would be provided by a lay person in the same capacity. Compensation received for such services is subject to the 15 percent limitation on outside earned income.
- (k) Covered senior employees are required to notify the authority designated to grant approvals and obtain approval *prior* to engaging in compensated teaching activities. Further, during the performance of a previously approved teaching commitment, approval is required prior to any material increase in the compensation or the time required. Those who have previously secured approval for compensated teaching pursuant to a long-term contract must reapply for approval prior to the commencement of any new academic year.
- (l) The Act does not define “teaching.” These regulations define it to include meaningful participation in *bona fide* components of an educational curriculum or plan, regardless of the duration or format of the particular program in which the covered senior employee participates. The statutory authority to “teach” for compensation thus includes permission to participate in the educational program of an accredited institution in the manner in which that institution plans and carries out its teaching function. When speeches and lectures are sponsored by and presented within the overall educational program of an accredited institution, the Conference believes that they do not provide the occasion for any of the evils Congress was seeking to avert and accordingly, they should qualify as

“teaching.” Thus, a lecture, lecture series, symposia, moot courts, and jurist-in-residence programs may be compensated as “teaching,” provided, of course, the strictures of the Codes of Conduct are met. Teaching may also include participation in programs sponsored by bar associations or professional associations or other established providers of continuing legal education programs for practicing lawyers. Participation in bar review courses or in the preparation and grading of bar examinations also qualifies as teaching.

- (m) The Codes of Conduct permit a covered senior employee to receive compensation for part-time teaching so long as:
 - (1) the compensation received is reasonable in amount and does not exceed that normally received by others for the same activity,
 - (2) the source of the compensation does not give the appearance of impropriety, and
 - (3) the teaching activity does not interfere with the performance of judicial duties.

These requirements are continued as criteria for approval of teaching requests.

- (n) Covered senior employees who wish to participate in a symposium, lecture series, or other teaching activity of limited duration and receive compensation therefor must secure the same prior approval as those who teach conventional courses for compensation. No such approval is required for teaching when no payment is received or when payment is received only to reimburse the ordinary and necessary expenses incurred in providing the teaching services, such as travel, lodging, and meals for the covered senior employee and a relative accompanying him or her; such reimbursement of expenses is not “compensation.” No prior approval is required for compensated teaching activity of an employee of the judicial branch whose basic pay is less than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule.
- (o) In addition to the civil penalty provided in [5 U.S.C. App. § 504\(a\)](#), a judge covered by the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 ([28 U.S.C. §§ 332\(d\)\(1\), 351 to 364](#)) who violates these regulations shall be subject to discipline as provided in that Act and any other judicial officer or employee who violates these regulations shall be subject to discipline in accordance with existing customary practices.

§ 1020.55 Notes on Regulations

- (a) The “Regulations of the Judicial Conference of the United States under Title VI of the Ethics Reform Act of 1989 concerning Outside Earned Income, Honoraria, and Outside Employment” were adopted on August 15, 1990, by the Judicial Conference, through its Executive Committee ([JCUS-SEP 90](#), p. 64).
- (b) At its March 1991 session, the Judicial Conference amended these regulations to exclude part-time magistrate judges from the ban against the receipt of honoraria ([JCUS-MAR 91](#), p.14).
- (c) The regulations were amended at the Judicial Conference's September 1991 session to cover the Tax Court and the Sentencing Commission and to make certain technical corrections ([JCUS-SEP 91](#), p. 54).
- (d) The Judicial Conference amended these regulations at its March 1992 session to:
 - (1) cover judges and employees of the Court of Appeals for Veterans Claims,
 - (2) reflect amendments to the Ethics Reform Act relating to the definition of “honorarium” and the exclusion from the limitation on outside earned income of compensation from approved teaching activities by certain senior judges (**see:** [JCUS-SEP 93](#), p. 43), and
 - (3) to clarify when and under what circumstances prior approval for compensated teaching activities must be obtained ([JCUS-MAR 92](#), pp. 16-17).
- (e) At its March 1994 session, the Judicial Conference amended the definition of Administrative Office employees who are included in the term “judicial officer or senior employee.” [JCUS-MAR 04](#), p. 15.
- (f) At its September 1994 session, the Judicial Conference amended the definition of outside earned income in § 1020.25(b)(1) to exclude income from national guard service; revised § 1020.30(b)(2) to clarify that the requirement for approval of teaching activities extends only to covered senior employees; revised the definition of an honorarium in § 1020.30(b)(3), § 1020.30(b)(4), and § 1020.30(b)(6) to exclude compensation for various artistic and athletic endeavors; amended § 1020.30(c) to clarify when honoraria may properly be donated to

charitable organizations; and made additional editorial revisions. The Commentary was also revised ([JCUS-SEP 94](#), p.46).

- (g) The Judicial Conference added a new § 1020.20(c), excluding special government employees from these regulations, at its March 1996 session ([JCUS-MAR 96](#), p. 12).