

Is the Juice Worth the Squeeze? Holding Shares in Corporate Conglomerates Can End Up a “Conflict Nightmare” for Federal Judges



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On the heels of an unflattering report by the *Wall Street Journal* reporting that 131 federal judges or their family members had some kind of financial ties to cases over which they presided, and President Biden’s efforts to tighten judicial disclosure requirements by way of the Courthouse Ethics and Transparency Act, members of the federal judiciary are voicing their own concerns over what they perceive as problematic reporting requirements under Federal Rule of Civil Procedure 7.1.¹ Perhaps putting an even finer point on the issue, the Federal Circuit recently vacated a roughly \$2 billion patent infringement verdict, after a 22-day bench trial, because the wife of the presiding judge (now deceased) owned stock in the defendant company worth approximately \$5,000.

On June 30, 2022, Judge Ralph Erickson of the U.S. Court of Appeals for the Eighth Circuit sent a letter to two judiciary committees wherein he outlined his concerns about a current “conflict nightmare” for members of the judiciary. He explained that Rule 7.1 does not provide adequate disclosure to judges such that they can avoid potential conflicts. By way of illustration, Judge Erickson explained that Orange Julius of America is wholly owned by International Dairy Queen, which relationship would be required to be disclosed under 7.1. Orange Julius, however, would not be required to disclose that Dairy Queen’s ultimate parent is Berkshire Hathaway, leaving judges potentially at risk of having an unknown and undisclosed conflict of interest.

Erickson pointed out that judges have had similar problems unwinding the corporate structure of CitiGroup and other conglomerates for reporting purposes. He suggested that Rule 7.1 be amended to require broader disclosures of corporate families and that judges be permitted a grace period to divest themselves of corporate holdings into qualified investments to avoid conflict of interest problems in the future. Along a similar vein, U.S. Magistrate Judge Patricia Barksdale sent a letter to the Federal Rules Committee recommending that Federal Rule 7.1 be amended to require that the nongovernmental corporate party certify that it has checked the assigned judges’ financial disclosure for potential conflicts within the party’s corporate family.

Corporations are well-advised to follow developments relating to Rule 7.1 disclosures in light of the federal government’s renewed focus on rooting out conflicts of interest arising from judicial financial ties to private corporations and the federal bar, suggesting that private corporations bear at least some of the responsibility of identifying such potential conflicts. Finally, corporations may want to add their own voices to the conversation.

¹ A. Zoppo, 'A Conflict Nightmare': Judge Raises Concerns Over Colleagues Holding Berkshire Stock (July 5, 2022)
