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May 14, 2012

California Fair Political Practices Commission
c/o Zackery P. Morazzini, General Counsel
428 J Street, Suite 800
Sacramento, California 95814

Re: Proposed Draft Regulation (Cal. Code Regs., tit. 2, § 18313.6)

Dear Members of the Commission:

The Administrative Office of the Courts (AOC) submits these comments regarding the proposed draft regulation (Cal. Code Regs., tit. 2, § 18313.6), which concerns the method by which public officials filing original statements of economic interests with the Fair Political Practices Commission (FPPC) pursuant to Government Code section 87200 may protect security-sensitive information from being disclosed when their statements are posted online on the FPPC's website. These comments address the security-related concerns of judges who serve in the judicial branch of state government, given the security risks to which judges are exposed in light of the unique nature of their public service.

As you know, staff of the AOC worked with the FPPC staff to develop a method by which a judge could submit a specially-prepared website-version Form 700 that omits certain financial interests revealing the home address of the judge or the home or work address of the judge's family members. Examples of financial interests of this kind include: on Schedule A-2, a spouse's business; on Schedule B, real property where the judge or a family member lives; and on Schedule C, income from a spouse's business. The reason for posting a website form on which security-sensitive financial information is omitted rather than identified as "REDACTED"

is to avoid highlighting the existence of such information as withheld on the website version. Of course, the complete information would be recorded on the judge's original statement maintained at the FPPC offices and would be available for public review.

Judges who handle a criminal calendar are in a uniquely vulnerable position as compared with other public officials who file statements of economic interests. Judges frequently interact directly with violent criminals who may well be willing to intimidate or seek revenge against a judge or the judge's family members. Additionally, emotions often run high in family law courts, where judges make decisions affecting a family's future and, in doing so, can become the target of disgruntled family law litigants. The security ramifications of posting judges' statements online cannot be overstated.

The FPPC staff report refers to federal law and the system by which federal judges' financial disclosure reports are publicly available and posted on the internet. It is noteworthy, however, that federal law recognizes the unique role of judges and accordingly provides security protections governing judges' mandatory disclosures. The financial disclosure provisions of the Ethics in Government Act of 1978 (EGA) apply to filing by federal judges (and judicial employees) of the required financial disclosure forms. (5 U.S.C. Appen. 4 § 101. Judges file form AO 10.) There are many similarities between California's Political Reform Act (PRA) and the EGA with respect to the financial disclosure requirements of public officials and employees, but also notable differences specifically applicable to federal judges and judicial employees:

- The substantive financial disclosure requirements for public officials and employees under the EGA are substantially similar to those under the PRA (disclosure of income, gifts, investments, real property, business positions, and outstanding loans), with judges and judicial employees specifically being required to file such information. (5 U.S.C. Appen. 4 §§ 101, 102.)
- To inspect or copy *any* federal financial disclosure form (form AO 10 for judges), however, a member of the public must fill out a written request with name, address, and occupation information (5 U.S.C. Appen. 4 § 105(b)(2).)
- Moreover, the Judicial Conference of the United States (the federal counterpart to the Judicial Council of California) serves as the filing officer for judicial branch financial interest disclosure filings (5 U.S.C. Appen. 4 § 103(h)(1)(B)) and administers the EGA for the judicial branch (5 U.S.C. Appen. 4 § 111). The Judicial Conference does *not* post judges' forms on the Internet (although private organizations are not restricted from doing so).
- The EGA contains language applicable only to judges and judicial branch employees that allows for redaction of financial information, the release of which would pose a safety threat to the official or family members (5 U.S.C. Appen. 4 § 105(b)(3)(A)). The Judicial Conference enacts regulations for the redaction process and the federal Administrative

Office of the Courts (US-AOC) must submit an annual report to Congress describing all the redactions that occurred in the prior calendar year (5 U.S.C. Appen. 4 § 105(b)(3)(B), (C), (D)).

The Judicial Conference Committee on Financial Disclosure¹ has the delegated responsibility for implementing financial disclosure provisions with respect to federal judges and federal judiciary employees who meet disclosure requirements. That committee has adopted regulations that govern access to the financial disclosure reports filed by judges and employees addressing the following topics:

1. Responsibility of the committee, which includes to review and approve or disapprove any request for redaction of statutorily mandated information where release of the information could endanger a filer or a family member.
2. Responsibility of the US-AOC for processing and maintaining financial disclosure reports.
3. Six-year retention period for reports, after which they are destroyed.
4. Requirement that requests to examine or obtain a copy of reports must be in writing, and specific information that must be included in the request.
5. How requests to view a report are handled.
6. Costs for providing copies of reports.
7. Notification of filers when a request is made to examine or receive a copy of a report.
8. Identification of specific information that must be redacted before viewing or copying of a report is permitted.
9. Procedures for filers to seek additional redactions.
10. Specific prohibitions on certain use of reports, including a prohibition against using a report “for any commercial purpose other than by news and communications media for dissemination to the general public.” (5 U.S.C. Appen. 4 § 105(c)(1)(B).)
11. Mandatory annual reporting by the committee to the Judicial Conference.

Of course, statutory amendments to the PRA would be necessary for similar disclosure requirements and protections for California judges’ statements of economic interests. But the

¹ The Judicial Conference of the United States has charged the Committee on Financial Disclosure (a committee of federal judges appointed by the Chief Justice) with the following tasks:

- Supervise the filing of financial disclosure reports by judicial officers and employees;
- Review financial disclosure reports filed by judges and other judicial branch officers and employees, as required by the Ethics in Government Act and respond to requests for redaction of such reports, consistent with the Regulations of the Judicial Conference of the United States on Access to Financial Disclosure Reports Filed by Judges and Judiciary Employees Under the Ethics in Government Act of 1978, as amended;
- Approve and modify reporting forms and instructions, as necessary;
- Respond to inquiries regarding financial disclosure matters from judges, employees, and the public.

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thoughtful approach under the federal system underscores Congressional recognition of the unique nature of the public service performed by judges, and the importance of not compromising the safety of judges by making security-sensitive information publicly available. The federal approach reflects the public policy reasons why the filing authority should, at a minimum, limit the publicity associated with judges' security-sensitive information.

To address judges' security concerns, we propose a regulation adopting the procedure that the AOC and FPPC staff developed earlier this year. That regulation (copy attached) would allow judges to omit security-sensitive information from the website-version Form 700 that they prepare, rather than merely redacting limited name and address information. A disclaimer on the FPPC website that the posted website-version forms may have security-sensitive information omitted would serve to inform the public that the form available online may not be an exact duplicate of the original complete statement filed and maintained in the FPPC offices.

Given that the mandate of posting officials' statements online was established by the Commission, the Commission itself is certainly free to implement particular processes and procedures that promote the underlying purposes of the PRA, while also protecting legitimate safety concerns of judges that arise because of the unique role judges play in our system of state government. Simply stated, considerations of convenience should not have priority over judges' safety and security.

Sincerely,



Mary M. Roberts
General Counsel

MMR/SCR/atg

Enclosure

By Email

cc: Jody Patel, Interim Administrative Director of the Courts

1 Adopt 2 Cal. Code Regs. Section 18313.6 to read:

2 **§ 18313.6. Online Posting: Omitting Financial Interests Containing Personal Information**

3 (a) An elected officer with a reasonable privacy concern related to the online posting
4 under Regulation 18313.5(b) of an individual's address, or a family member's name or other
5 personally identifiable information, may provide, simultaneously with the filing of the original
6 statement, a copy of the original statement for online posting that omits the disclosure of a
7 financial interest which includes any of the following identifying information:

8 (1) The address of the individual.

9 (2) The name of the family member.

10 (3) The address of an entity at which the family member is employed.

11 (4) The name of any entity if the name of the entity would reveal the name of the family
12 member or the address at which the family member lives or is employed.

13 (b) Any official providing a statement for online posting pursuant to subdivision (a) shall
14 also file an original statement containing all information required under the Act. The statement
15 provided for online posting shall be attached to the original statement.

16 (c) Any statement provided for online posting under subdivision (a) shall be subject to the
17 review of Commission staff, as delegated by the Commission's Executive Director. If it is
18 determined that the official has omitted disclosing a financial interest other than that permitted
19 by this regulation, the official shall be provided with no less than 30 days to amend his or her
20 statement provided for online posting prior to the online posting of the official's original
21 statement.

22 (d) For purposes of this regulation a family member includes an official's spouse or
23 former spouse; child or step-child; parent; grandparent; grandchild; brother; sister; current or

- 1 former parent-in-law, brother-in-law, or sister-in-law; nephew; niece; aunt; uncle; grand nephew;
- 2 grand niece; grand aunt; grand uncle; first cousin; first cousin once removed; or spouse or former
- 3 spouse of these persons other than a former in-law.
- 4 Note: Authority cited: Section 83112, Government Code. Reference: Section 81002 and 83113,
- 5 Government Code.