



CALIFORNIA JUDGES ASSOCIATION

The Voice of the Judiciary

May 15, 2012

88 KEARNY STREET
SUITE 1850
SAN FRANCISCO, CA 94108-5523
PHONE: 415-263-4600
TOLL FREE: 1-866-432-1CJA
FAX: 415-263-4605
WEB: WWW.CALJUDGES.ORG

Ms. Ann Ravel, Chair
Fair Political Practices Commission VIA FACSIMILE AND US MAIL
428 J Street, Suite 620
Sacramento, CA 95814

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RE: May 17, 2012, FPPC Meeting, General Item 11: Proposed Cal. Codes Regs., tit. 2, §18313.6 – Internet Posting of Elected Officials' Personal Information.

Dear Ms. Ravel:

The California Judges Association (CJA) appreciates this opportunity to comment on the Fair Political Practices Commission's (FPPC) proposed Cal. Codes Regs., tit. §18313.6, On-line Posting, Redacting Personal Information.

CJA was established in 1929, and with over 2,500 members is the nation's largest, private association of judicial officers. We represent roughly 75% of California's sitting justices, judges and subordinate bench officers. The organization also has over 900 retired bench officer members. For 84 years, CJA has been the voice of California's judiciary.

As CJA stated at the FPPC March 15 meeting, given judicial officers' unique role in government posting Form 700s on-line creates for the judiciary an elevated threat (both physical and financial) than what one might ordinarily expect from such a policy. Judges, of all people in the community, impose the final decisions on litigants, such as depriving them of liberty, defining their visitation and custody rights with children, or interpreting contracts. The level of vitriol aimed at judicial officers can be hard to explain. The fact that, on average, a judicial officer in the United States is killed every 36 months underscores the level of anger directed at judges.¹

Even the federal government has recognized the unique security threat faced by judges. The Ethics in Government Act of 1978 (5 USC app. §105) was amended in

¹ Indeed, on May 15, 2000, before the American Law Institute annual meeting, then-United States Supreme Court Chief Justice William Rehnquist made a similar observation: "trial judges in general are exposed to the criminal element in our society in ways most federal employees who must file financial disclosure reports, such as Senators, Congressmen, (and appellate judges for that matter) are not." CJA notes civil judges, especially those in Family Law, face significant threats against them as well.

1998 to empower the Judicial Conference (the federal version of California's Judicial Council) and the US Marshal's Office to redact *any* "personal information" the release of which might endanger a judge. Indeed, no federal judges' financial disclosures are posted on the internet.

As CJA explained at the last FPPC meeting, the federal procedures allowing a person to gain access to a federal judge's financial and personal disclosure are strict. These safe-guards include, to name just a few, notice to the judge, a 5 day waiting period, and inspection of the form in-person only. Congress recognizes the high threat level presented to judicial officers by disclosure of their personal information.

While declining to remove judges completely from the FPPC's policy of posting Form 700s on the internet, the FPPC agreed to re-evaluate that regulation in light of information CJA presented and to propose a new rule tailored towards protecting all elected officials.

To that end, 3 proposed regulations have emerged addressing the posting of Form 700s' on-line; 2 from the FPPC and 1 from the Administrative Office of the Courts (AOC). CJA has reviewed each and makes these observations:

- 1) CJA urges adoption of the AOC's proposed regulation as the best alternative for 2 main reasons. First, the AOC's proposed regulation eliminates the requirement that elected officials submit a written description of why sensitive information is being omitted from the on-line posting. Forcing an elected official to describe in a publicly available document why s/he wants to keep information private is the same as posting it. This will have the unintended consequence of making the FPPC's suggested regulation more dangerous than the current system, not less. Second, the AOC's version of §18313.6 allows omissions of posted information rather than redactions. Redactions draw more attention to sensitive material than omission. Redactions focus heightened scrutiny on the absence of information in a way that omissions do not. CJA prefers allowing an elected official to choose which method s/he wishes to employ.
- 2) CJA seeks a more inclusive definition of information which may be omitted from on-line posting. As CJA explained at the previous hearing personal information is relational, meaning each small piece of data posted on-line becomes part of a larger picture from which an assailant gleans information about elected officials', and their family members', locations and habits. FPPC should adopt a standard which expands current definitions of what can be omitted to include information identifying locations where elected officials and/or their family members can be readily found (other than at the elected person's primary place of work, e.g., city hall, the Capitol, a courthouse.) For instance, if a person has rental property at which s/he collects rent or performs maintenance that address should be omitted.
- 3) In all proposed regulations CJA seeks expansion of the definition of "family member" to include domestic partners and former domestic partners, as defined in Family Code §297.

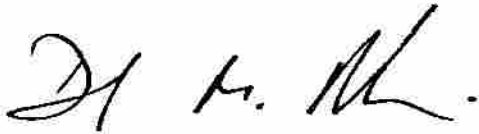
CJA believes the current practice of filing a completed FPPC Form 700 locally and with the FPPC (without internet posting) correctly balances the Commission's goal of transparency and access to

Ms. Ann Ravel
May 15, 2012
Page 3

information, against protecting elected officials' security. If the FPPC wishes to go forward with posting on-line sensitive financial and personal data of elected officials, then the modifications sought by CJA will increase the safety of these individuals, and their families, without compromising the FPPC's aims.

Thank you for your attention to the matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "D. M. Rubin". The signature is fluid and cursive, with a period at the end.

David M. Rubin
President

DMR:gk