

Fair Political Practices Commission

MEMORANDUM

To: Chair Ravel, Commissioners Eskovitz, Garrett, Montgomery, and Rotunda

From: Zackery P. Morazzini, General Counsel
Brian G. Lau, Commission Counsel

Subject: Discussion of Online Posting of Statements of Economic Interest filed by Elected Judges.

Date: February 27, 2012

Discussion Item: Discussion regarding the online posting of statements of economic interests (Commission Form 700) filed by elected judges as required by Commission Regulation.

Background: Commission Regulation 18313.5 was first adopted in June 2010. As adopted, subdivision (b) states that “[t]he Commission shall also post on its website all statements of economic interests required to be filed with the Commission on or after January 1, 2010, by elected officers in their elected capacity.” Statements should be posted “as soon as possible” after the document has been filed. Pursuant to Section 82020 of the Act, an “elected officer” is “any person who holds an elective office or has been elected to an elective office but has not yet taken office.” (*Ibid.*) Judges are elected officers required to file their SEIs with the Commission. (Gov. Code, § 87500, subd. (i)). An elected officer also includes “a person who is appointed to fill a vacant elective state office” under Regulation 18313.5.

Because of the additional staff time required to post statements online, the implementation of online posting of statements of economic interests has been divided into several stages. In 2010, the initial year of implementation, online posting of statements of economic interests was limited to statements received from constitutional officers, members of the Legislature, and county boards of supervisors. Online posting was extended to city council members in 2011.

Commission staff informed the Administrative Office of the Courts (the “AOC”) that online posting of statements of economic interests filed by judges would begin in early 2011. However, in response to security-related concerns expressed by several judges and their representatives, the implementation was postponed for the year to allow additional time to specifically consider online posting as applied to judges.

Discussion: While Regulation 18313.5 applies to online posting to all elected officers that file with the Commission, the Commission has not specifically addressed this policy as it applies to judges. Without question, as expressed by those judges and their representatives commenting on the implementation of online posting in early 2011, the privacy and security concerns of judges (as well as all public officials for that matter) must be weighed against the increased accessibility of the information when posting statements online. In this regard,

Regulation 18313.5 expressly requires that the “address, telephone number, and signature block of the elected official’s statement will be redacted from the cover page of the document before posting to the website.”

Commission staff has also taken further precautions with the implementation of online posting to address privacy and security concerns unique to individual officials. Most significantly, *all* elected officials subject to online posting of statements of economic interests have been permitted to request the redaction of sensitive information. While the determination of whether or not information may be redacted must be made on a case-by-case basis, elected officials’ requests to redact home addresses for private individuals including both family and friends have been granted liberally.

In response to those concerns raised by judges and their representatives, Commission staff entered into multiple discussions with the AOC, which formed a working group consisting of trial judges, appellate justices, and representatives of the AOC and the California Highway Patrol to explore the security implications of online posting and ways to shield sensitive information from online publication. Ultimately, the AOC informed staff that the working group’s concerns could be addressed if judges were permitted to submit a copy of their respective statements omitting sensitive information so that the online version would not contain obscured text drawing additional attention to the redacted information.

Accordingly, Commission staff agreed to allow judges to submit a second version of their respective statements omitting sensitive information as a supplement to their original statements. Under the anticipated procedure more thoroughly described in the attached AOC Memorandum dated January 23, 2012, a judge with a specific security related concern could file a second version of his or her statement omitting sensitive information that would be used for the online posting. The judge would however continue to file an original statement containing all information required under the Act. This original statement would remain available at the Commission for staff and public review and could be compared to the online posting to ensure that the judge only omitted information with a valid privacy or security concern.

To the extent that the Commission finds that privacy and security concerns for judges have not been adequately addressed, the Commission may, of course, elect to direct staff to propose a regulatory amendment to Regulation 18313.5 excluding judges from the online posting of statements of economic interests, which can be placed on the agenda for consideration at a future meeting of the Commission.

Attachment:

1 – Regulation 18313.5

2 – AOC Memorandum dated January 23, 2012