

## **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:** Regulation 18313.6: Redacting Personal Information

**Date:** May 7, 2012

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### **Proposed Commission Action and Staff Recommendation**

At the request of the Commission to explore a regulation guiding the redaction of personal information from statements of economic interests posted online pursuant to Regulation 18313.5, Commission staff is proposing two alternatives for the Commission's consideration. While Option 1 permits the redaction of certain personal information by staff at the request of an official, Option 2 allows an official to submit, simultaneously with the filing of the original non-redacted statement of economic interests, a copy of his or her statement for online posting redacting certain personal information. Given the significant increase in workload required in reviewing two statements from the same official, staff recommends the adoption of Option 1.

### **Background**

Regulation 18313.5 was adopted in June 2010. Under subdivision (b), "The 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. Under 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." An elected officer includes "a person who is appointed to fill a vacant elective state office." (Regulation 18313.5.)<sup>1</sup>

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, online posting was limited to statements received from constitutional officers, members of the Legislature, and county boards of supervisors. Posting was extended to city council members in 2011. Implementation of online posting for judges was originally scheduled for 2011. However, this was postponed to allow additional time to consider privacy-related concerns as applied to judges.<sup>2</sup>

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<sup>1</sup> Judges are elected officers required to file their statements of economic interests with the Commission. (Section 87500(j).)

<sup>2</sup> Attempting to address concerns raised by the Judicial Council of California Administrative Office of the Courts (the "AOC"), Commission staff reached an agreement with the AOC in early 2012, which allowed judges to submit a redacted copy of their statements omitting personal information for online posting as a supplement to their original non-redacted statements. (See AOC Memorandum dated January 23, 2012, attached.) However, the

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At the March 2012 Commission Meeting, several judges -- and individuals representing judges -- sought a categorical exemption for judges from online posting. Considering the privacy concerns expressed by those commenting, the Commission did not reach a consensus regarding an exemption for judges, but instead directed staff to explore a regulation providing guidelines for the redaction of personal information for purposes of online posting and postponed online posting for judges until the consideration of the regulation.

### **Discussion**

While commenting judges have asked for a categorical exemption from online disclosure, the public's interest in the disclosure of financial information weighs heavily against the exemption. As declared in Section 81001(b) of the Act, public officials "should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interest of persons who have supported them." In this regard, Section 81002(c) provides the following as a primary purpose of the Act:

"Assets and income of public officials which may be materially affected by their official actions should be disclosed and in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided."

Online disclosure for judges is not without precedent. While not adopted by the State of California, the Model Code of Judicial Conduct published by the American Bar Association supports the online posting of reports by judges disclosing compensation received for extrajudicial activities, gifts and other things of value, and reimbursements of expenses or waivers of fees or charges if "technically feasible." Moreover, Judicial Watch, Inc., which describes itself as a conservative, non-partisan educational foundation, has collected and self-published financial disclosure reports filed by federal judges as required by the Ethics in Government Act of 1978 (5 U.S.C. Appen. §§ 101-111) on its website [www.judicialwatch.org](http://www.judicialwatch.org) for several years.<sup>3</sup>

Considering broad public support for disclosure and the American Bar Association's endorsement of online disclosure, staff does not believe that privacy concerns specific to judges support a categorical exemption for judges. Nonetheless, disclosure rules under both the Model Code of Judicial Conduct and the Ethics in Government Act do not require the same degree of specificity mandated by the Act. While the Act requires the disclosure of street addresses and the names of individuals who have provided income or gifts to an official, for the most part, the Model Code of Judicial Conduct and the Ethics in Government Act do not. Thus, the more significant point of contention is not whether to grant a categorical exemption for judges, but the

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previous agreement apparently did not resolve all concerns, and the issue was subsequently brought before the Commission for discussion at its March 2012 Commission Meeting at the request of representatives of the affected judges.

<sup>3</sup> The Ethics in Government Act generally requires only broad disclosure of interests. For instance, an official discloses only the source, type, and amount of most types of income. Similarly, an official discloses only the source, description, and value of most types of gifts. For property interests, an official must typically disclose only investment and business properties, and the official need only to identify the properties and provide a category of value. (5 U.S.C. Appen. § 102.)

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determination of what information the Commission should permit officials to redact considering their concerns.

As stated in staff's previous Memorandum to the Commission dated February 23, 2012, "Without question ... 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." Even accepting that judges as a category are more frequently exposed to threats of retaliation or harm, it is difficult to distinguish equivalent concerns of other public officials. To the extent that the Commission finds legitimate privacy concerns arising from the online posting of statements of economic interests, staff believes all public officials should receive the same protection from the disclosure of the information.

*What is the appropriate balance between the redaction of personal information and the disclosure of unrelated financial information?*

Striking the proper balance between the redaction of personal information and the disclosure of unrelated financial information is perhaps the most difficult task in addressing privacy concerns. First, it is necessary to identify which information presents a valid concern. Personally identifiable information of family members is the most obvious concern. However, privacy concerns are not limited to family members. On a much broader scale, any individual may have cause for concern with the online posting of his or her home address.

Once it is determined which information presents a valid concern, the extent to which the Commission should permit officials to redact an interest must also be considered. The previous AOC agreement appeared to allow judges to omit an economic interest in its entirety if the interest would disclose personal information. As contended by the AOC, any method of redaction indicating to the online reader that information has been redacted poses a privacy concern because it reveals that personal information is available on the original form filed with the Commission or the clerk of the court. (See Section 87500(j).)

Nonetheless, commenting judges and their representatives have conceded that their concerns are limited to online posting and that non-redacted originals filed with the Commission or the clerk of the court do not pose the same concerns because the filings cannot be viewed in the heat of the moment. Commission staff does not support a regulation permitting officials to omit entire economic interests. Officials can disclose pertinent financial information while redacting only that information posing concerns to individual persons. In fact, in some cases, omitting entire economic interests may be misleading because the public may falsely assume that the online posting is complete.

*Does the Commission have the existing resources to permit redaction without jeopardizing online posting?*

Without question, allowing the redaction of personal information requires considerably more staff time to fulfill the online posting requirement of Regulation 18313.5. The Technical Assistance Division estimates that approximately 6,000 officials filing statements of economic interests with the Commission are subject to online reporting. Potentially, allowing redaction

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may jeopardize online posting if the time it takes to review and redact information overwhelms existing resources.

Notably, after several years of experience in redacting information only at the specific request of the official, staff has not been besieged with requests. While we recognize that requests will increase with the implementation of online posting for judges, Commission staff anticipates that allowing redaction will not overwhelm current resources so long as officials must specifically request redaction.

Commission staff has however experienced multiple problems with its previous attempt to allow judges to file redacted statements for online posting simultaneously with their non-redacted original statements. Of the approximately 2,500 judges subject to online posting, around 10-percent of the statements submitted included a second statement for online posting. The time necessary to review these statements proved considerable. For example, staff has had difficulty identifying the redacted statement from the original non-redacted statement, and matching redacted statements with original non-redacted statements from the same official when submitted separately. The preliminary review of the statements was time intensive, exposed a significant problem with the over redaction or omission of financial information unconnected to privacy concerns, and revealed many officials who failed to file a non-redacted statement. Such a procedure may ultimately result in considerably more time to notify officials of their errors.

*Proposed Regulation 18313.6.*

Commission staff is presenting Regulation 18313.6 for the Commission's consideration. At this time, two alternative drafts have been provided. While Option 1 permits the redaction of certain personal information by staff at the request of an official, Option 2 allows an official to submit a copy of his or her statement of economic interests for online posting redacting certain personal information in addition to the official's original non-redacted statement.

Most significantly, both options limit redaction to addresses of individuals (including family members), names of family members, addresses of entities at which a family member is employed, and names of entities only if the name of the entity reveals the name of a family member or the address at which the family member lives or is employed. Staff believes this limitation helps to strike a balance between the public's general interest in disclosure and an official's actual privacy concerns. Neither alternative would permit an official to omit an economic interest in its entirety. For example, only the address of an individual that has provided a gift to an official could be redacted under either alternative; the name of the individual could not. Moreover, while the name or address of an entity need not be disclosed if it would reveal certain information regarding a family member, financial information related to the entity such as the size of the entity and type of economic interest must be disclosed.

Option 1 is comparable to Commission staff's current approach of redacting personal information on a case-by-case basis for online posting purposes. Under this option, officials would continue to submit only their original non-redacted statements of economic interests. In those instances in which an official has a specific concern, the official would be required to request that Commission staff redact the personal information. While comparable to current practices, Option 1 provides the additional benefit of providing general guidelines under which

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information may be redacted. By requiring specific requests for redactions by Commission staff, Option 1 should (1) alleviate problems with overreaching requests, (2) allow for staff oversight on a case-by-case basis, and (3) help avoid the time-consuming task of reviewing multiple statements from the same official.

Alternatively, Option 2 provides officials with additional assurance that personal information will be redacted prior to online posting by allowing officials to file a redacted copy of their statements for online posting simultaneously with their original non-redacted statements. While this option is comparable to staff's previous agreement with the AOC regarding online posting for judges, this option permits officials to file two separate statements and may require significant staff time to review the duplicate statements. Because this regulation would extend to all elected officers filing a statement with the Commission, it is unlikely that the additional workload required to review redacted statements comprehensively could be absorbed at current staffing levels. Should the Commission elect Option 2, it is likely that redacted statements will be posted with minimal staff review, and instances of improper redaction would have to be brought to staff's attention for review on a case-by-case basis.

As an additional safeguard, Option 2 includes proposed language requiring officials filing a redacted statement to submit an additional written notification identifying the nature of the information redacted and explaining the basis for the redaction under the regulation. Improper redactions would be subject to the review of Commission staff and an official would receive thirty days to amend improper redactions prior to the posting of the official's non-redacted statement.

**Attachments:**

- 1 – Proposed Regulation 18313.6 (Option 1)**
- 2 – Proposed Regulation 18313.6 (Option 2)**
- 3 – Regulation 18313.5**
- 4 – AOC Memorandum dated January 23, 2012**