



Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS

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MEMORANDUM

Date

January 23, 2012

Action Requested

Please Review re Form 700 Filing

To

Justices of the Supreme Court
Justices of the Courts of Appeal
Judges of the Superior Courts

Deadline

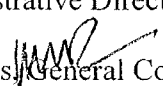
Form 700 Filing Deadline: March 1, 2012

From

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Subject

Posting of Your Statement of Economic
Interests (Form 700) on the FPPC Website

This memorandum provides new information about the posting of judges' Statement of Economic Interests (Form 700) by the Fair Political Practices Commission (FPPC) on its public website. The new information reflects the FPPC's efforts to accommodate judges' concerns about the posting of their security-sensitive information on the Internet. The memorandum also includes background on the web posting requirement, options for addressing security-sensitive information before your Form 700 is posted on the FPPC website, and a section of frequently asked questions.

Background

Last year, the FPPC began posting on its website the Forms 700 of elected officials *other than judges*, under a regulation adopted effective July 17, 2010, that provides in pertinent part:

The [Fair Political Practices] 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. 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. The statement of economic interests will be posted as soon as possible after the document is filed with the Commission. (Cal. Code Regs., tit. 2, § 18313.5.)

Justices and judges (collectively, "judges"), whether elected or appointed, qualify as "elected officers" as defined under California's Political Reform Act.¹ In early 2011, the FPPC notified the Administrative Office of the Courts (AOC) of its intention to start posting judges' Forms 700 on the FPPC website. The AOC promptly informed all judges of the FPPC's plan to post their forms.² A few days later, the AOC contacted judges again to report that the FPPC's executive director, in response to security-related concerns expressed by several judges, had agreed *not* to post judges' 2011 Forms 700 on the website, pending further discussion and in light of the imminent arrival of incoming FPPC Chair Ann Ravel, former Santa Clara County Counsel and past Judicial Council member.³ The FPPC ultimately did not post judges' 2011 Forms 700 on its public website, but will do so starting with this year's annual forms due March 1, 2012.⁴

Form 700 Working Group

A working group comprising trial judges, appellate justices,⁵ and representatives of the AOC and California Highway Patrol was convened to look at the security implications of website posting of Forms 700 and explore ways to shield security-sensitive information from publication on the Internet. Discussions with the FPPC chair and staff continued through 2011 and into this year and resulted in the filing options described below, approved by the FPPC and the working group.

Options to Address Security-Related Concerns about FPPC Website Posting

Please keep in mind that the same FPPC regulation that requires website posting of all elected officials' Forms 700 also requires that the address, telephone number, and signature block be redacted from the cover page of every form before posting—this information will never appear on any Form 700 published on the FPPC website.

¹ For full definitions, see Government Code sections 82020 (Elected officer) and 82023 (Elective office).

² The AOC sent an informational memorandum by e-mail to all justices and judges on February 23, 2011.

³ This second e-mail notice was sent by the AOC on February 28, 2011.

⁴ Beginning this year, FPPC also will post on its website Forms 700 filed by judges assuming office.

⁵ The judicial officers on the working group are Justices Richard D. Aldrich (Second Appellate District), Patricia Bamattre-Manoukian (Sixth Appellate District), and William R. McGuinness (First Appellate District); and Judges James R. Brandlin (Los Angeles), Benjamin G. Davidian (Sacramento), Kevin A. Enright (San Diego), Katherine A. Feinstein (San Francisco), Frederick Paul Horn (Orange), Gary Nadler (Sonoma), and David Rosenberg (Yolo).

The first and second options described below are suitable for judges who have no particular security-related concerns about information in their Forms 700 being posted on the FPPC website, while the third option is the approach to be taken by judges who do have specific security concerns.

Options for Judges Who Have No Specific Security-Related Concerns

Judges who have no specific security-related concerns have two options for filing Form 700:

Option 1: Submit only the completed Form 700. Simply complete the form, sign it, and give it to your court staff who handle the collection and filing of judges' Forms 700. (Statute requires that a copy of your completed form also be maintained at your court for in-person public inspection.⁶) The FPPC will redact your address, telephone number, and signature from the cover page before posting your Form 700 on the public website.

Option 2. Submit the completed form plus a copy with signature and contact information omitted. As an alternative, you may elect to prepare *two* Forms 700—one containing all reportable information (with the original submitted to the FPPC and a copy kept at your court for in-person public inspection), plus a second version with the cover sheet entries for *address, telephone number, and signature block* left blank. This second version is the form the FPPC will post on its website. Preparing two forms means that FPPC staff need not redact information from the form's cover page because that information would not appear on the form that the judge prepares for FPPC website posting. The benefit of omitting rather than redacting security-sensitive information is that the mechanics of redaction reveal that information that appeared on the original Form 700 has been rendered unreadable, a perception that may itself spark unwelcome interest in the concealed information.

Option for Judges with Specific Security-Related Concerns

Judges who have significant security-related concerns may prefer to submit Form 700 using this option:

Option 3. Submit the completed form plus a copy with *all* security-sensitive information omitted. Prepare two Forms 700: one containing all reportable information and signed (the original of which will be kept at the FPPC and a copy to be kept at your court for in-person public inspection), plus a second that omits the address, telephone number, and signature from the cover page **and** any listing of financial interests that could reveal the home address of the judge or the home or work address of the judge's family members; the latter is the version the FPPC will post on its website.

⁶ Government Code section 87500(i) requires the clerk of the court to make and retain a copy of the Forms 700 and forward the originals to the FPPC for filing.

The discussion that follows describes the procedure for judges to prepare two Forms 700.

Procedure to Omit Security-Sensitive Information

A judge who wishes to withhold certain security-sensitive reportable financial interests on the Form 700 from being posted on the FPPC website may follow this procedure.

- (1) The judge begins by filling out Form 700 with only that information appropriate for posting on the FPPC website, omitting any security-sensitive details—the address, telephone number, and signature block on the cover page in section 5, Verification, *will be left blank*, and any financial interest that reveals the judge’s home address or the home or work address of a member of the judge’s family *will not be identified* on any of the reporting schedules. Examples of financial interests typically omitted for this reason include:
 - a. Schedule A-2, a spouse’s business;
 - b. Schedule B, real property where the judge or a family member lives; and
 - c. Schedule C, income from a spouse’s business.All other reportable financial interests *must be listed*.

- (2) After filling out as much of the Form 700 as possible without revealing security-sensitive financial interests, the judge makes a copy of the incomplete form to be submitted to the FPPC for website posting. (If filling out an electronic version of Form 700, the judge would print the partially completed form at this point for website posting.)
- (3) The judge then completes the Form 700 by listing all previously omitted financial interests, filling in the court address and telephone number on the cover page, and signing in the cover page signature block. Court staff collect the forms from all their court’s judges and assemble *two* sets—(a) one with judges’ original completed and signed Forms 700, and (b) one with any alternate versions prepared for website posting—then label both sets (e.g., “original forms for filing” and “copies of forms for FPPC website posting”) and mail them to the FPPC. If certain judges submit only the original signed form as per Option 1, court staff should inform the FPPC of that fact in a transmittal cover letter accompanying the forms.

Even a judge whose Form 700 contains no security-sensitive information may wish to follow Option 2 above and prepare a separate website version of Form 700 with the address, telephone number, and signature block on the cover page left blank. The result of this approach would be that all of a court’s judges’ Forms 700 posted on the FPPC website have the same “look,” with no visible redactions on any judge’s Form 700 cover page or reporting schedules. Instead, the information that would otherwise be redacted by the FPPC before posting will simply not appear

on the posted forms. This result is beneficial in that the omission of security-sensitive information is not apparent on any judge's form.

Frequently Asked Questions about FPPC Website Posting of Forms 700

1. Why is the FPPC posting judges' Forms 700 on its website?

The FPPC adopted a regulation in 2010 requiring publication on its website of the Forms 700 of all elected officials for whom the FPPC is the "filing officer" (the entity that retains original Forms 700 for public inspection, per statute). Government Code section 87500(i) designates the FPPC as filing officer for judges (and court commissioners⁷). By posting all elected officials' Forms 700 on its website, the FPPC intends to relieve the significant burden of responding to hundreds of public requests each year for inspection and photocopying of officials' forms.

2. Will submitting a "website version" of Form 700 to the FPPC prevent public access to a judge's original Form 700 that discloses all reportable financial interests?

No. Under Government Code section 81008, the public has the right to anonymous, unrestricted access to original Forms 700 filed by all public officials (including employees) and elected officials. The FPPC's posting of a Form 700 version that omits security-sensitive information will not affect the public's right to in-person access to the original complete Form 700 at either the FPPC's Sacramento office or at a judge's court.

3. When is the deadline for judges to file Form 700 for 2012?

Judges must file Form 700 with their court's clerk every year on or before **March 1** (Cal. Code Regs., tit. 2, § 18723). The form is considered filed when the court clerk accepts the original signed Form 700 and stamps the cover sheet with a "received" date. Court staff must then make and retain a copy of each judge's Form 700 and mail the originals—along with any website versions—to the FPPC no later than **March 6** (Cal. Code Regs., tit. 2, § 18115).

4. If a judge does *not* prepare a separate website version of Form 700 and files only the original complete form, how will the FPPC handle posting the form on its website?

Under the current regulation, the FPPC will redact the judge's address, telephone number, and signature block from the cover sheet before posting the Form 700 on its website. All other information on the judge's original Form 700, including any reported financial interests, will remain viewable when the form is posted on the FPPC website.

⁷ Court commissioners are not elected officers under the statutory definition, so their Forms 700 will not be posted.

5. If a judge has already completed and filed this year's Form 700, may the judge still submit a website version of the form to the FPPC, or is it too late to do so?

It is not too late to submit a website version of Form 700. The FPPC is holding all judges' Forms 700 filed to date and will not post them to its website until after the March 1 filing deadline. Therefore, a judge who has already filed a completed Form 700 may submit a website version to FPPC; just include a cover letter indicating that an original signed Form 700 was previously submitted and the enclosed website version should be used for posting.

6. Why do federal judges seem to have greater privacy protections regarding financial disclosure requirements than do California state judges?

While there are many similarities between California's Political Reform Act and the federal Ethics in Government Act of 1978,⁸ there are notable differences. For example, to inspect or copy any federal financial disclosure form—including disclosure forms of federal judges—a member of the public must submit a written request with name, address, and occupation information.⁹ By contrast, California's Political Reform Act provides for anonymous, in-person access by the public to inspect and photocopy Forms 700 filed by public officials and government employees.¹⁰ In addition, the Judicial Conference of the United States (the federal counterpart to the Judicial Council of California) serves as filing officer for the federal judiciary and does not post judges' forms to the Internet (although private organizations such as Judicial Watch post such information on their websites). To conform California law to the federal provisions protecting judges' financial privacy would require legislation.

7. Are Forms 700 filed by candidates for judicial office or by retired judges in the Assigned Judges Program subject to posting on the FPPC website?

No, as to both. The FPPC requirement for website posting of Forms 700 applies only to judges who meet the Political Reform Act definition of "elected officer," which does not include either candidates for judicial office or retired judges sitting by assignment.¹¹

8. Who can I contact if I have other questions about completing or filing my Form 700?

Call the FPPC Advice Line at 866-275-3772 (866-ASK-FPPC), e-mail the FPPC at advice@fppc.ca.gov or contact attorney Steve Crooks of the AOC's Office of the General Counsel using the contact information on the first page of this memorandum.

MMR/SRC/atg

⁸ 5 U.S.C. Appen. 4, § 101 et seq.

⁹ 5 U.S.C. Appen. 4, § 105(b)(2).

¹⁰ Gov. Code, § 81008.

¹¹ Gov. Code, §§ 82020, 82023.

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cc: Frederick K. Ohlrich, Clerk of the Supreme Court
Clerk/Administrators of the Courts of Appeal
Court Executive Officers of the Superior Courts
Jody Patel, Regional Administrative Director