

## RESOLUTION 11-09-2014 (as amended)

### DIGEST

#### Bench Officer Disclosure Statements: Not Available on the Internet

Adds sections 87211 and 87212 to the Government Code to provide that disclosure statements for judges and commissioners of court are not available on the Internet.

### RESOLUTIONS COMMITTEE RECOMMENDATION

#### APPROVE IN PRINCIPLE

#### History:

No similar resolutions found.

#### Reasons:

This resolution adds Government Code sections 87211 and 87212 to provide that disclosure statements for judges and commissioners of court are not available on the Internet. This resolution should be approved in principle because it provides a balance between the public's need for material information about potential conflicts of interest in the judiciary, with the interest of ensuring the safety of judges and commissioners.

The proponent notes that under current law, the management of disclosure statements from judges and commissioners is handled in the same way that the federal government treats senior executives. This suggests that making the information about judicial officers' real property and financial investments readily available is of no benefit to the public, but poses real threats as to the security of bench officers.

Although this falls under Title 9 of the Government Code, "Political Reform," it is not about campaign financing directly. Rather, these added statutes are about potential conflicts of interest in a judge or commissioner's decision-making based on investments and property holdings. Although personal residences are exempted from the ambit of these disclosures under Government Code section 87206, subdivision (f), a balance needs to be struck between the public's need to know and the potential for abuse of the information. This resolution, which is generally patterned after 5 U.S.C. §105, with the addition of the prohibition of Internet posting, is a good effort at striking that balance.

### TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to add sections 87211 and 87212 to the California Government Code, to read as follows:

- 1 § 87211
- 2 Notwithstanding any other provision of law to the contrary, including the Political
- 3 Reform Act of 1974, the Online Disclosure Act of 1997 and provisions to the contrary in
- 4 sections 81008, 87500, 87500.2, and 87505 of the Government code, a statement disclosing the
- 5 investments, interests in real property, and income from investments and interests in real

6 property of a judge or commissioner of courts of the judicial branch of government may not be  
7 made available on the internet. In addition, no such statement may be made available to any  
8 person nor may any copy thereof be provided except upon a written application by such person  
9 stating-

10 (A) that person's name, occupation and address;

11 (B) the name and address of any other person or organization on whose behalf the  
12 inspection or copy is requested; and

13 (C) that such person is aware of the prohibitions on the obtaining or use of the statement  
14 provided in Government Code section 87212.

15 Any such application shall be made available to the public throughout the period during which  
16 the statement is made available to the public.

17 This section does not require the immediate and unconditional availability of statements filed by  
18 an individual described as a judge or commissioner of courts of the judicial branch of  
19 government in section 87200 of the Government Code if a finding is made by the Judicial  
20 Council, in consultation with either the Chief of Police of the city or the Sheriff of the county in  
21 which the judge or commissioner of courts of the judicial branch of government resides or serves  
22 as a judicial officer, that revealing personal and sensitive information could endanger that  
23 individual or a family member of that individual.

24 (A) A statement disclosing the investments, interests in real property, and income from  
25 investments and interests in real property may be redacted pursuant to this paragraph only-

26 (i) to the extent necessary to protect the individual who filed the statement or a family  
27 member of that individual; and

28 (ii) for as long as the danger to such individual exists.

29  
30 § 87212

31 It shall be unlawful for any person to obtain or use a statement disclosing the  
32 investments, interests in real property, and income from investments and interests in real  
33 property of a judge or commissioner of courts of the judicial branch of government:

34 (A) for any unlawful purpose;

35 (B) for any commercial purpose, other than by news and communications media for  
36 dissemination to the general public;

37 (C) for determining or establishing the credit rating of any individual; or

38 (D) for use, directly or indirectly, in the solicitation of money for any political, charitable,  
39 or other purpose.

40 (2) The Attorney General or the District Attorney of the County in which the Judge or  
41 commissioner of courts resides or serves as a judicial officer may bring a civil action against any  
42 person who obtains or uses a statement disclosing the investments, interests in real property, and  
43 income from investments and interests in real property of a judge or commissioner of the courts  
44 of the judicial branch of government for any purpose prohibited in paragraph (1) of this  
45 subsection. The court in which such action is brought may assess against such person a penalty  
46 in any amount not to exceed \$10,000. Such remedy shall be in addition to any other remedy  
47 available under statutory or common law.

(Proposed new language underlined; language to be deleted stricken.)

**PROPONENT:** San Mateo County Bar Association

**STATEMENT OF REASONS**

The Problem: California requires internet disclosure of financial assets, investments, and income of judges and is less protective than federal law. For purposes of internet disclosure, California

treats judicial financial information the same way that federal law treats senior government executives.

Recent allegations of public corruption by Senators Leland Yee and Ron Calderon have focused public attention upon a nexus between political fundraising and official duties. Senator Yee's disclosure of economic interests was so detailed that he disclosed receiving a \$1.89 bottle of soda from the Coca Cola Bottling Company on March 11, 2013. This absurd level of specificity, when contrasted with allegations of *pay for play* and gunrunning, underscores the fact that existing disclosure laws fail to achieve their objective. Simply put, they do more harm than good.

In a March 2013 statement entitled "*An Independent Review of the Impact of Providing Personally Identifiable Financial Information Online Submitted to the Congress and the President of the United States,*" the National Academy of Public Administration noted the harmful effects of the STOCK Act's requiring strict compliance with financial disclosure laws by senior government executives:

"Virtually every agency met with during this study stated instances of senior executives covered under the new STOCK Act online disclosure requirements who were considering downgrades or retirement to avoid the online posting. Stated reasons centered on the desire to protect privacy, fear of identity theft or other financial harm, and sometimes, fear of harassment or physical harm. Although very few data are available to substantiate the impact of these concerns on recruitment and retention, agencies that often hire people from outside the federal government at the senior level (i.e., who would be covered by the online posting provision) provided examples of prospective new hires turning down jobs because of the requirement...Overall, officials are worried that if the STOCK Act's provisions for online posting stay as they are, there will be serious, long-term negative consequences for the federal government in terms of attracting and retaining the talent it needs for its senior-most jobs."

The Solution: With respect to judges, the Academy wrote: "*The breadth of their cases and the interests they entail are extreme and cannot be predicted, so reviewing judges' point-in-time snapshot of financial holdings would almost be futile.*" ("The STOCK Act An Independent Review of the Impact of Providing Personally Identifiable Financial Information Online Submitted to the Congress and the President of the United States" by the National Academy of Public Administration, March 2013, finding 7, page xiv. Full statement available at <http://www.napawash.org/wp-content/uploads/2013/03/STOCKactFinal1.pdf>)

The same concerns that the National Academy had with respect to senior government executives apply equally to California judges. The proposed amendments address some of those concerns. They do not affect any disclosure statutes as to either campaign disclosure or gift statementing. The amendments are limited to investment and real estate holdings and income. They are modeled on federal statutes - 5 U.S.C. app. 4, §105(b)2, (b)3.

## **LEGISLATIVE HISTORY**

This resolution is related to The Political Reform Act of 1974 (Government Code 81000, et seq.) The Online Disclosure Act of 1997 (Government Code 84600, et seq.)

## **IMPACT STATEMENT**

This resolution would impact The Political Reform Act of 1974 (Government Code 81000, et seq.) The Online Disclosure Act of 1997 (Government Code 84600, et seq.)

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