

AUDIT REPORT

2011 MARSHALS STATEMENTS OF INCOME

JULY 11, 2012



SUMMARY & BACKGROUND

SUMMARY:

State marshals are required to file a limited financial disclosure form, known as a Statement of Income (“SOI”), with the Office of State Ethics (“Office”) on an annual basis. We have performed an audit of the SOIs filed by state marshals for the 2011 calendar year – a total of 217 forms. Our audit procedures were designed to reveal the level of technical statutory compliance, using criteria developed in the audits of the 2009 and 2010 SOIs (See, e.g., Audit Report: 2010 Marshals Statements of Income – September 15, 2011).

The audit revealed that approximately 76% of state marshals – 165 out of 217 - filed their forms without issue. Of the remaining 24%, the facial review of the forms raised several questions or issues, most of which are neatly categorized into a few discrete areas. The vast majority of questions and issues raised concerned technical compliance with the letter of the statute. These “technical” mistakes included: erroneous placement of data (e.g., a specific item of disclosure was entered into the wrong blank space on the form); arithmetic mistakes; entry fields inadvertently left blank; and others. The audit revealed no instance where it appeared that a marshal had deliberately attempted to evade the reporting requirements set forth in the statute.

The overall level of compliance is consistent with the previous year’s compliance – wherein 77% of state marshals timely filed their forms without error or omission that was identified by the audit. Of the approximately 24% of this year’s forms that contained findings, the highest occurring examples of errors and/or non-compliance were:

1. Twenty eight forms - approximately 13% - were filed after the May 1 deadline.¹
2. Twenty four of the forms – approximately 11% - contained omissions of certain items (addresses, itemized dollar amounts, etc.) in the itemization requested by the form.
3. Fourteen of the forms – approximately 6% - contained mathematical errors.

As a result of the audit, the Office requested marshals to amend their forms. Nine marshals who had significant deficiencies in their forms were given a deadline within which to make necessary corrections. Out of these nine, one failed to make corrections within the noticed period and, after a Notice of Hearing was issued, the matter was resolved with the imposition of an agreed penalty.

It is significant to note that two areas of problems in previous years – marshals’ use of the wrong form and the failure of marshals to sign and certify forms – were entirely eradicated this year as a result of a change in the Office’s intake procedures.

BACKGROUND:

A. The Filing Requirement

Connecticut General Statutes § 1-83(a) (1) designates that:

All state-wide elected officers, members of the General Assembly, department heads and their deputies, members of the Gaming Policy Board, the executive director of the

¹ The Office achieved 100% compliance on May 14, 2012 without need of any hearings.

Division of Special Revenue within the Department of Revenue Services, members or directors of each quasi-public agency, members of the Investment Advisory Council, *state marshals* and such members of the Executive Department and such employees of quasi-public agencies as the Governor shall require, *shall file, under penalty of false statement, a statement of financial interests for the preceding calendar year with the Office of State Ethics on or before the May first next in any year in which they hold such a position.* (Emphasis added).

In contrast to the more detailed Statement of Financial Interest (“SFI”) also contemplated in General Statutes Section 1-83(a) (1), the SOI calls only for the disclosure of amounts and sources of income earned by state marshals strictly in their capacity as marshals, per Section 1-83(b) (2). SOI filers must also include expenses that are directly attributable to official duties as marshals. Conn. Reg. § 1-81-13.²

Other than enforcing the filing requirements of Section 1-83, this Office does not have jurisdiction over marshals.

B. Submitting the SOI Form

Marshals are not required by statute to file on line, and currently this Office does not have an electronic system which would allow marshals to file on line. In 2011, the Office added a “fillable” version of the marshal SOI on its web site which can be completed electronically and then printed out by the user for submission to the Office. The State Marshal Commission also maintains the same “fillable” form on its web site. Of the 217 marshal filings, 85 were submitted on the “fillable” form (38% of the total).

AUDIT OBJECTIVES, SCOPE AND METHODOLOGY

AUDIT OBJECTIVES:

The primary objective of the audit is to ascertain, at a base level, the level of facial compliance with the disclosures required by Section 1-83. Particular focus is devoted to completeness of answers and internal consistency. Except where otherwise specifically noted, the audit objectives do not include the substantive analysis of financial disclosures.

SCOPE AND METHODOLOGY:

1. SCOPE:

Review of the SOIs consisted of a facial review of 100% of the marshals’ forms, or 217 forms altogether. Because of the relatively small number of marshals (in contrast to filers of the SFI, who number in the thousands), it was practical to review all marshal forms. The results of the audit are therefore more accurate than the results of an audit that is limited to a small sample size.

A separate audit was performed on a sample of SFIs, and is not the subject of this report.

² The pertinent agency regulations are attached hereto as Exhibit A.

2. METHODOLOGY:

Methodology was developed with reference to audit protocols developed by the Office for lobbyist filings, as well as reference to GAAP³, GAAS⁴, and protocols of the Auditors of Public Accounts. The audit methodology included two distinct sets of protocols. The first protocol included steps to individually analyze each response in order to determine whether an appropriate response was made to the SOI inquiry. The second set of protocols sought to analyze whether the responses were internally consistent, as well as consistent with other filings. The audit protocols are attached hereto as Exhibit B.

3. AGENCY RESPONSE:

The audit process is designed to be non-punitive. Rather, the primary goals of the audit process are to educate the filer and to promote compliance. Where substantive errors are apparent on the face of a form, and where there is no evidence of deliberate attempts to conceal or otherwise misrepresent by the filer, the filer is notified of the error and instructed to correct the form. In situations where technical, non-substantive errors are discovered on the face of the form, the results are recorded. However, due to resource issues, in contrast to years past, the Enforcement Division did not seek corrections for technical, non-substantive errors.

A secondary goal of the audit process is to identify areas of potential improvement in the processes that the Office uses in administering the filing of SOIs.

RESULTS OF AUDIT AND CONCLUSIONS

OVERALL RESULTS:

The following results and conclusions can be gleaned from the audit. First, the percentage of forms that were timely filed, and filed without errors, even of a technical sort, was relatively high: approximately 76%. This suggests that many filers were able to understand and adequately comply with instructions. Second, the most common findings were as follows:

1. Twenty eight forms - approximately 13% - were filed after the May 1 deadline.
2. Twenty four of the forms – approximately 11% - contained omissions of certain items (addresses, itemized dollar amounts, etc.) in the itemization requested by the form.
3. Fourteen of the forms – approximately 6% - contained mathematical errors.
4. Three of the forms – approximately 1% - failed to attach forms itemizing receipts over \$1000.

There was no ascertainable pattern to these deficiencies. A total of nine letters were sent to filers whose forms contained deficiencies that required correction.

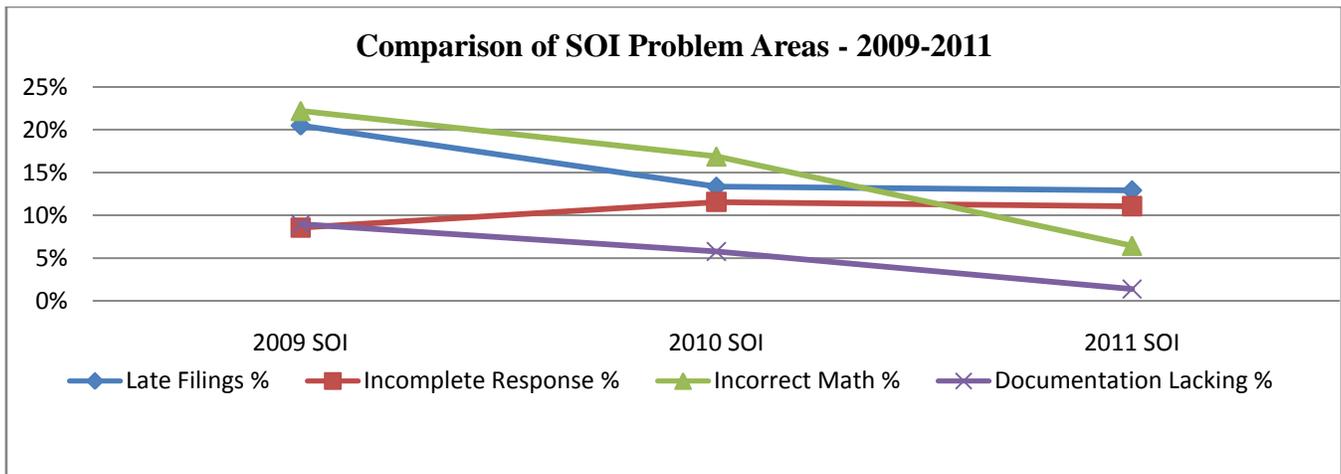
This marks the third consecutive year that this Office has audited SOIs. The results of this audit, on the whole, demonstrated an improvement in compliance from the previous year's audit. The below chart compares the results of previous years' audits with this year's.

³ Generally Accepted Accounting Principles.

⁴ Generally Accepted Auditing Standards.

	Number of Marshals/SOIs	Late Filings	Incomplete Responses	Incorrect Arithmetic	Documentation Lacking
2009 SOI	234	48	20	52	21
2009 %		20.5%	8.5%	22%	9%
2010 SOI	225	30	26	38	13
2010 %		13%	11.5%	17%	6%
2011 SOI	217	28	24	14	3
2011 %		13%	11%	6%	1%

Among the major areas of filing problems, it is apparent that the general trend over the audit years is toward reduction (or general stasis) in the percentage of forms presenting the problems. A trend chart of the past three years would present as such:



The above chart demonstrates that, over the past three audit years, the percentage of incidents of faulty math and lack of documentation have declined consistently. This trend likely derives, at least in part, from the existence of the audit program, of which a growing number of marshals are aware.

SPECIFIC AREAS OF FOCUS:

1. Late Filings

At first blush, the numbers for late filings presents a curiosity. After dipping dramatically last year (from 20% down to 13%), the number of late filings for the 2011 SOI stayed stagnant at a 13% level. The Enforcement Division had anticipated a continued decline in the number of late filings. However, a closer analysis provides at least one mitigating point. In 2011, due to the May 1 filing date falling on a Sunday, the Board instructed the Enforcement Division to not begin enforcing the filing requirement until May 2. This order was publicized to the State Marshals Commission which, in turn, informed its membership. This publication may have had the effect of providing a reminder of the deadline to marshals, but may have had the inadvertent effect of preparing the marshals for a similar extension in 2012. In any event, of the late filings received this year, 14 were received in the Office on May 2 (an additional 6 were received over the following two days). If these “one day late” filings were to be excluded from the late filing tally, the percent for this year would have been a more modest 6%.

Solving problems in another area may have given rise to an increased number of late filings. Because this year the Office refused to accept forms that were unsigned, or filings that were on the wrong form, some persons who would otherwise have made timely filings (albeit ones that would have been faulty for other reasons), were forced to take additional time to “cure” the certification/wrong form issues. The Office did not monitor the number or timing of the filing of these forms this year, but will do so in future years to determine what, if any, impact this has on the timeliness of filings overall.

Nevertheless, with 13% filing forms after the deadline, there remains work to be done in enforcing the timeliness of filings. To date, the Enforcement Division has typically granted a minimal “grace period” to filers who have not had previous enforcement actions against them.⁵ In the past, this “grace period” has been fourteen days. All but one of the late filers filed within the “grace period” this year. In future years, the Enforcement Division plans to gradually shrink the “grace period” out of existence, in order to get 100% compliance by the statutory deadline.

2. Filing of Wrong Forms/Failure to Sign and Certify Forms

In the previous two audit years, the Office received SOIs that were filed on the wrong form (typically a previous year’s form) and/or were filed without signature and certification. As stated above, this year the Office implemented an internal system – rejecting filings that were on the wrong form or without certification/signature - that completely eradicated these two previous issues.

3. Failure to Provide Addresses for Executions Over \$1000

The regulations governing the filing of SOIs state that marshals “shall disclose amounts and sources of income earned in their capacity as state marshals including the name, address, and amount received from any person paying one thousand dollars or more for any category of state marshal services during the calendar year being reported for.” Conn. Reg. § 1-81-12 (a). Among the categories of marshal services that must be itemized is “Execution Services” – services provided by marshals where they are forced to execute judgments on assets held by Connecticut citizens. Out of the nine marshals who were contacted to provide further information, a majority had failed to include “the name, address, and amount received from any person paying one thousand dollars or more” for execution services.⁶ (Categorically speaking, this deficiency is recorded on the above charts as an “incomplete response.”).

Subsequent conversations with marshals unveiled a significant difficulty in providing a strict application of the language of the regulation. In providing “Execution Services,” the marshal will receive from a particular law firm a list of persons against whom judgments and orders of execution have been entered. The order of execution allows a marshal to go to the person’s bank and serve the order, at which time the bank will write a check to the marshal in the amount of money that the person currently has in an account at the bank. When the marshal presents the bank with a list of people, the bank will write a check to the marshal in the collective amount that is in all the bank accounts. The marshal, upon receiving this check from the bank, will deposit the check into the marshal’s bank account and write a

⁵ The primary reasons for granting a “grace period” have been two-fold: 1. The “grace period” is consistent with the overarching goal of the SOI program, which is to promote transparency through the filing of the SOI forms. The underlying statutory framework does not presume that any particular filer has engaged in ethical misconduct. Rather, this is a regulatory requirement. The failure to file on time is *malum prohibitum*, not *malum in se*; 2. Perhaps more importantly, the cost to the agency of enforcing late filings that are one or two days late typically exceeds the amount of money that could be recovered through such efforts.

⁶ The number and amount of executions increased significantly over the last couple of years, in all likelihood a result of the languishing state economy, thus making this issue of much greater prominence than even two years ago.

check to the law firm in an amount that equals what he received from the bank, minus the marshal's fee (statutorily limited to 15% of the total amount of the execution).

The above scenario, when juxtaposed against the regulatory language, presents a dilemma. Who is the "person" who is "paying" the marshal for purposes of interpreting the regulation. If the "person" is the bank who writes the check to the marshal, then it is debatable whether any public policy is being served by disclosing the identity of a bank that just so happens to be the holder of a bank account of a judgment debtor. If the "person" is the actual judgment debtor, then the regulation would require that the marshal disclose the name, address, and amount taken from the debtor's account. In addition to being questionable in terms of public policy, this interpretation would have the marshal disclose the name and address of individual citizens of the state in a publicly available form. The other alternative interpretation is that the "person" contemplated by the regulation is the law firm on whose behalf the marshal is performing the execution.

This issue has not yet received an interpretation by the Connecticut courts or the Office of State Ethics and, in the absence of such, the Enforcement Division is faced with a more significant hurdle in attempting to enforce the express language of the regulation. Over the past several years, the amount of dollars received by marshals overall for executions has increased (likely due to the lackluster economy). Thus, the issue has become more acute, as more marshals exceed the \$1,000 threshold beyond which they must disclose the source of the income, as well as the address.

CONCLUSION AND RECOMMENDATIONS

As outlined above, using consistent methodology, the annual audit of marshal SOIs continues to demonstrate increased compliance – or at least stability – in all areas that the Office monitors. As in the case of last year's SOI audit, this Office has gained valuable insight and information from the present audit. This Office will use this to attempt to improve marshal filings in the future. Several changes that may lead to improved compliance on the part of marshals include:

- 1) Continue communication with, and education of, the State Marshal Commission (which is now an independent division within the Department of Administrative Services). Such steps might include:
 - a. Providing at least one educational session for the Commission and/or marshals in the spring of 2013 (i.e., immediately prior to the May 1, 2013 filing date);
 - b. Continuing to communicate with the Ethics Liaison of the Commission;
 - c. Ensuring that the Commission continues to maintain a .pdf copy of the current year SOI on its web site;
 - d. Encouraging the Commission to post pertinent statutory and regulatory provisions on its web page.
- 2) Continue educational opportunities with marshals, through the State Marshal Commission, to bolster clarity and minimize interpretational errors in filling out the form. Such efforts might include:
 - a. Creating and distributing a one-page guide with easy-to-read instructions on how (and when) to file the SOI;
 - b. Ensuring that marshals are aware that the Legal Division of the Office of State Ethics is available and authorized to provide legal advice regarding the SOI form.
- 3) Consider ways to provide on-line calculation tools on the OSE web site for marshals to minimize arithmetic errors.

- 4) Consider creating an on-line filing option for marshals.
- 5) Encourage marshals to disclose e-mail addresses to allow the Office to communicate directly regarding upcoming filing requirements.
- 6) Gradually reduce the “grace period” in order to fully acclimate marshals to the May 1 deadline.
- 7) Provide a Legal interpretation (or consider a regulatory change) to address the above-described conundrum with respect to itemization of “Execution Services.”

In addition, there may be opportunities to improve compliance through improvement of, or clarification of, the laws that govern filing of the SOI. This Office will consider the above and other changes as necessary and continue to audit marshal filings annually, which will allow this Office to track progress and foster improvement of marshal compliance.

Office of State Ethics
18-20 Trinity Street
Hartford, CT 06107
(860) 263-2400

EXHIBIT A – REGULATIONS PERTAINING TO MARSHAL STATEMENTS OF INTEREST

Part 2 - Annual Statements of Financial Interests Required of State Marshals

Sec. 1-81-12. Form of statement, filing requirements

- (a) The Annual Statement of Financial Interests required to be filed by state marshals, pursuant to Subdivision (2) of Subsection (b) of Section 1-83 of the Connecticut General Statutes, shall disclose amounts and sources of income earned in their capacity as state marshals including the name, address, and amount received from any person paying one thousand dollars or more for any category of state marshal services during the calendar year being reported for.
- (b) The State Marshal Annual Statement of Income shall be made under penalty of false statement and filed on a form promulgated by the Citizen's Ethics Advisory Board.
- (c) The statement shall be filed by the first of May of each year disclosing the amounts and sources of income earned as a state marshal during the preceding calendar year. However, a person assuming the office of state marshal after March thirty-first of any year shall file for the preceding year within thirty days after assuming office. When a state marshal is required to file for a previous calendar year during which he or she was not in office, the statement shall disclose the date when office was assumed and a certification of the fact that no reportable income was received during the preceding year. A person leaving such office shall file for the portion of the calendar year served. The person will be notified of this requirement by the Office of State Ethics within thirty days of his or her departure, and shall file within sixty days after receipt of the notification. No statement shall be considered filed until it is received by the Office of State Ethics.

(Effective June 16, 1993; amended effective January 2, 2008.)

Sec. 1-81-13. Determination of income and expenses

In order to accurately reflect net income on State Marshal Annual Statement of Income, the filer shall disclose both gross income earned as a state marshal and expenditures made incident to earning this income.

- (a) In reporting gross income, the filer shall include salary and payments for service of process, executions (wage, bank, property, etc.), collection of delinquent taxes, and court attendance (as bailiff). The filer shall not, however, include reimbursements of advancements, or funds held but not his or hers to keep. For example, do not include: bail or bond money received or held; reimbursement of motor vehicle or town clerk fees; filing or entry fees; witness, moving, or keeper fees; certified/registered mailing fees.
- (b) In reporting expenses, the filer shall include the proportionate amounts of all expenses directly attributable to the performance of official duties as state marshal (office expenses such as rent, insurance, utilities, actual copying costs; transportation expenses; employee expenses; etc.). For employees, include proportionate amounts of their compensation and benefits (social security tax, unemployment compensation tax, medical insurance, etc.) attributable to supporting the state marshal in the performance of official duties. To report transportation expenses, report either the proportionate cost of actual expenses for gasoline, car insurance, repairs, etc., or the number of miles traveled on state marshal business multiplied by the statutory mileage fee. In addition to reporting total expenses, the filer shall, on a separate sheet, itemize expenses by category. Said categories shall be as follows: employees (specify secretarial, etc.), office expenses (specify actual copying costs, etc.), and transportation.

(Effective March 21, 1995; amended effective January 2, 2008.)

EXHIBIT B – PROTOCOL FOR AUDIT OF 2011 MARSHAL SOI FILINGS

SELECTION: For 2011 filings, all marshal filings will be audited.

REVIEW FOR COMPLETENESS: The following initial tasks will be performed:

1. Check if signed.
2. Check if timely filed and dated.
3. Ensure that form is the 2011 form.
4. Check to ensure that each question was answered.
5. Check to ensure that the names, addresses, and amounts received (page 3) are completed and that the totals are correct and are reflected on page 1.
6. Determine whether patterns of responses suggest intentional deficiencies (e.g., filer enters no substantive information; expenses (page 2) appear overstated in relation to work performed; etc.).
7. If additional pages are attached, check to ensure that the attachments are complete and do not contradict answers given to questions on the form.
8. Note whether each marshal identifies the state, or any state or quasi-public agency, as a person from whom the marshal received \$1,000 or more.

Additional analysis may be necessary or appropriate if any adverse findings occur as a result of the above. If it is determined that an underdisclosure exists, but no other ethics code violation is indicated or suggested, the filer will be given a nominal, uniform grace period to amend the form. Upon expiration of the grace period, if the deficiencies have not been corrected, a notice of a UAPA hearing will be issued to the filer, at which point the Enforcement Division will seek penalties pursuant to General Statutes § 1-88(b). If additional substantive ethics code violations are indicated or suggested by the audit, the Division will make a determination on a case-by-case basis as to how to proceed.