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Audit Report: 2014 Marshals Statements of Income

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 2014 calendar year – a total of 206 forms. Our audit procedures were designed to reveal the level of technical statutory compliance, using criteria developed in previous audits of the SOIs.

The audit revealed that approximately 41% of state marshals – 84 out of 206 - filed their forms in full substantive and technical compliance with the statute and regulations. Of the remaining 59%, the facial review of the forms raised several questions or issues. The vast majority of these questions and issues concerned technical compliance with the letter of the statute and regulations. The largest areas of technical non-compliance were, failure of the filer to fully identify the name of the debtor as indicated in the court order for execution services the marshal had performed (26% of all forms) and failure to provide complete responses for each section of the form pertaining to gross income and net income (28% of all forms). Five percent of all filers failed to include any addresses for any clients at all.¹ Fifteen percent of all filers failed to fully identify the name and address of a state agency on whose behalf the marshal performed services. Approximately eight percent of filers failed to timely file the SOI with the Office of State Ethics. Arithmetic mistakes were found on approximately twelve percent of forms. 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 lower than the previous year’s level of compliance, wherein 49% of state marshals timely filed their forms without error or omission it. This is the third consecutive year that full compliance, as measured on a percentage basis, has declined. While the largest area of technical non-compliance from 2013 was the failure of the filer to fully identify the name and address of a state agency on whose behalf the marshal had performed services (39%), 2014 saw this number decrease to (15%). However, with the exception of the timeliness of filings, which saw no change from 2013, all specific areas of concern saw an increase.

¹ In total, 11 forms – or approximately 5.39% - were incomplete with respect to identifying the persons who received services, their addresses, or the amount charged for the services.

Background

1. The Filing Requirement

In 2014, Connecticut General Statutes § 1-83 (a)(1) mandated that:

All state-wide elected officers, members of the General Assembly, department heads and their deputies, members of the Gaming Policy Board, 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 § 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 § 1-83 (b)(2). SOI filers must also include expenses that are directly attributable to official duties as marshals. § 1-81-13 of the Regulations of Connecticut State Agencies.²

Other than enforcing the filing requirements of General Statutes § 1-83, this Office does not have jurisdiction over marshals. State marshals are not included in the definition of public official or state employee.

2. 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 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. In addition, in 2013 the Office of State Ethics modified the fillable form to automatically perform the arithmetic calculations required on the form.

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

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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 § 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 206 forms altogether. Because of the relatively small number of marshals (in contrast to filers of the SFI, who number in the thousands), it continues to be feasible to review all marshal forms, rather than a small sample.³

2. METHODOLOGY:

Methodology was developed with reference to audit protocols developed by the Office for lobbyist filings, as well as reference to GAAP, GAAS, and protocols of the Auditors of Public Accounts. The audit methodology included two distinct sets of protocols. The first set included steps to individually analyze each response in order to determine whether it was responsive to the SOI. The second set of protocols sought to analyze whether the responses were internally consistent, as well as consistent with other filings.⁴

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. In situations where technical, non-substantive errors are discovered on the face of the form, the results are recorded. In August, the Enforcement Division sent letters to all marshals whose forms were not in compliance, with a request that the forms be modified to attain compliance. Failure to make such corrections in the time set forth by the Division would result in further enforcement action to force compliance.

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. In each of the last several years, adjustments have been made to the form and to the notice process used by the Office.

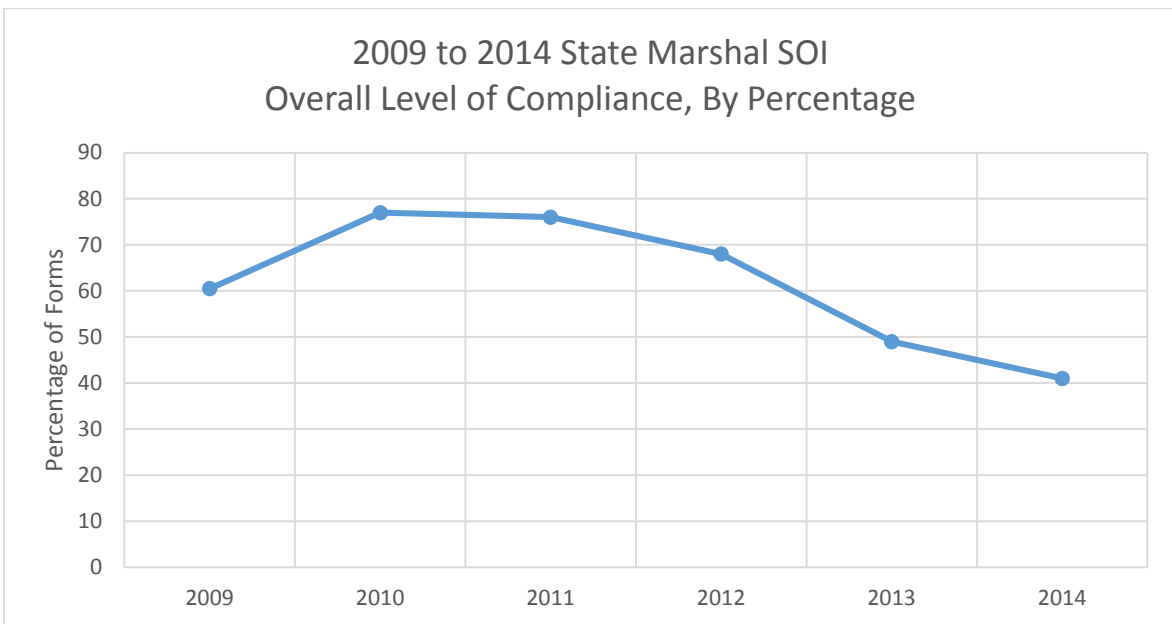
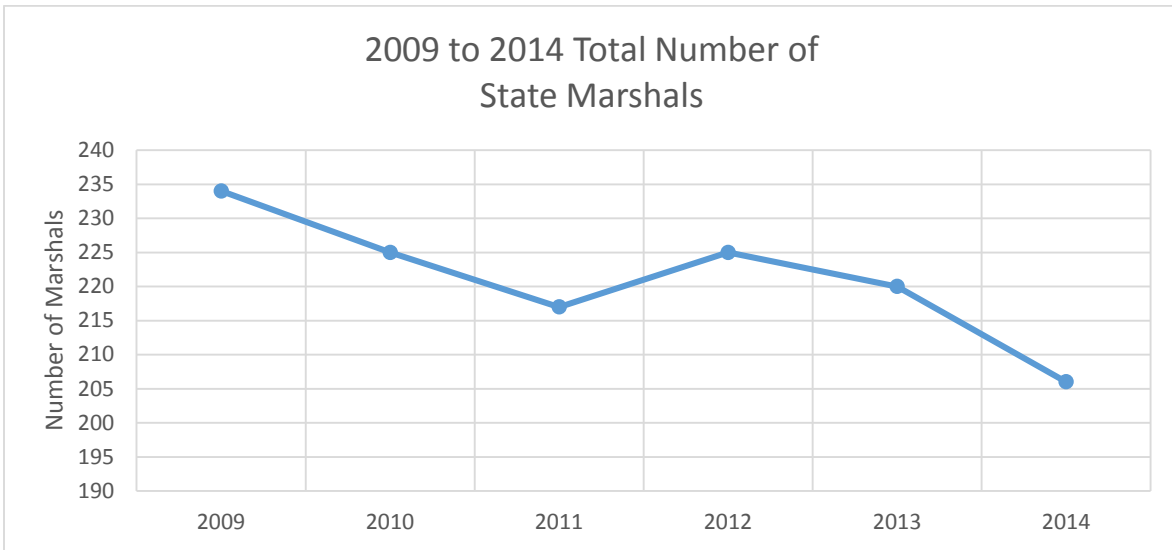
³ A separate audit was performed on a sample of SFIs, and is not the subject of this report.

⁴ The audit protocols are attached hereto as Exhibit B.

RESULTS OF AUDIT AND CONCLUSIONS

Overall Results

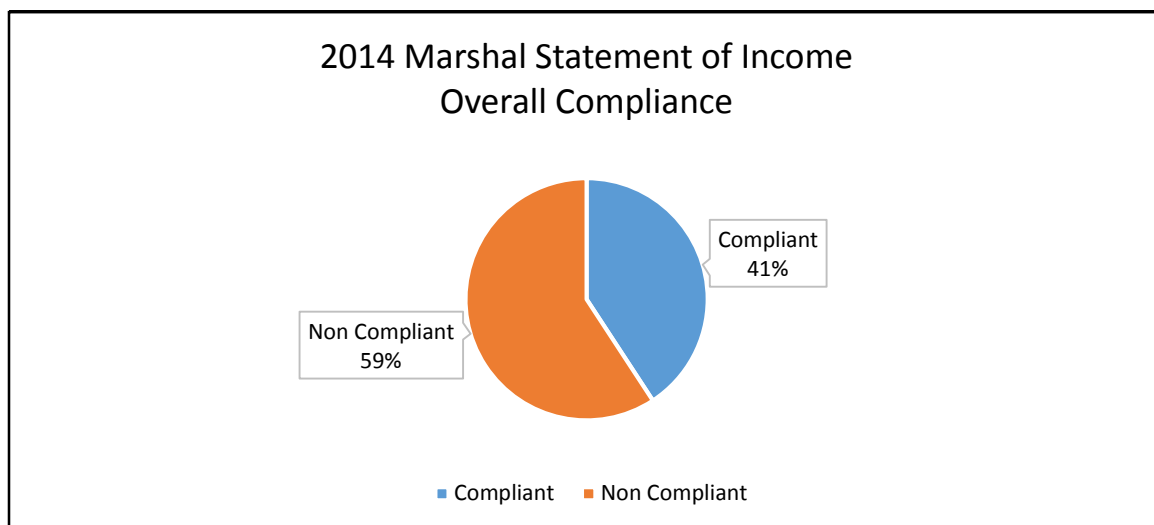
The total number of marshals from 2009 to 2014 has declined from a high of 234 in 2009 to the current number of 206 in 2014. However, the percentage of marshal forms without errors has also declined. There is no ascertainable pattern to this decline in overall compliance.



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A total of 122 forms were filed that contained errors. Forty-six of those marshal forms had multiple errors (36% of the forms that contained errors).

As a threshold matter, the percentage of forms that were timely filed, and filed without errors, even of a technical sort, was lower than previous years: approximately 41%.



The most common findings were as follows:

1. 31 forms (approximately 15.04%) failed to identify either the state agency, or its address, for whom marshal services had been provided.⁵
2. 11 forms (5.39%) contained no addresses at all for persons upon whose behalf the marshals had provided services.⁶
3. 18 forms (approximately 8.73%) were filed after the statutory deadline of May 1.
4. 25 forms (approximately 12.13%) contained arithmetic errors in calculating either income or expenses.
5. 54 forms (approximately 26.21%) failed to identify the debtor from the court order in connection with execution services the marshal provided.
6. 58 forms (approximately 28.15%) failed to provide responses for each section of the form pertaining to gross income and or net income.

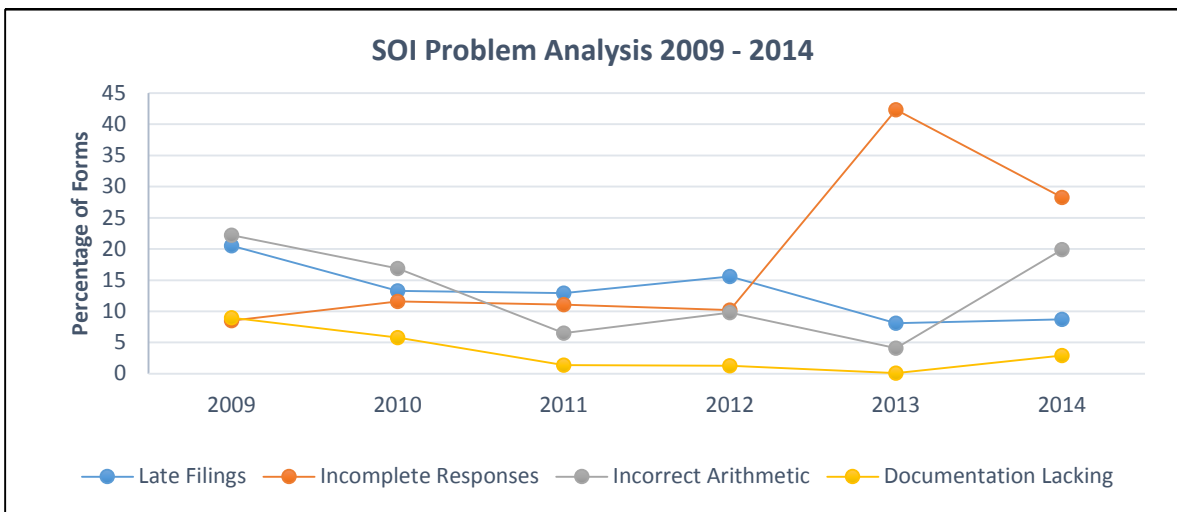
⁵ The state regulations require that marshals “shall disclose amounts and sources of income earned in their capacity as state marshals including the name, address, and amount received from any person paying one thousand dollars or more.” The failure to strictly comply with this requirement of the regulations previously represented the largest problem area for the 2013 filings.

⁶ The forms in this category were not included in the first category above.

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There was a sharp decline in forms that did not include identities and/or addresses for state agencies and forms that contained no addresses at all for persons upon whose behalf the marshals performed services. There was little to no change in the number of forms that were filed after the statutory deadline. There was an upward tick with respect to the number and percent of forms with arithmetic errors. As detailed above, the areas that lacked the most compliance were the number of forms that failed to identify the debtor from the court order in connection with execution services the marshal provided and forms that were filed that failed to provide responses for each section of the form pertaining to gross income and or net income.

SOI Problem Areas – 2009 through 2014					
	Number of Marshals/SOIs	Late Filings	Incomplete Responses	Incorrect Arithmetic	Documentation Lacking
2009 SOI	234	48	20	52	21
%		20.5%	8.5%	22.2%	9.0%
2010 SOI	225	30	26	38	13
%		13.3%	11.6%	16.9%	5.8%
2011 SOI	217	28	24	14	3
%		12.9%	11.1%	6.5%	1.4%
2012 SOI	225	35	23	22	3
%		15.6%	10.2%	9.8%	1.3%
2013 SOI	220	18	93	9	1
%		8.1%	42.3%	4.1%	.9%
2014 SOI	206	18	58	25	12
%		8.73%	28.15%	12.13%	2.9%



Specific Areas of Focus

1. Late Filings

Although an 8% tardy filing rate is less than acceptable, the lack of change from the previous year shows continued improvement from prior years. The primary reasons for the continued improvement from prior years are likely as follows:

a. Continued Enforcement and Penalties

In enforcing the 2013 SOI, the Enforcement Division prosecuted five (compared to seven the previous year) marshal cases. The decline in the number of enforcement actions may be due in part to recent marshal prosecutions. More specifically, a marshal who failed to file forms in a timely manner (Patricia Randall), was decommissioned as a marshal by the Marshal Commission based in part on her failure to file the SOI. In addition, the Enforcement Division prosecuted the Vincent Messina matter in 2014. Several members of the marshal community attended the Messina hearing and Mr. Messina was found to have violated General Statutes § 1-83 (b) (2) and ordered to amend his SOI filing in addition to paying a civil penalty. Because these matters were publicized to the marshal community, there is reason to believe that these most recent enforcement actions have contributed to the continued improvement of timely filing of forms this year.

b. Increased Communication With the Marshal Commission

The Enforcement Division coordinated with the Commission regarding steps to encourage late filers to timely file. During the months leading up to the filing date in 2015, Office staff provided updates and assistance to the Commission. In addition, the Commission updated its web site with a “Calendar of Obligations” for marshals that linked directly to the Office of State Ethics web site and the SOI. Through this effort, marshals were able to gain information and awareness of the filing requirement from the Commission that regulates them, as well as directly from the Office of State Ethics.

2. Arithmetic Mistakes

Arithmetic mistakes increased this year. This increase can be attributed to a failure to use the “auto-sum” feature included in the on-line SOI form that the Office created on its web site. In previous years, the on-line form allowed marshals to fill out their SOIs on the Office’s web site. Based on recommendations of the previous year’s audit, the Office developed and implemented a feature for the fillable SOI form that would automatically perform arithmetic on the form, unfortunately, this form was not used a great deal by the marshals. The Marshal Commission also had a link to the fillable form on their website. This year, 72 marshals (34.95%) used the “auto-sum” function on the fillable .pdf form. As such, all of the arithmetic on these forms was accurate. Among 134 filers who did not use the “auto-sum” function, the arithmetic error rate was approximately 18.65% (25 forms).

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3. Incomplete Responses

As to filers who failed to fully answer or failed to check as “not applicable” various questions on their 2014 form (28.5% of filers), this problem may be associated with some of the following reasons: (1) the assumption that leaving a response blank was the same as indicating the question was “not applicable”; (2) the filer inadvertently missed the question in a rush to submit the form; and/or (3) the mistaken assumption that, because the total income and/or expenses were provided, questions which called for components of the total income and/or expenses were not required.

The decrease in incomplete responses may also be due in part to the Vincent Messina case as detailed above.

4. Failure to Provide Debtor Information for Executions Over \$1,000

Fifty-four filers failed to fully answer or failed identify the debtor from the court order in connection with execution services the marshal provided over \$1,000 on their 2014 form (26.21% of filers). These 54 filers who failed identify the debtor from the court order in connection with execution services the marshal provided over \$1,000 on their 2014 form provided the name of the law firm on whose behalf the marshal was performing service (98%) or identified the name of the bank holding the account of the judgment debtor (2%). This problem may be associated with some of the following reasons:

The instructions page of the Marshals Statement of Income included the following:

NOTE: In disclosing income for execution services, please identify the source of the execution income (e.g., disclose name of debtor as indicated in court order). Do not disclose bank account or social security numbers when identifying the source of the execution income.

The page for recording information about execution services included the following:

*List name(s) of, address(es) of, and amount(s) received from any person(s) or firm(s) who, in 2014, paid you \$1,000 or more for **execution services**.*

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.⁷

⁷ 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 a few years ago.

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This issue has not yet received an interpretation by the Connecticut courts or the Office of State Ethics.⁸ Although the Office of State Ethics Legal Division has discussed this matter with the Counsel for the Judicial Branch, the discussion was limited in scope to the fact that court ordered income/wage executions are public records and that the income/wage executions provide the identity of the debtor, identity of financial institution and/or employer where income/wage execution is levied along with the identity of the creditor who pursues the execution.

CONCLUSION AND RECOMMENDATIONS

As outlined above, using consistent methodology, the annual audit of marshal SOIs continues to demonstrate increased compliance in many areas that the Office monitors. A comparison of the results of the first audit, conducted on the 2009 SOI, and the 2014 filings demonstrates the effectiveness of the audit program over the long term.

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 actions 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 2016 (i.e., immediately prior to the May 2, 2016 filing date)⁹;
 - b. Continuing to communicate with the Ethics Liaison of the Commission;
 - c. Ensuring that the Commission continues to maintain an updated .pdf copy of the current year SOI on its web site;
 - d. Encouraging the Commission to add a fillable .pdf copy of the SOI to its web site, including the "auto sum" feature;
 - e. Encouraging the Commission to post pertinent statutory and regulatory provisions relating to the Code of Ethics on its web page.

⁸ 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. In any event, the possibility for varying interpretation by the filer suggests that further clarity and instruction be contemplated before the filing of the 2015 form.

⁹ General Statutes § 1-83 (a)(1) provides in pertinent part: If, in any year, May first falls on a weekend or legal holiday, such statement shall be filed not later than the next business day.

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2. Continue educational opportunities with marshals, through the State Marshal Commission and the CT Marshals Association, 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 creating an on-line filing option for marshals.
4. Encourage marshals to disclose e-mail addresses to allow the Office to communicate directly regarding upcoming filing requirements.
5. Consider regulatory changes and/or Advisory Opinion(s) that would clarify and update the regulatory provision relating to disclosure of “names, addresses, and amounts” insofar as it relates to marshal services performed on behalf of the State of Connecticut.

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. The Office – and, in particular, the Citizen’s Ethics Advisory Board – should consider whether the over-arching statutory structure for marshal filings is ripe for overhaul. Marshals are neither state employees nor lobbyists. Because the Office has no other jurisdiction over marshals, there are no enforcement opportunities with respect to marshal business other than the timely and complete filing of the SOI.¹⁰ A statutory change that would vest the Marshal Commission with jurisdiction over the SOI may be ripe for consideration.

¹⁰ The filing of the form itself is a vestige of the bygone Sheriff’s system in the state of Connecticut and, with its passing, may not serve the same function. Sheriffs were state employees subject to the Code of Ethics and, therefore, the filing of the forms with the Office of State Ethics served a larger enforcement purpose.

EXHIBIT A

Regulations Pertaining to Marshal Statements of Interest

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

Section 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 § 1-83 of the 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.)

Section 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.

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(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.)

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EXHIBIT B

Protocol for Audit of 2014 Marshal Statements of Interest

SELECTION:

For 2014 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 2014 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 source of the execution income (e.g., disclose name of debtor as indicated in court order) from whom the marshal received \$1,000 or more.
9. 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 under disclosure 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.