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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 2012 calendar year – a total of 225 forms. Our audit procedures were designed to reveal the level of technical statutory compliance, using criteria developed in previous audits of the SOIs (See, e.g., [Audit Report: 2011 Marshals Statements of Income](#))

The audit revealed that approximately 68% of state marshals – 153 out of 225 - filed their forms without issue. Of the remaining 32%, the facial review of the forms raised several questions or issues, most of which are neatly categorized into a few discrete areas. The largest problem area continued to be the timely filing of forms, with 32 forms (15.6%) arriving after the May 1 deadline. Beyond that, the vast majority of questions and issues raised concerned technical compliance with the letter of the statute. These “technical” mistakes included: arithmetic mistakes (9.8% of forms); failure to adequately identify the state agency for whom services were performed (8.4% of forms); failure to include the address for clients who paid in excess of \$1,000 (8% of forms); and other technical mistakes. 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 76% of state marshals timely filed their forms without error or omission that was identified by the audit.

Background

A. The Filing Requirement

In 2013, 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).

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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. § 1-81-13.¹

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

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 fill-in version of the marshal SOI on its website 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 fill-in form on its website. Of the 225 marshal filings, 62 were submitted using the fill-in form (28% of the total). This represents a decrease from the 38% who used the fill-in form the previous year.

¹ The pertinent agency regulations are attached hereto as Exhibit A.

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 225 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. 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. 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 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. 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 68%. This suggests that many filers were able to understand and adequately comply with instructions. Second, the most common findings were as follows:

1. 35 forms - approximately 15.6% - were filed after the May 1 deadline. Of these, ten were received by the Office within the next two days of the deadline. All audited forms were filed by June 4, 2013.²
2. 22 forms – approximately 9.8% - contained arithmetical errors in calculating the total receipts and/or expenditures.
3. 19 forms – approximately 8.4% - failed to fully identify a state agency from which the marshal had received in excess of \$1,000. Most typically, the identification was limited to “State of Connecticut.”
4. 18 forms – approximately 8% - failed to include the address of clients from whom the marshals had received in excess of \$1,000.

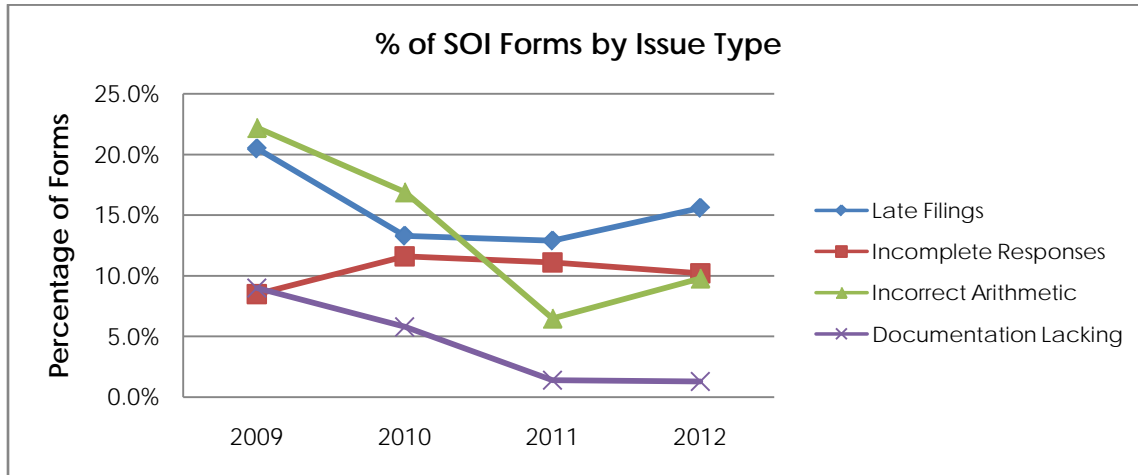
The general trend continues to be downward with respect to the number of forms presenting problem areas. This year, following three years of decline, there was a slight increase in the number and percentage of forms that were filed after the May 1 deadline. In addition, the number of forms with incorrect arithmetic also increased slightly after three years of declines.

SOI Problem Areas – 2009 through 2012

	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%

² The Office did not receive a form from one marshal. The Office filed a notice of hearing, at which the marshal did not appear. The Board approved the hearing officer’s report and imposed a fine on the marshal. In subsequent conversations with the Marshal Commission, it was determined that the marshal was unable to continue to perform as a marshal and, by agreement between the Commission and the marshal was decommissioned. In light of the decommissioning, and other underlying information, the Office deemed the penalty as uncollectible.

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Specific Areas of Focus

1. Late Filings

At first blush, the numbers for late filings presents a curiosity. After dipping dramatically over the past two years (from 20% down to 13%), the number of late filings for the 2012 SOI rose to over 15% delinquency. The Enforcement Division had anticipated a continued decline in the number of late filings. However, a closer analysis provides at least one mitigating point. Of the late filings received this year, 10 were received in the Office on May 2 or 3. If these filings were to be excluded from the late filing tally, the percent for this year would have been a more modest 11%.

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. Attempts to consistently monitor the intake procedure for all SOI forms this year proved unworkable due to limited staff, and the timing of accepting hundreds of forms (both SFI and SOI) during the last couple of days of the filing period. Anecdotally, however, several marshals appeared on May 1 with forms that were rejected for lack of information and, having departed to complete the forms, the marshals reappeared after May 1 with completed forms.

Nevertheless, with over 15% 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

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enforcement actions against them.³ In the past, this “grace period” has been fourteen days. All but three of the late filers filed within the “grace period” this year. The Office intends to shrink the “grace period” this year to ten days. In addition, the Office will continue to work with the Marshal Commission to attempt to persuade the Commission to communicate with its membership regarding timely filing of the form.

2. Arithmetic Mistakes

Arithmetic mistakes continue to be an issue. The most significant factor in this area is that all forms – even the on-line “fillable” form – are completed manually by the filer. There is no automatic calculation that is performed, leaving the form ripe for human error. In many cases, the math was off by a matter of a few pennies. The Office will continue to consider mechanisms to reduce the number of errors. However, the reduction will continue to be hampered unless and until an on-line application is developed and, more importantly, used by the marshals.

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.⁴

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. In the case of multiple persons having accounts at the same bank, the bank will write a check to the marshal in the collective amount that is in all the bank accounts. 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 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).

³ 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.

⁴ 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.

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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.

4. Failure to Identify State Agency with Particularity

Regulation § 1-81-12 (a) requires that marshals disclose the name and address of all persons from whom the marshals receive \$1,000 or more. However, a percentage of marshals continue to list “State of Connecticut” as the person paying over \$1,000, but do not further identify the agency or the agency address. The Office will continue its efforts to educate marshals in this regard, and will continue to encourage the Marshal Commission to educate its membership.

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 the 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 2014 (i.e., immediately prior to the May 1, 2014 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 website;
 - d. Encouraging the Commission to post pertinent statutory and regulatory provisions on its website.
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 website 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.”

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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. In this regard, 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. 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. 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

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.

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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.)

EXHIBIT B

Protocol for Audit of 2012 Marshal Statements of Interest

SELECTION:

For 2012 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 2012 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.