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“Statement of Economic Interest” Edition

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“WHEREAS, THE PEOPLE OF NORTH CAROLINA ENTRUST PUBLIC POWER TO ELECTED AND APPOINTED OFFICIALS FOR THE PURPOSE OF FURTHERING THE PUBLIC, NOT PRIVATE OR PERSONAL, INTEREST...”
EXECUTIVE ORDER NO. ONE

Letter from the Director

As we take down our decorations and get our homes back to normal, we transition from the holiday season to the “filing” season, and I’m sure you look forward to the latter as much as you did the former. We will soon be mailing out our new-and-improved “Statements of Economic Interest” and “No-Change Forms” to all covered Public Officials. (And you thought you had opened all of your presents!) Since disclosure and evaluation is one of the cornerstones of the Board of Ethics’ conflict of interest identification and prevention program, this newsletter is intended to help all filing Officials understand not just the letter but also the spirit of the applicable rules. We want to help you identify areas of possible concern from an “ethical” standpoint; help you avoid embarrassing at best and damaging at worst conflict of interest violations; help you perform your public duties in a manner that reflects the high degree of professionalism and integrity expected of all public officials. In short, we want to help you help yourself.

Since we can now provide electronic copies of our newsletters to a great many Public Officials and State agencies, we are reissuing this “Statement of Economic Interest” edition which was first produced last February. As always, if you have any questions or need any help choosing or filling out a particular form, please do not hesitate to call on us for assistance.

Perry Y. Newson

ETHICS EDUCATION

Due to the current State budget situation, we are unable to travel outside of the Raleigh area to make basic ethics education and awareness presentations.

If your board or agency is meeting in the area and you would like such a presentation, please call the Board’s offices to make the necessary arrangements.

In the meantime, Board staff is always available for telephone consultations regarding conflict of interest and other pertinent “ethical” questions

Financial Disclosure & Evaluation: “Statements of Economic Interest”

Of the many functions and duties performed by the Board of Ethics, it is perhaps most famous (or infamous) as the source of annual financial disclosure forms known as “Statements of Economic Interest” (SEI). Nothing the Board does is more visible or, for the most part, more controversial. Public Officials often do not see the value of disclosing all significant assets, liabilities, and other extremely personal information. In some cases, providing this information can be very burdensome, and there is not much that can be done about that. But hopefully understanding not only the process but also the rationale behind it will make financial disclosure a bit more palatable.

This newsletter is intended to answer some of the most common questions Public Officials have about Statements of Economic Interest and explain the reasoning behind certain questions. As always, if you have any questions about your particular situation, please do not hesitate to give us a call. We want to make the filing process as easy and understandable as possible.

Who must file an SEI?

According to Sections 9 (a) and 4 (c) of Executive Order One, most “Public Officials” as that term is defined in the Order must file an SEI with the Board. This includes Public Officials appointed by the Governor to non-advisory boards, commissions, or councils and those “Other Public Officials” who voluntarily come under the Board’s jurisdiction.

If you are in doubt as to whether you need to file an SEI with the Board, ask your appointing authority (the person who appointed you to the particular board or commission) or the Board of Ethics. We will be happy to help you.

The purpose for filing an SEI

Aside from supporting the old sports adage “No pain, no gain,” filing an SEI serves at least three purposes:

(1) Introspection – It allows, and even forces, the covered Public Official to closely examine his or her personal, familial, and financial situation in the context of conflict of interest and the appearance of conflict of interest. Hopefully it educates and sensitizes the filing Official to potential conflict issues in his or her particular situation, thereby avoiding a costly or embarrassing mistake later on.

(2) Third-Party Review – It allows an experienced, neutral third-party in the form of the Board of Ethics to “look over the shoulder” of the filing Public Official and help identify any potential problem situations the filer might have missed.

(3) Public Scrutiny – It allows the “public,” primarily in the form of the news media, to see for themselves that their Public Officials are free from impermissible or undue influence in the performance of their public duties. Needless to say, Statements of Economic Interest are public records subject to inspection and copying according to the Public Records Law.

Time of filing

All **currently serving** Public Officials who submitted an SEI under former Executive Order 127 were to resubmit a **new Statement** on or before May 15, 2001. See section 9 (e). All **new** employees or appointees who are covered by Executive Order Number One must file their Statement as soon as reasonably possible, the intent being to have a conflict evaluation prior to or contemporaneous with the commencement of public service where feasible. Either prior to or immediately after your appointment to a covered board or employment in a covered position, your “appointing authority” (the person who appointed or hired you) should provide you with a copy of Executive Order Number One and all financial disclosure forms required by the Order, primarily including the Statement of Economic Interest. If you did not receive one, please call your appointing authority or the Board of Ethics immediately. At first, all newly appointed or employed Public Officials must fill out the “Long Form,” answering all questions as completely as possible. Thereafter, you *may* be able to file a “No-Change Form” (also called a “Short Form”), depending on your particular situation.

After the initial filing, all covered Officials must file an **updated Statement by May 15 each year**. See section 9 (b). Even though the official annual filing period does not begin until April 15, Public Officials may file, and Board staff will accept, Statements filed after January 1 of the filing year *provided* that the financial and other information is current and timely and will not materially change between the time of filing and the annual filing period (April 15 to May 15). The intent of this provision is that Public Officials provide information that is as current, timely, and relevant as possible under the circumstances, taking into consideration the fluidity of everyone’s personal, financial, and even familial situation.

Annual updates

As stated above, Executive Order Number One requires *all* Public Officials, both new and currently serving, to start off by filing a new SEI (the “Long Form”). This allows us all to start at the same point and eliminate any discrepancies between the current and former versions of the SEI form. Thereafter, the filing Public Official must update his or her SEI annually by May 15. He or she may do this in several ways: (1) by submitting a new, complete Statement (“Long Form”) with *all* information provided which supersedes the earlier SEI, (2) by submitting a supplemental “Long Form” SEI on which the filer selectively answers only those questions where there are changes to report, which form supplements the earlier SEI, (3) by submitting a “No-Change Form” (also called a “Short Form”) indicating no material changes from the previous filing period on a form provided by Board staff, or (4) by submitting such other documentation or information requested or approved by staff on a case-by-case basis. If you have changes to report, staff prefers that you choose the first option and submit a completely new SEI which supersedes all prior ones, but this decision is up to each Public Official. If you have any questions about which form to use, please give staff a call. If you retain an electronic copy of your preceding Statement, this may be the easiest way to update your information as well.

Common Questions About SEIs

Do I have to include my *spouse's* assets, liabilities, business holdings/dealings, sources of income, etc., when completing my Statement of Economic Interest?

Answer: Yes. See Section 9 (c) of Executive Order Number One.

Do I have to list real estate my spouse or I own which is located *outside* of North Carolina?

Answer: No, you do not. See Section 9 (c) (2) (a) of the Order.

Do I have to list or disclose the dollar value of my assets (including real estate and stock holdings) and liabilities?

Answer: No. The intent is to identify areas of potential conflict of interest, not to establish or reveal the net worth of either you or your spouse. This is a common misconception of filers.

In question number 3 of the SEI form dealing with stockholdings in publicly-owned companies, do I have to include any mutual funds my spouse or I own?

Answer: Not in question number 3. Mutual funds would be listed under question number 9 dealing with assets having a value of \$10,000 or more which have not been listed elsewhere in the SEI.

Also in question number 3 dealing with stockholdings in publicly-owned companies, do I have to list all of the companies on the form or can I attach a list from my broker?

Answer: You may attach a list from your broker, accountant, attorney, or other advisor.

Does question number 6 asking me to list all directorships on all boards on which I am serving include unpaid positions on public-interest, non-profit, or tax-exempt boards or governing bodies?

Answer: Yes it does. See Section 7 of the Order.

In question number 10 dealing with **liabilities**, do I have to list credit card debts, automobile loans, or the mortgage on my personal residence?

Answer: No, you do not.

In question number 11 asking for sources of income greater than \$10,000, do I have to list how much my spouse and/or I make?

Answer: No, you do not. Again, the intent is to identify areas of potential conflict of interest (like employers or other sources of income), not to establish or reveal the net worth of either you or your spouse.

Can I file my Statement of Economic Interest or other disclosure documents electronically?

Answer: No, although you can download the appropriate form from the Board's web site, fill it out on your computer, and then print a hard copy for execution and filing. Remember: *all* disclosure forms (SEIs, supplemental SEIs, "No-Change" forms) must be signed and notarized.

Section 9 (a) (2) of the Order requires Public Officials who are "hired for State employment to a position which is anticipated to have annual compensation in excess of \$40,000 per year" to file an SEI with the Board. If I am a Public Official (say, an employee in the Governor's office or a "confidential" assistant to a department head) who is currently making less than \$40,000 and my salary increases to more than \$40,000 during the year, do I have to file an SEI with the Board of Ethics?

Answer: It depends on when your salary increases. If it increases to more than \$40,000 *before* July 1, you would need to file an SEI with the Board. If it increases to more than \$40,000 *on or after* July 1, you would not have to file an SEI until the next filing period.

If my financial or other situation changes after I have filed my SEI with the Board, do I have to file either a new or amended Statement?

Answer: Once timely and properly filed for the reporting year, Public Officials are generally *not* required to file an updated or amended Statement prior to the next annual filing period unless specifically requested to do so by the Board or unless the Order is modified to require a new filing. Provided, however, that if there are significant, material, and relevant changes to the Official's personal, familial, or financial situation which would render the current Statement not only technically obsolete but also misleading and incorrect from a conflict of interest standpoint, the Official should carefully consider filing an updated or amended Statement with the Board. Public Officials should consult with Board staff if they have any doubt about whether it would be necessary or advisable to file an amended or updated Statement. Typical fluctuations in the value of financial holdings or portfolios during the course of a year would *not* normally require the filing of an amended or updated Statement.

Do I have to file a full, "Long Form" Statement of Economic Interest every year?

Answer: No, not after the initial filing under Executive Order Number One. After you have filed a new SEI under Executive Order Number One (*not* an old SEI under former Executive Order 127), you have several options available to you for updating your Statement annually. If you have had a lot of changes from the prior year, you may choose (and it is probably best) to file a completely new Statement. If you have only had a few changes, you may want to use the standard "Long Form" SEI to supplement your earlier SEI, selectively answering only those questions where you have changes to report. If you have not had any material changes to your personal, financial, or professional status from a conflict of interest standpoint, you can file a "No-Change Form" provided by Board staff. Finally, in unusual or extenuating cases, you may be able to update your Statement by submitting such other documentation or information requested or approved by staff on a case-by-case basis.



Don't forget to update your Statement of Economic Interest by **May 15**. If you have not had any material changes since your last filing, you may use the new "No-Change Form." Be sure to sign and have your statement notarized.

The Final Word on Disclosure

“Filing reports that disclose financial interests and holdings is more than a formality. It’s a means for the public to have tangible proof that officials are acting in the public interest and not for their private gain. Conversely, completing the reports gives officials an opportunity annually to review their holdings and be more sensitive to subjects that might pose an actual or perceived conflict of interest.

“Some form of conflict of interest or ethics laws has been on the books for generations. They stem from common law and the biblical caution that ‘no man can serve two masters.’ These laws, and their inherent prohibitions, go hand-in-hand with financial disclosure. Each is virtually meaningless without the other.”

Washington State Disclosure Commission