

ADVICE



EDUCATION



DISCLOSURE



ENFORCEMENT

STATE ETHICS COMMISSION

Fiscal Year 2012
Annual Report

MASSACHUSETTS STATE ETHICS COMMISSION
One Ashburton Place, Room 619
Boston, MA 02108
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www.mass.gov/ethics

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* Term expired October 2011

** Appointed December 2011

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INTRODUCTION TO THE STATE ETHICS COMMISSION

Since 1963, the Massachusetts conflict of interest law has regulated the conduct of public officials and employees in the Commonwealth. Massachusetts General Laws c. 268A governs what public employees may do on the job, what they may do after hours or “on the side,” and what they may do after they leave public service. It also sets standards of conduct for all state, county and municipal employees and officials. The law requires that public servants give undivided loyalty to the level of government for which they work, and that they act in the public interest rather than for private gain. Until the law was revised in 1978, it was enforced solely as a criminal matter under the jurisdiction of the Attorney General and the various local District Attorneys.

In addition to strengthening the conflict of interest statute, Chapter 210 of the Acts and Resolves of 1978 established a financial disclosure law, G.L. c. 268B, requiring public officials, political candidates and state and county employees in designated policy-making positions to file an annual statement of their financial interests and private business associations. Chapter 210 also created the State Ethics Commission, and empowered it to interpret and enforce G.L. c. 268A and 268B. The Commission provides free advice, education and other information regarding the conflict of interest and financial disclosure laws and serves as the primary civil enforcement agency for these laws.

Chapter 28 of the Acts of 2009 further strengthened the conflict of interest law by increasing the maximum civil penalty for violations, codifying and increasing the statute of limitations from 3 years to 5 years, strengthening the Commission’s summons authority, prohibiting gifts to public employees because of their official position, authorizing the Commission to order restitution and repayment of any economic advantage obtained by a violator, adding a false or fraudulent claims provision to the conflict of interest law, and imposing mandatory conflict of interest law education and training requirements on all public employees. The financial disclosure statute was also amended to ban gifts from lobbyists to certain public officials and their immediate family members.

The non-partisan Commission consists of five members who are appointed to staggered, five-year terms. Three Commissioners are appointed by the Governor, one by the Secretary of State and one by the Attorney General. No more than two of the gubernatorial appointments and no more than three members of the Commission as a whole may be from the same political party. The Commissioners serve part-time and employ a full-time staff.

HIGHLIGHTS

The Commission was established in 1978

The Commission consists of five members serving staggered five-year terms

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INTRODUCTION TO THE STATE ETHICS COMMISSION

Mission Statement

The mission of the State Ethics Commission is to foster integrity in public service in state, county and local government, to promote the public's trust and confidence in that service, and to prevent conflicts between private interests and public duties. The Commission strives to accomplish this mission by conducting ongoing educational programs, providing clear and timely advice, and fairly and impartially interpreting and enforcing the conflict of interest and financial disclosure laws.

Commission Staff

The Commission appoints the Executive Director, who supervises a staff of 23 employees. The Commission also appoints the General Counsel who is the chief legal officer of the Commission and head of the Commission's Legal Division. The Legal Division provides free, confidential advice to public employees regarding the legality of proposed activities, advises the Commission during adjudicatory proceedings and represents the Commission in court. The Legal Division also administers the Statements of Financial Interests process and requirements.

The Public Education and Communications Division conducts free educational seminars for public employees on the requirements of the conflict of interest law, maintains the Commission's website, handles media and public relations and administers the conflict of interest law education requirements. In addition, the Public Education and Communications Division Chief manages the Commission's information technology resources.

The Enforcement Division receives and investigates complaints of alleged violations of c. 268A and c. 268B, and publicly prosecutes the more serious violations. It resolves relatively minor violations privately with confidential education letters.

Amendments to the Conflict of Interest and Financial Disclosure Laws

During FY 2012, the Court Reform Act, Chapter 93 of the Acts of 2011, amended the conflict of interest law by adding a new section 6B, which requires an applicant for state employment, as part of the application process, to disclose the names of certain family members also employed by the state. The Expanded Gaming Law, Chapter 194 of the Acts of 2011, amended the conflict of interest law by adding a new section 5(b½), which imposes a one-year restriction on any former state, county or municipal employee who worked on any expanded gaming legislation from becoming employed by a gaming licensee or having a financial interest in a gaming license.

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The Expanded Gaming Law also amended the financial disclosure law by amending section 6 to include gaming licensees and gaming license applicants within the definition of legislative agents for the purposes of that section.

Summary of Fiscal Year 2012

The Legislature appropriated \$1,796,500 for the Ethics Commission in FY 2012. Civil penalties totaling \$76,665 were assessed by the Commission in FY 2012. All penalties collected by the Commission are deposited in the state's General Fund, as the Commission does not retain revenue.

In FY 2012, the Legal Division received 5,390 oral and written requests for confidential advice regarding the conflict of interest and financial disclosure laws, and received 86 proposed opinions from municipal counsels. The Legal Division responded to 4,948 oral requests for advice and issued 442 written informal opinions, and reviewed and commented on 86 municipal counsel opinions. In FY 2012, the Legal Division reviewed a total of 706 disclosures, which were filed with the Commission to comply with the conflict of interest law. There were 24 requests for advice pending at the end of FY 2012.

During FY 2012, 4,572 elected officials, candidates and public employees in designated major policy-making positions were required to file Statements of Financial Interests ("SFIs") with the Commission. Eighty-five percent of all filers filed their forms electronically in FY 2012. While 485 filers missed the May filing deadlines, all but 37 had filed by the end of the fiscal year. Staff responded to more than 1,600 telephone inquiries relating to either the completion or amendment of SFIs. Requests for copies of more than 924 SFIs were received from the public or media during FY 2012.

A total of 2,268 people attended the 65 educational seminars conducted by the Public Education and Communications Division in FY 2012. The division also fielded more than 970 calls from the public and media seeking information about the Commission, enforcement matters, the conflict of interest law, or the mandatory education and training requirements.

HIGHLIGHTS

More than 5,300 requests for advice were received in FY 2012

85% of all filers electronically filed SFIs with the Commission

More than 1,300 complaints were received or pending during FY 2012

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The Commission's Enforcement Division reviewed 1,359 complaints either received during FY 2012, or which were pending at the beginning of FY 2012, alleging violations of the conflict of interest and financial disclosure laws. Enforcement Division staff conducted interviews, obtained additional information and analyzed documents as part of their initial review of these complaints. The Enforcement Division issued 160 private educational letters, initiated 66 investigations, recommended 39 cases for formal review by the Commission and concluded 47 formal inquiries. The Enforcement Division issued 8 Orders to Show Cause initiating public adjudicatory hearings, and negotiated 12 Disposition Agreements. Four adjudicatory hearings were completed, which resulted in Decisions and Orders by the Commission.

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LEGAL DIVISION

Advice and Opinions

Individuals who fall within the jurisdiction of G.L. c. 268A and G.L. c. 268B are entitled to receive confidential advice about whether their own proposed activities are permissible under these laws. The Legal Division consists of a Chief, who also serves as the Commission's General Counsel, two Deputy Chiefs, two staff attorneys, a financial disclosure administrator/analyst and an administrative assistant. In addition to providing advice, the Legal Division advises the Commission during adjudicatory proceedings, represents the Commission in court and administers the Statements of Financial Interests process and requirements.

Commission Opinions

Opinions of the Commission serve as a legal defense in subsequent proceedings concerning the requesting individual's conduct, unless the request omits or misstates material facts. The Legal Division strives to answer written requests for advice within four weeks. Most requests for advice are handled by telephone on the day of the call. In FY 2012, the Commission's Legal Division responded to 442 requests for advice through informal letters, and 4,948 requests via telephone and office visits. A total of 430 requests for advice were received online.

Formal opinions are issued by the Commission. They address issues for which there is no clear Commission precedent and generally take longer to complete. Although formal advisory opinions issued by the Commission are confidential, the Commission publishes summaries of formal advisory opinions as well as public versions of such opinions with any identifying information deleted. Informal advice is based on prior formal Commission rulings, is issued by a staff attorney, and is not published. The Commission did not issue any formal opinions in FY 2012. Formal advisory opinions are available on the Commission's website.

In FY 2012, the Legal Division responded to most written opinion requests within 30 days. By the end of FY 2012, 292 out of 442 written opinion requests, or 68%, received a response in less than 30 days. Twenty-four opinion requests were pending at the end of FY 2012.

The law requires that the Commission keep confidential whether anyone has sought or received advice from the Commission.

HIGHLIGHTS

430 online requests for advice were received in FY 2012

66% of written requests for advice received a response within 30 days

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Municipal Opinions

All conflict of interest opinions issued by city solicitors or town counsel must be filed with the Commission for review to ensure that these opinions are consistent with Commission precedent. The Commission has 30 days to notify the municipal counsel of any objections to an opinion; if there are no objections, the municipal opinion can serve as a legal defense in any subsequent Commission proceeding. A municipal counsel's opinion is legally binding only with respect to the person who requested the opinion, and is not binding if material facts were omitted or misstated by the requester, if the opinion was not obtained in advance of the relevant action, or if the requester otherwise acted in bad faith in securing the opinion. In FY 2012, the Commission reviewed 86 municipal opinions, of which 84 were received during the fiscal year and 2 were carried over from the prior fiscal year.

HIGHLIGHTS

706 disclosures filed by public employees to comply with the conflict of interest law in FY 2012

New disclosure forms made available on the Commission's website in FY 2012

Disclosures

Each year, the Commission receives from state and county employees and officials disclosures required by several sections of the conflict of interest law. These disclosures, which are available to the public, are reviewed for completeness and accuracy by the Commission's Legal Division. Legal Division staff reviewed 792 disclosures, of which 706 were received in FY 2012, and 86 were carried over from the prior fiscal year. This is an 18% increase over FY 2011. In 50 of these instances, the filer was contacted and asked to clarify, amend or correct the disclosure.

New Disclosure Forms

In FY 2012, the Commission created new disclosure forms for state, county and municipal employees to use to comply with the conflict of interest law. The new disclosure forms are available on the Commission's website.

Regulations

The Ethics Reform Law, Chapter 28 of the Acts of 2009, directed the Commission to create exemptions in specified areas. In December 2010, after completing the formal process to issue regulations, the Commission approved new regulations, codified at 930 CMR 5.00 and 6.00. During FY 2012, the Commission completed work on additional regulations which went into effect in FY 2013.

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Litigation

Decisions by the Commission in adjudicatory matters are appealable to the Superior Court. In FY 2012, the Commission prevailed in Superior Court in a case challenging its decision. The case was appealed to the Court of Appeals and a decision is pending.

Statements of Financial Interests

G.L. c. 268B requires that all state and county elected officials, candidates for state office and certain state and county employees annually disclose their financial interests and private business associations. The appointed state and county employees who are required to file financial disclosures are those individuals who hold designated major policy-making positions within their agencies. Commission staff are available to assist filers in completing their Statements of Financial Interests ("SFIs").

The SFI functions and requirements are administered by the Legal Division, which assists filers who have questions on how to complete the SFI form. Compliance issues are addressed by the Enforcement Division.

In FY 2012, 4,572 public employees, elected officials and candidates for office were required to file SFIs. Commission staff responded to more than 1,600 telephone and email inquiries concerning accessing the electronic filing application or completing the SFI.

Electronic Filing

In 2001, the Commission launched an electronic filing application for SFIs. That year, 40% of filers filed their SFIs electronically. In FY 2012, a total of 3,885 filers, or 85% of all filers, submitted their SFIs electronically.

Inspection Requests

SFIs are public records and are available for inspection at the Commission's office. While any individual may inspect and obtain a copy of any SFI filed with the Commission, the law requires that filers be notified whenever their SFIs have been requested for review. As a result, SFIs can only be provided after a requester completes an inspection request form and produces valid identification. Prior to making an SFI available for public inspection, Commission staff redact legally protected information from the forms, including

HIGHLIGHTS

4,572 public employees required to file SFIs during FY 2012

85% of all SFI filers filed electronically

More than 900 SFIs were requested by the public and media

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home addresses and names of family members. During FY 2012, the Commission received requests for 924 SFIs from the media, private citizens, state agencies and law enforcement agencies. This is a decrease from FY 2011, when the Commission received requests for 1,641 SFIs.

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PUBLIC EDUCATION AND COMMUNICATIONS DIVISION

During FY 2012, the Public Education and Communications Division consisted of the Chief and an administrative assistant. The Division provides free educational seminars throughout the state, maintains the Commission's website and manages the mandatory education and training program. The Division Chief also serves as the public information officer of the Commission and responds to requests for information from the media and from the general public.

Seminars

The Commission provides free seminars on the conflict of interest and financial disclosure laws. A total of 2,268 people attended the Commission's 65 seminars during FY 2012. Seminars were provided to 14 municipalities, with a total of 584 attendees; 25 state agencies, with a total of 928 attendees; and 5 professional associations whose membership consists of municipal employees, with a total of 261 attendees. The Commission also conducted 11 seminars in connection with the Inspector General's Massachusetts Certified Public Procurement Officer certification program, with a total of 268 attendees; 8 seminars held at the Commission's office, with a total of 167 attendees; and 2 seminars for legislative staff, with a total of 60 attendees.

Publications

The Commission's FY 2011 Annual Report was distributed electronically during the fiscal year. Annual Reports dating back to FY 2001 are available on the Commission's website. The Commission prepares a calendar year compilation of its public advisory opinions and enforcement actions (the "Rulings"). Rulings for 2011 and 2012 will be prepared in FY 2013. Rulings from 2002 through 2010 are available on the Commission's website. Commission Rulings for 1978 through 2002 are available at the Commission's office and on the Social Law Library database, which can be found on its website, www.sociallaw.com.

Educational Materials

The Commission publishes a wide variety of educational materials explaining various provisions of the conflict law, and providing information regarding recent rulings. This information is available on the Commission's website. The Commission issues educational advisories to explain how the conflict of interest law applies to public employees in certain circumstances.

HIGHLIGHTS

2,268 public employees attended 65 conflict of interest law seminars in FY 2012

Rulings and Annual Reports are available on the Commission's website

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PUBLIC EDUCATION AND COMMUNICATIONS DIVISION

Education and Training

The Ethics Reform Law, Chapter 28 of the Acts of 2009, amended the conflict of interest law to require mandatory education and training on the conflict of interest law for all public employees at the state, county and municipal levels. Every year, all public employers are required to distribute a summary of the conflict of interest law to all employees, and every two years, all public employees must complete an online training program available on the Commission's website. The Commission prepares the summaries of the law and posts them on its website.

HIGHLIGHTS

All state and county agencies and municipalities were notified to distribute the summary of the conflict of interest law to all employees

The Commission's website averaged 7,763 visitors a month in FY 2012

The summaries are also available in Spanish and Portuguese translations. The Commission's online training programs are also available on its website. The Commission has posted implementation procedures to assist public agencies and employees in complying with the education requirements. Among other things, these procedures address when public employers may authorize certain exemptions from the requirements.

Beginning in FY 2011, Commission staff have been working to develop two new online training programs to replace an online training program that has been available since July 2007. The new online training programs will be launched in FY 2013.

During FY 2012, the Commission notified all elected state and county officials, all state and county agencies and municipalities, and all regional municipal districts and independent municipal agencies about the educational requirements and compliance deadlines. The Public Education and Communications Division responded to almost 500

telephone and email inquiries concerning the mandatory education and training requirements. The Commission is required to maintain the records of compliance for all elected state and county officials.

Website

The Commission's website is located at www.mass.gov/ethics. During FY 2012, the Commission launched a new website as part of a major website redesign affecting all state agency websites within the Mass.Gov portal. The website continues to see significant use: In FY 2012, the website received an average of 7,763 visitors a month. The Commission's website is searchable and contains information in various forms on the conflict of interest and financial disclosure laws, including educational materials, formal advisory opinions issued by the Commission, enforcement actions, disclosure forms and information on the education requirements. The public can now request confidential advice, submit confidential complaints, electronically file Statements of Financial Interests and complete the online training program through the website.

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PUBLIC EDUCATION AND COMMUNICATIONS DIVISION

Media and Public Relations

The Public Education and Communications Division Chief has primary responsibility for responding to inquiries from the media and the public about the Commission and the conflict of interest and financial disclosure laws. In FY 2012, the Commission responded to 481 inquiries from the press and the public. The Commission does not confirm or deny whether advice has been requested or given, or whether investigations are being conducted, due to strict confidentiality requirements imposed on the Commission by statute. It does, however, provide general explanations of the law, often directing individuals with questions to the Commission's website for additional information.

In FY 2012, the Public Education and Communications Division issued 20 press releases, most related to public enforcement matters resolved by the Commission. Press releases are issued via email to media outlets and interested parties. Press releases are also posted on the Commission's website.

More than 2,100 individuals subscribe to one or more of the Commission's email lists and regularly receive information from the Commission, including press releases and notices of the availability of the Commission's publications.

HIGHLIGHTS

The Commission received 481 inquiries from the media and the public concerning the conflict of interest and financial disclosure laws in FY 2012

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The Enforcement Division consists of a Chief, a Deputy Chief, two staff attorneys, five full-time investigators and an administrative assistant. The Enforcement Division investigates and, where appropriate, prosecutes alleged violators of the conflict of interest and financial disclosure laws. In FY 2012, the Commission received a total of 1,100 complaints alleging violations of both of these laws.

CONFLICT OF INTEREST LAW

Complaints

The Enforcement Division received 1,070 complaints in FY 2012 alleging violations of the conflict of interest law. In addition, 259 complaints were pending at the beginning of FY 2012. At the end of FY 2012, 229 complaints were pending. Staff reviewed all complaints received, and

HIGHLIGHTS

1,070 complaints alleging conflict of interest violations received in FY 2012

303 complaints were submitted online, a 15% increase from FY 2011

completed 1,844 investigative follow-ups during which additional interviews were conducted, or documents obtained, as part of the initial review of the complaints. The Enforcement Division issued 160 private educational letters, initiated 66 investigations, recommended 39 cases for formal review by the Commission and concluded 47 formal inquiries. The Enforcement Division issued 8 Orders to Show Cause initiating public hearings and negotiated 12 Disposition Agreements to resolve cases in lieu of public hearings. Four adjudicatory hearings were concluded in FY 2012, which resulted in Decisions and Orders.

Anyone may call, write or visit the Commission to submit a complaint regarding an alleged violation of the conflict of interest or financial disclosure laws. Complaints can also be submitted through the website; during FY 2012, 303 online complaints were received. In FY 2012, complaints were received from the following sources:

- 470 from private citizens
- 233 from anonymous sources
- 313 from public agencies
 - 13 from other law enforcement agencies
 - 28 generated by Commission staff
 - 13 were "self-reports" by public employees

The complaints received involved the following: 788 municipal employees, 166 state employees, 12 county employees, and 42 private individuals or corporations. In 62 instances, the affiliation of subjects was unknown.

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The Enforcement Division closed 745 complaints because the allegations fell outside the Commission's jurisdiction, were clearly frivolous or otherwise did not warrant continued investigation. The Enforcement Division consolidated 50 complaints with existing cases and resolved 160 cases with private educational letters. The Enforcement Division initiated 66 investigations by assigning those matters to an attorney/investigator team for further review. At the end of FY 2012, 229 complaints remained under review and were carried over to the new fiscal year.

Confidentiality

Matters under review by the Commission's Enforcement Division are confidential. The Commission cannot confirm the nature or existence of a complaint or investigation, and must keep the identities of all complainants confidential. If, after a formal inquiry has been completed by Enforcement Division staff, the Commission finds that there is reasonable cause to believe that the conflict of interest law has been violated, the matter will be resolved publicly, either through a disposition agreement, public education letter, or adjudicatory hearing.

Staff Investigations

The Commission closed 22 cases following informal staff investigations. Six of these cases involved state employees, and 16 involved municipal employees. At the end of FY 2012, there were 20 ongoing informal staff investigations.

Formal Inquiries

The Commission authorized a total of 39 formal inquiries in FY 2012 regarding alleged violations of the conflict of interest law. Thirty-four subjects of formal inquiries were municipal officials or employees; 25 were state officials or employees; and 4 were private citizens. During FY 2012, Enforcement Division staff completed 47 formal inquiries into alleged violations of the conflict of interest law that were either initiated in FY 2012 or carried over from FY 2011.

Of the 47 formal inquiries completed in FY 2012, in 19 cases the Commission found reasonable cause to believe that a violation of the conflict of interest law had occurred and authorized adjudicatory proceedings. Eleven of those cases were later resolved with Disposition Agreements, negotiated settlement agreements in which the subject admits to having violated the conflict of interest or financial disclosure law and agrees to pay a civil penalty.

HIGHLIGHTS

39 formal inquiries were authorized by the Commission in FY 2012

47 formal inquiries were completed in FY 2012

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In 13 of the formal inquiries completed in FY 2012, the Commission issued 15 confidential compliance letters, advising subjects of their violations and explaining the consequences of future misconduct. Ten cases were terminated. Nineteen formal inquiries were carried over into the new fiscal year. Six Orders to Show Cause were issued formally charging two state employees and 4 municipal employees with conflict of interest law violations.

At the end of FY 2012, the Commission had 6 public adjudicatory hearings pending.

HIGHLIGHTS

12 Disposition Agreements were approved by the Commission in FY 2012

Average civil penalty assessed by the Commission in FY 2012 was more than \$6,000

30 complaints alleging financial disclosure law violations were received in FY 2012

Public Resolutions

In FY 2012, the Commission completed 2 adjudicatory hearings, which resulted in Decisions and Orders. The Commission also entered into 12 Disposition Agreements involving violations of the conflict of interest law: three with current or former state employees, and 9 with current or former municipal officials or employees. In these agreements, subjects admitted to violating G.L. c. 268A, and agreed to pay civil penalties.

Penalties

In FY 2012, the Ethics Commission assessed civil penalties for violations of the conflict of interest law in the total amount of \$72,500 through Disposition Agreements or Decisions and Orders. Penalties imposed in FY 2012 averaged more than \$6,000.

FINANCIAL DISCLOSURE LAW

Complaints

In FY 2012, the Enforcement Division received 30 complaints alleging violations of the financial disclosure law, G.L. c. 268B, all relating to the timely or accurate filing of a Statement of Financial Interests (SFI). Twenty-five of these complaints involved state employees, and 5 involved county employees.

Resolutions

In FY 2012, the Enforcement Division closed 4 SFI complaints. Twenty-five matters were referred for formal review by the Commission. Of these, 16 matters were terminated by the Commission due to extenuating circumstances. Six matters were terminated after the subjects

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paid civil penalties for late filing their 2010 SFIs. In one instance, the subject entered into a Disposition Agreement with the Commission and paid a civil penalty. Two matters resulted in the issuance of Orders to Show Cause formally charging 2 former state employees with violating the financial disclosure law. Both adjudicatory proceedings resulted in Decisions and Orders imposing civil penalties upon the subjects. One complaint was carried over to the next fiscal year.

There were no SFI adjudicatory proceedings or formal reviews pending as of June 30, 2012.

Late Filing

Failure to file on time or to amend an inaccurate or incomplete statement is a violation of the financial disclosure law. The Commission can levy civil penalties of up to \$10,000 for each violation. The Commission has adopted a penalty schedule for late-filing an SFI.

Any person who willfully files a materially false SFI may be subject to civil and criminal penalties. In addition, pursuant to G.L. c. 268B, section 5(e), public employees who do not file on time may not continue to perform their public duties or be paid until they do so. The Commission notified the employing agencies of employees who failed to file their SFIs by the May 1, 2012 deadline. As a result, all but 37 current or former public employees who had not filed by the deadline filed their SFIs by the end of FY 2012.

A total of 485 filers missed the May 1, 2012 deadline for appointed public employees. More than 100 filers filed their SFIs shortly after the deadline passed. The Commission sent formal notices of lateness to 361 filers. By the end of FY 2012, 6 current public employees and 31 former public employees had failed to file their 2011 SFIs. Of this number, 29 filers failed to file within the 10 day grace period after receiving a formal notice of lateness, and those matters were referred to the Enforcement Division. All elected public officials filed their SFIs by the May 29, 2012 deadline for elected public officials.

Penalties

In FY 2012, 9 late filers were assessed civil penalties by the Ethics Commission totaling \$3,300 for violations of the financial disclosure law.

HIGHLIGHTS

9 SFI filers were assessed civil penalties for late-filed SFIs in FY 2012

The Commission assessed civil penalties totaling \$3,300 for financial disclosure law violations in FY 2012

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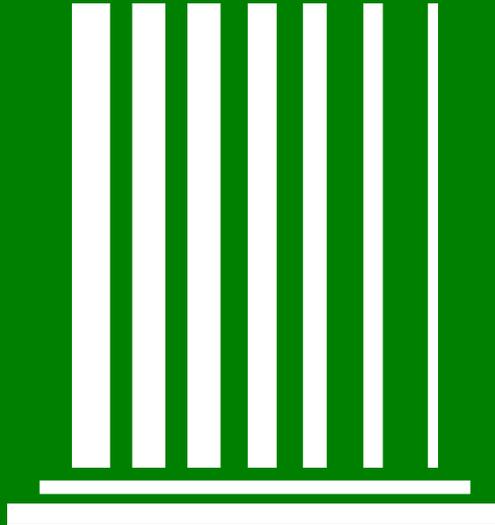


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