



NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

JOHN W. McCONNELL
COUNSEL

MEMORANDUM

November 19, 2015

To: All Interested Persons

From: John W. McConnell

Re: Request for Public Comment on Proposed Rule for the Grant of Disclosure Exemptions under Public Officers Law §73-a.

=====

Public comment is requested on the Office of Court Administration's proposed rule for the review of applications for exemptions from the disclosure of client information under Public Officers Law §73-a (Exh. A).

Chapter 56 of the Laws of 2015 amended the annual ethics filing requirements of legislative and executive officers and policy-makers under the Public Officers Law. (A copy of the relevant portion of that legislation is attached as Exh. B). Among its provisions, that legislation requires the Office of Court Administration (OCA), as an alternative to the New York State Joint Commission on Public Ethics, to receive and determine requests for exemptions from the duty to disclose the identities of clients under the Public Officers Law §73-a. The legislation provides, *inter alia*, that such OCA review be completed within three days of receipt of an exemption request; that a (non-exclusive) range of factors be considered in the analysis; and that the information disclosed in the application remain confidential. OCA is further charged with the secure receipt and storage of information relating to filers' work on initial public offerings (IPOs). These requirements take effect on December 31, 2015. The proposed rule is designed to establish a procedure to comply with this legislative directive.

While comments addressing any and all aspects of the proposal are welcome, OCA has expressed particular interest in the following issues:

1. In light of ethical rules governing the attorney-client relationship, should the identities of clients of attorneys be subject to a higher standard of protection from disclosure than clients of other professions under the statute? If so, what is that standard?
2. Should a different standard of disclosure apply to clients represented in a matter as individuals, as opposed to clients represented in their commercial or corporate capacity?

3. What showing, if any, should be required to support a statement by the filer that the factors set forth in the statute as supporting nondisclosure of a client identity – to wit, that disclosure may reveal trade secrets, or could reasonably result in retaliation against the client, or may result in undue harm to the attorney-client relationship, or may result in an unnecessary invasion of privacy to the client – are applicable in a given matter?

4. In the absence of a more defined legislative directive, does the standard articulated in section 160.4(c) of the proposed rule for review of exemption requests – the balancing of interests in disclosure against those favoring exemption in light of the "totality of the circumstances" – appropriately effectuate the statute's purpose?

=====

Persons wishing to comment on the proposed rules should e-mail their submissions to rulecomments@nycourts.gov or write to: John W. McConnell, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 11th Fl., New York, New York 10004. **Comments must be received no later than December 10, 2015.**

All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration. Issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the Unified Court System or the Office of Court Administration.

EXHIBIT A

PART 160.

Requests for Exemption From Public Disclosure of Client Information Under Public Officers Law §73-a.

§160.1. Preamble.

The purpose of this Part is to implement the legislative direction in Part CC of Chapter 56 of the Laws of 2015 that the Office of Court Administration receive and determine requests for exemption from the duty to publicly disclose client information pursuant to certain questions on the financial disclosure statement that must be filed by legislators and other State employees in accordance with section 73-a of the Public Officers Law. To ensure the fullest compliance with this legislative direction, the rules in this Part have incorporated express language in the relevant statutory provisions in Part CC. Where, however, Part CC does not provide all necessary procedural specifics, these rules include additional procedures that harmonize with the overall legislative intent so far as it is apparent in the statutory text.

§160.2. Definitions.

- (a) *Applicant* shall mean a covered person seeking an exemption pursuant to this Part.
- (b) *Client information* shall mean the identity of a person or entity required to be publicly disclosed pursuant to questions 8(b-1), 8(b-2) or 8(c) of the financial disclosure statement.
- (c) *Commission* shall mean the New York State Joint Commission on Public Ethics.
- (d) *Covered person* shall mean any individual who is required to file a financial disclosure statement pursuant to section 73-a of the Public Officers Law and is required to disclose client information pursuant to questions 8(b-1), 8(b-2) or 8(c) of the financial disclosure statement.
- (e) *Exemption* shall mean a waiver from the duty to publicly disclose client information pursuant to questions 8(b-1), 8(b-2) or 8(c) of the financial disclosure statement.
- (f) *Financial disclosure statement* shall mean the annual statement that must be filed pursuant to section 73-a of the Public Officers Law.
- (g) *Ministerial matter* shall mean an administrative act carried out in a prescribed manner not allowing for substantial personal discretion.
- (h) *OCA* shall mean the Office of Court Administration.
- (i) *State agency* shall mean any state department, or division, board, commission, or bureau of any state department, any public benefit corporation, public authority or commission at least one of whose members is appointed by the Governor. State agency shall also include the State University of New York or the City University of New York, including all their constituent

units except (1) community colleges of the State University of New York, and (2) the independent institutions operating statutory or contract colleges on behalf of the state.

§160.3. Exemption Request Procedure.

(a) A covered person may apply to OCA for an exemption from the requirement to disclose client information by filing an application (“exemption request”), on a form promulgated by OCA, no later than thirty days prior to the deadline by which such covered person must file a financial disclosure statement pursuant to Public Officers Law §73-a(2) that otherwise must disclose such client information. Applications may be filed in advance of the applicant’s commencement of work on the client matter. An applicant may not file an exemption request with OCA for a client matter which the applicant has previously addressed in an exemption application filed with the Commission.

(b) The exemption request shall be made in writing, signed by the applicant, and filed electronically in a manner specified by OCA.

(c) The applicant shall state the following in the exemption request, as required by statute:

“My client is not currently receiving my services or seeking my services in connection with:

- (1) a proposed bill or resolution in the Senate or Assembly during the reporting period;
- (2) a contract in an amount totaling \$10,000 or more from the state or any state agency for services, materials or property;
- (3) a grant of \$10,000 or more from the state or any state agency during the reporting period;
- (4) a grant obtained through a legislative initiative during the reporting period;
or
- (5) a case, proceeding, application or other matter that is not a ministerial matter before a state agency during the reporting period.”

(d) The exemption request shall include the following information, to the best of the applicant’s knowledge and upon professionally appropriate inquiry:

- (1) the applicant’s name, title and work address, and a description of the applicant’s duties and responsibilities;

(2) a description of the services rendered or to be rendered in each matter on which the applicant has provided or anticipates providing services to the client during the reporting period, including the actual or estimated duration of such services;

(3) a statement explaining why the applicant should receive the requested exemption, with reference to the factors set forth in section 160.4(a) of this Part;

(4) whether the client has any business before the state; and, if so, how significant the business is; and whether the client has any particularized interest in pending legislation and if so how significant the interest is;

(5) a description of any action relating to the client taken by the applicant in the course of performing the applicant's official duties;

(6) whether or not the applicant has publicly disclosed the client relationship in any public filing or public appearance; and

(7) whether or not the applicant has applied to OCA or the Commission for an exemption from disclosure of the client's identity on any matter (including pending applications) and the result of such applications;

(8) any other relevant information, including statements from clients and third parties, which the applicant believes may support the exemption request.

(e) The applicant need not initially disclose the identity of the client or the compensation earned or expected to be earned in the course of the engagement. However, if disclosure of this information by the applicant is necessary in furtherance of a proper determination of the exemption request, OCA may require such disclosure.

§160.4. Action by OCA.

(a) Upon receipt of an exemption request pursuant to section 160.3 of this Part, OCA shall review the material filed to determine whether the exemption request shall be granted. The factors OCA shall consider in determining an exemption request shall include, but not be limited to, the following statutory factors:

(1) the nature and the size of the client;

(2) whether the client has any business before the state; and, if so, how significant the business is; and whether the client has any particularized interest in pending legislation and if so how significant the interest is;

(3) whether disclosure may reveal trade secrets;

(4) whether disclosure could reasonably result in retaliation against the client;

(5) whether disclosure may cause undue harm to the client;

(6) whether disclosure may result in undue harm to the attorney-client relationship; and

(7) whether disclosure may result in an unnecessary invasion of privacy to the client.

(b) In reviewing an exemption request, OCA may consult with bar or other professional associations, or with the Commission or the Legislative Ethics Commission for individuals subject to its jurisdiction, and may consider the rules of professional conduct.

(c) OCA shall grant the exemption request upon a finding that, under the totality of the circumstances, the interests in nondisclosure of the client information (including the general interests served by principles of client confidentiality) outweigh the interests served by disclosure; otherwise it shall deny the request. OCA shall provide the applicant with a written explanation of its determination, which shall clearly state that such determination is based solely upon the information furnished by the applicant in support of his or her exemption request and that, upon any subsequent change in such information, the determination may be reconsidered as provided in this Part. The OCA determination shall neither address nor alter the applicant's disclosure or confidentiality obligations under any law or authority other than Public Officers Law §73-a.

(d) OCA shall determine an exemption request not later than three days following the day on which such request is received; provided, however, where the last of such days is a Saturday, Sunday or a public holiday, OCA may render its determination on the next succeeding business day as provided by the General Construction Law. When the request contains information deemed insufficient for the rendering of a determination, OCA may direct the applicant to provide additional information in a further submission, whereupon it shall render its determination within three business days from receipt of such additional information.

(e) Where OCA denies an exemption request, and thereafter there occurs a material change of facts or circumstances – including a change in the applicant's title or duties, a change in the nature of the services provided to the client, or a change in the nature of such client's business – an applicant may seek reconsideration of that denial by following the procedures set forth in section 160.3.

(f) Where OCA grants an exemption request, it shall be unnecessary for the applicant to make the same request in subsequent years, except that the applicant shall thereafter annually review the application submitted in support of the exemption request to determine whether there has been a material change in the facts and circumstances reported in such application – including a change in the facts attested pursuant to section 160.3(c) of this rule; or in the scope of the services provided by an applicant to the client; or in the applicant's title, responsibilities, or assignments. In the event of such change, the applicant shall promptly report that change to OCA, which may, in appropriate cases, withdraw the exemption. Where OCA withdraws an

exemption pursuant to this subdivision, OCA shall provide the applicant with a written explanation for such action.

(g) Determinations pursuant to this Part shall not be deemed judicial determinations and shall not be subject to judicial review except as may otherwise be authorized by law.

§ 160.5. Confidentiality.

OCA shall keep confidential all information submitted to it which is subject of or part of an exemption request pursuant to this Part, and shall release such information only upon authorization of a court of competent jurisdiction.

§ 160.6. Initial Public Offerings.

When a covered person, or his or her firm, has provided legal representation to a client with respect to an initial public offering, and federal law or regulations restrict the disclosure of information relating to such work, the covered person shall deliver electronically, in a manner set forth by OCA, a signed written statement, disclosing the identity of the client and the services relating to the initial public offering.

EXHIBIT B

Section 1. Subparagraphs (a), (b) and (c) of paragraph 8 and paragraph 13 of subdivision 3 of section 73-a of the public officers law, subparagraphs (a), (b) and (c) of paragraph 8 as amended by section 37 of subpart A of part H of chapter 55 of the laws of 2014 and paragraph 13 as amended by section 5 of part A of chapter 399 of the laws of 2011, are amended to read as follows:

(a) If the reporting individual practices law, is licensed by the department of state as a real estate broker or agent or practices a profession licensed by the department of education, or works as a member or employee of a firm required to register pursuant to section one-e of the legislative law as a lobbyist, ~~[give a general]~~ describe the services rendered for which compensation was paid including a general description of the principal subject areas of matters undertaken by such individual and principal duties performed. Specifically state whether the reporting individual provides services directly to clients. Additionally, if such an individual practices with a firm or corporation and is a partner or shareholder of the firm or corporation, give a general description of principal subject areas of matters undertaken by such firm or corporation.

(b) APPLICABLE ONLY TO NEW CLIENTS OR CUSTOMERS FOR WHOM SERVICES ARE PROVIDED ON OR AFTER JULY FIRST, TWO THOUSAND TWELVE AND BEFORE DECEMBER THIRTY-FIRST, TWO THOUSAND FIFTEEN, OR FOR NEW MATTERS FOR EXISTING CLIENTS OR CUSTOMERS WITH RESPECT TO THOSE SERVICES THAT ARE PROVIDED ON OR AFTER JULY FIRST, TWO THOUSAND TWELVE AND BEFORE DECEMBER THIRTY-FIRST, TWO THOUSAND FIFTEEN:

If the reporting individual personally provides services to any person or entity, or works as a member or employee of a partnership or corporation that provides such services (referred to hereinafter as a "firm"), then identify each client or customer to whom the reporting individual personally provided services, or who was referred to the firm by the reporting individual, and from whom the reporting individual or his or her firm earned fees in excess of \$10,000 during the reporting period for such services rendered in direct connection with:

(i) ~~[A proposed bill or resolution in the senate or assembly during the reporting period;~~

~~(ii)]~~ A contract in an amount totaling \$50,000 or more from the state or any state agency for services, materials, or property;

~~[(iii)]~~ (ii) A grant of \$25,000 or more from the state or any state agency during the reporting period;

~~[(iv)]~~ (iii) A grant obtained through a legislative initiative during the reporting period; or

~~[(v)]~~ (iv) A case, proceeding, application or other matter that is not a ministerial matter before a state agency during the reporting period.

For purposes of this question, "referred to the firm" shall mean: having intentionally and knowingly taken a specific act or series of acts to intentionally procure for the reporting individual's firm or knowingly solicit or direct to the reporting individual's firm in whole or substantial part, a person or entity that becomes a client of that firm for the purposes of representation for a matter as defined in

subparagraphs (i) through ~~(iv)~~ (iv) of this paragraph, as the result of such procurement, solicitation or direction of the reporting individual. A reporting individual need not disclose activities performed while lawfully acting pursuant to paragraphs (c), (d), (e) and (f) of subdivision seven of section seventy-three of this article.

The disclosure requirement in this question shall not require disclosure of clients or customers receiving medical or dental services, mental health services, residential real estate brokering services, or insurance brokering services from the reporting individual or his or her firm. The reporting individual need not identify any client to whom he or she or his or her firm provided legal representation with respect to investigation or prosecution by law enforcement authorities, bankruptcy, or domestic relations matters. With respect to clients represented in other matters, where disclosure of a client's identity is likely to cause harm, the reporting individual shall request an exemption from the joint commission pursuant to paragraph (i) of subdivision nine of section ninety-four of the executive law ~~Only~~, provided, however, that a reporting individual who first enters public office after July first, two thousand twelve, need not report clients or customers with respect to matters for which the reporting individual or his or her firm was retained prior to entering public office.

Client

Nature of Services Provided

(c) APPLICABLE ONLY TO NEW CLIENTS OR CUSTOMERS FOR WHOM SERVICES ARE PROVIDED ON OR AFTER ~~JANUARY FIRST~~ DECEMBER THIRTY-FIRST, TWO THOUSAND FIFTEEN, OR FOR NEW MATTERS FOR EXISTING CLIENTS OR CUSTOMERS WITH RESPECT TO THOSE SERVICES THAT ARE PROVIDED ON OR AFTER ~~JANUARY FIRST~~ DECEMBER THIRTY-FIRST, TWO THOUSAND FIFTEEN:

If the reporting individual receives income of ~~fifty~~ ten thousand dollars or greater from any employment or activity reportable under question 8(a), identify each registered lobbyist who has directly referred to such individual a client who was successfully referred to the reporting individual's business and from whom the reporting individual or firm received a fee for services in excess of ~~ten~~ five thousand dollars. Report only ~~these~~ those referrals that were made to a reporting individual by direct communication from a person known to such reporting individual to be a registered lobbyist at the time the referral is made. With respect to each such referral, the reporting individual shall identify the client, the registered lobbyist who has made the referral, the category of value of the compensation received and a general description of the type of matter so referred. A reporting individual need not disclose activities performed while lawfully acting pursuant to paragraphs (c), (d), (e) and (f) of subdivision seven of section seventy-three of this article. The disclosure requirements in this question shall not require ~~[disclosure of clients or customers receiving medical or dental services, mental health services, residential real estate brokering services, or insurance brokering services from the reporting individual or his or her firm. The reporting individual need not identify any client to whom he or she or his or her firm provided legal representation with respect to investigation or prosecution by law enforcement authorities, bankruptcy, or domestic relations~~

~~matters. With respect to clients represented in other matters, the reporting individual shall request an exemption from the joint commission, which shall be granted for good cause shown. For the purposes of this question, good cause may be shown by circumstances including, but not limited to, where disclosure of a client's identity would reveal trade secrets or have a negative impact on the client's business interests, would cause embarrassment for the client, could reasonably result in retaliation against the client, or would tend to reveal non-public matters regarding a criminal investigation. Only a) disclosing clients or customers receiving medical, pharmaceutical or dental services, mental health services, or residential real estate brokering services from the reporting individual or his or her firm or if federal law prohibits or limits disclosure. The reporting individual need not identify any client to whom he or she or his or her firm provided legal representation with respect to investigation or prosecution by law enforcement authorities, bankruptcy, family court, estate planning, or domestic relations matters, nor shall the reporting individual identify individuals represented pursuant to an insurance policy but the reporting individual shall in such circumstances only report the entity that provides compensation to the reporting individual; with respect to matters in which the client's name is required by law to be kept confidential (such as matters governed by the family court act) or in matters in which the reporting individual represents or provides services to minors, the client's name may be replaced with initials. To the extent that the reporting individual, or his or her firm, provided legal representation with respect to an initial public offering, and federal law or regulations restricts the disclosure of information relating to such work, the reporting individual shall (i) disclose the identity of the client and the services provided relating to the initial public offering to the office of court administration, who will maintain such information confidentially in a locked box; and (ii) include in his or her response a statement that pursuant to this paragraph, a disclosure to the office of court administration has been made. Upon such time that the disclosure of information maintained in the locked box is no longer restricted by federal law or regulation, the reporting individual shall disclose such information in an amended disclosure statement in response to the disclosure requirements of this paragraph. The office of court administration shall develop and maintain a secure portal through which information submitted to it pursuant to this paragraph can be safely and confidentially stored. With respect to clients represented in other matters not otherwise exempt, the reporting individual may request an exemption to publicly disclosing the name of that client from the joint commission pursuant to paragraph (i) of subdivision nine of section ninety-four of the executive law, or from the office of court administration. In such application, the reporting individual shall state the following: "My client is not currently receiving my services or seeking my services in connection with:~~

(i) A proposed bill or resolution in the senate or assembly during the reporting period;

(ii) A contract in an amount totaling \$10,000 or more from the state or any state agency for services, materials, or property;

(iii) A grant of \$10,000 or more from the state or any state agency during the reporting period;

(iv) A grant obtained through a legislative initiative during the reporting period; or

(v) A case, proceeding, application or other matter that is not a ministerial matter before a state agency during the reporting period."

In reviewing the request for an exemption, the joint commission or the office of court administration may consult with bar or other professional associations and the legislative ethics commission for individuals subject to its jurisdiction and may consider the rules of professional conduct. In making its determination, the joint commission or the office of court administration shall conduct its own inquiry and shall consider factors including, but not limited to: (i) the nature and the size of the client; (ii) whether the client has any business before the state; and if so, how significant the business is; and whether the client has any particularized interest in pending legislation and if so how significant the interest is; (iii) whether disclosure may reveal trade secrets; (iv) whether disclosure could reasonably result in retaliation against the client; (v) whether disclosure may cause undue harm to the client; (vi) whether disclosure may result in undue harm to the attorney-client relationship; and (vii) whether disclosure may result in an unnecessary invasion of privacy to the client.

The joint commission or, as the case may be, the office of court administration shall promptly make a final determination in response to such request, which shall include an explanation for its determination. The office of court administration shall issue its final determination within three days of receiving the request. Notwithstanding any other provision of law or any professional disciplinary rule to the contrary, the disclosure of the identity of any client or customer in response to this question shall not constitute professional misconduct or a ground for disciplinary action of any kind, or form the basis for any civil or criminal cause of action or proceeding. A reporting individual who first enters public office after [~~January first~~] December thirty-first, two thousand fifteen, need not report clients or customers with respect to matters for which the reporting individual or his or her firm was retained prior to entering public office.

Client	Name of Lobbyist	Category of Amount (in Table 1)
--------	------------------	---------------------------------

13. List below the nature and amount of any income in EXCESS of \$1,000 from EACH SOURCE for the reporting individual and such individual's spouse for the taxable year last occurring prior to the date of filing. Each such source must be described with particularity. Nature of income includes, but is not limited to, all income (other than that received from the employment listed under Item 2 above) from compensated employment whether public or private, directorships and other fiduciary positions, contractual arrangements, teaching income, partnerships, honorariums, lecture fees, consultant fees, bank and bond interest, dividends, income derived from a trust, real estate rents, and recognized gains from the sale or exchange of real or other property. Income from a business or profession and real estate rents shall be reported with the source identified by the building address in the case of real estate rents and otherwise by the name of the entity and not by the name of the individual customers, clients or tenants, with the aggregate net income before taxes

for each building address or entity. The receipt of maintenance received in connection with a matrimonial action, alimony and child support payments shall not be listed.

Self/ Spouse	Source	Nature	Category of Amount (In Table I)

§ 2. Paragraph 8 of subdivision 3 of section 73-a of the public officers law is amended by adding two new subparagraphs (b-1) and (b-2) to read as follows:

(b-1) APPLICABLE ONLY TO NEW CLIENTS OR CUSTOMERS FOR WHOM SERVICES ARE PROVIDED ON OR AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND FIFTEEN, OR FOR NEW MATTERS FOR EXISTING CLIENTS OR CUSTOMERS WITH RESPECT TO THOSE SERVICES THAT ARE PROVIDED ON OR AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND FIFTEEN (FOR PURPOSES OF THIS QUESTION, "SERVICES" SHALL MEAN CONSULTATION, REPRESENTATION, ADVICE OR OTHER SERVICES):

If the reporting individual receives income from employment reportable in question 8(a) and personally provides services to any person or entity, or works as a member or employee of a partnership or corporation that provides such services (referred to hereinafter as a "firm"), the reporting individual shall identify each client or customer to whom the reporting individual personally provided services, or who was referred to the firm by the reporting individual, and from whom the reporting individual or his or her firm earned fees in excess of \$10,000 during the reporting period in direct connection with:

- (i) A contract in an amount totaling \$10,000 or more from the state or any state agency for services, materials, or property;
- (ii) A grant of \$10,000 or more from the state or any state agency during the reporting period;
- (iii) A grant obtained through a legislative initiative during the reporting period; or
- (iv) A case, proceeding, application or other matter that is not a ministerial matter before a state agency during the reporting period.

For such services rendered by the reporting individual directly to each such client, describe each matter that was the subject of such representation, the services actually provided and the payment received. For payments received from clients referred to the firm by the reporting individual, if the reporting individual directly received a referral fee or fees for such referral, identify the client and the payment so received.

For purposes of this question, "referred to the firm" shall mean: having intentionally and knowingly taken a specific act or series of acts to intentionally procure for the reporting individual's firm or having knowingly solicited or directed to the reporting individual's firm in whole or substantial part, a person or entity that becomes a client of that firm for the purposes of representation for a matter as defined in clauses (i) through (iv) of this subparagraph, as the result of such procurement, solicitation or direction of the reporting individual. A reporting individual need not disclose activities performed while

lawfully acting in his or her capacity as provided in paragraphs (c), (d), (e) and (f) of subdivision seven of section seventy-three of this article.

<u>Client</u>	<u>Matter</u>	<u>Nature of Services Provided</u>	<u>Category of Amount (in Table I)</u>
---------------	---------------	------------------------------------	--

(b-2) APPLICABLE ONLY TO NEW CLIENTS OR CUSTOMERS FOR WHOM SERVICES ARE PROVIDED ON OR AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND FIFTEEN, OR FOR NEW MATTERS FOR EXISTING CLIENTS OR CUSTOMERS WITH RESPECT TO THOSE SERVICES THAT ARE PROVIDED ON OR AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND FIFTEEN (FOR PURPOSES OF THIS QUESTION, "SERVICES" SHALL MEAN CONSULTATION, REPRESENTATION, ADVICE OR OTHER SERVICES):

(i) With respect to reporting individuals who receive ten thousand dollars or more from employment or activity reportable under question 8(a), for each client or customer NOT otherwise disclosed or exempted in question 8 or 13, disclose the name of each client or customer known to the reporting individual to whom the reporting individual provided services: (A) who paid the reporting individual in excess of five thousand dollars for such services; or (B) who had been billed with the knowledge of the reporting individual in excess of five thousand dollars by the firm or other entity named in question 8(a) for the reporting individual's services.

<u>Client</u>	<u>Services Actually Provided</u>	<u>Category of Amount (in Table I)</u>
---------------	-----------------------------------	--

FOLLOWING IS AN ILLUSTRATIVE, NON-EXCLUSIVE LIST OF EXAMPLES OF DESCRIPTIONS OF "SERVICES ACTUALLY PROVIDED":

- * REVIEWED DOCUMENTS AND CORRESPONDENCE;
- * REPRESENTED CLIENT (IDENTIFY CLIENT BY NAME) IN LEGAL PROCEEDING;
- * PROVIDED LEGAL ADVICE ON CLIENT MATTER (IDENTIFY CLIENT BY NAME);
- * CONSULTED WITH CLIENT OR CONSULTED WITH LAW PARTNERS/ASSOCIATES/MEMBERS OF FIRM ON CLIENT MATTER (IDENTIFY CLIENT BY NAME);
- * PREPARED CERTIFIED FINANCIAL STATEMENT FOR CLIENT (IDENTIFY CLIENT BY NAME);
- * REFERRED INDIVIDUAL OR ENTITY (IDENTIFY CLIENT BY NAME) FOR REPRESENTATION OR CONSULTATION;
- * COMMERCIAL BROKERING SERVICES (IDENTIFY CUSTOMER BY NAME);
- * PREPARED CERTIFIED ARCHITECTURAL OR ENGINEERING RENDERINGS FOR CLIENT (IDENTIFY CUSTOMER BY NAME);
- * COURT APPOINTED GUARDIAN OR EVALUATOR (IDENTIFY COURT NOT CLIENT).

(ii) With respect to reporting individuals who disclosed in question 8(a) that the reporting individual did not provide services to a client but provided services to a firm or business, identify the category of

amount received for providing such services and describe the services rendered.

A reporting individual need not disclose activities performed while lawfully acting in his or her capacity as provided in paragraphs (c), (d), (e) and (f) of subdivision seven of section seventy-three of this article.

The disclosure requirement in questions (b-1) and (b-2) shall not require disclosing clients or customers receiving medical, pharmaceutical or dental services, mental health services, or residential real estate brokering services from the reporting individual or his or her firm or if federal law prohibits or limits disclosure. The reporting individual need not identify any client to whom he or she or his or her firm provided legal representation with respect to investigation or prosecution by law enforcement authorities, bankruptcy, family court, estate planning, or domestic relations matters, nor shall the reporting individual identify individuals represented pursuant to an insurance policy but the reporting individual shall in such circumstances only report the entity that provides compensation to the reporting individual; with respect to matters in which the client's name is required by law to be kept confidential (such as matters governed by the family court act) or in matters in which the reporting individual represents or provides services to minors, the client's name may be replaced with initials. To the extent that the reporting individual, or his or her firm, provided legal representation with respect to an initial public offering, and professional disciplinary rules, federal law or regulations restrict the disclosure of information relating to such work, the reporting individual shall (i) disclose the identity of the client and the services provided relating to the initial public offering to the office of court administration, who will maintain such information confidentially in a locked box; and (ii) include in his or her response to questions (b-1) and (b-2) that pursuant to this paragraph, a disclosure to the office of court administration has been made. Upon such time that the disclosure of information maintained in the locked box is no longer restricted by professional disciplinary rules, federal law or regulation, the reporting individual shall disclose such information in an amended disclosure statement in response to the disclosure requirements in questions (b-1) and (b-2). The office of court administration shall develop and maintain a secure portal through which information submitted to it pursuant to this paragraph can be safely and confidentially stored. With respect to clients represented in other matters not otherwise exempt, the reporting individual may request an exemption to publicly disclosing the name of that client from the joint commission pursuant to paragraph (i) of subdivision nine of section ninety-four of the executive law, or from the office of court administration. In such application, the reporting individual shall state the following: "My client is not currently receiving my services or seeking my services in connection with:

(i) A proposed bill or resolution in the senate or assembly during the reporting period;

(ii) A contract in an amount totaling \$10,000 or more from the state or any state agency for services, materials, or property;

(iii) A grant of \$10,000 or more from the state or any state agency during the reporting period;

(iv) A grant obtained through a legislative initiative during the reporting period; or

(v) A case, proceeding, application or other matter that is not a ministerial matter before a state agency during the reporting period."

In reviewing the request for an exemption, the joint commission or the office of court administration may consult with bar or other professional associations and the legislative ethics commission for individuals subject to its jurisdiction and may consider the rules of professional conduct. In making its determination, the joint commission or the office of court administration shall conduct its own inquiry and shall consider factors including, but not limited to: (i) the nature and the size of the client; (ii) whether the client has any business before the state; and if so, how significant the business is; and whether the client has any particularized interest in pending legislation and if so how significant the interest is; (iii) whether disclosure may reveal trade secrets; (iv) whether disclosure could reasonably result in retaliation against the client; (v) whether disclosure may cause undue harm to the client; (vi) whether disclosure may result in undue harm to the attorney-client relationship; and (vii) whether disclosure may result in an unnecessary invasion of privacy to the client.

The joint commission or, as the case may be, the office of court administration shall promptly make a final determination in response to such request, which shall include an explanation for its determination. The office of court administration shall issue its final determination within three days of receiving the request. Notwithstanding any other provision of law or any professional disciplinary rule to the contrary, the disclosure of the identity of any client or customer in response to this question shall not constitute professional misconduct or a ground for disciplinary action of any kind, or form the basis for any civil or criminal cause of action or proceeding. A reporting individual who first enters public office after January first, two thousand sixteen, need not report clients or customers with respect to matters for which the reporting individual or his or her firm was retained prior to entering public office.

<u>Client</u>	<u>Services</u>	<u>Category of Amount</u>
	<u>Actually Provided</u>	<u>(in Table I)</u>

§ 3. Section 73-a of the public officers law is amended by adding a new subdivision 7 to read as follows:

7. With respect to an application to either the joint commission or the office of court administration for an exemption to disclosing the name of a client or customer in response to questions 8 (b-1), 8 (b-2) and 8 (c), all information which is the subject of or a part of such application shall remain confidential. The name of the client need not be disclosed by the reporting individual unless and until the joint commission or the office of court administration formally advises the reporting individual that he or she must disclose such names and the reporting individual agrees to represent the client. Any commissioner or person employed by the joint commission or any person employed by the office of court administration who, intentionally and without authorization from a court of competent jurisdiction releases confidential information related to a request for an exemption received by the

commission or the office of court administration shall be guilty of a class A misdemeanor.

§ 4. Section 73 of the public officers law is amended by adding a new subdivision 7-a to read as follows:

7-a. No member of the legislature, legislative employee, statewide elected official, or state officer or employee shall receive, directly or indirectly, or enter into any agreement express or implied, for any compensation, in whatever form, for the rendering of consulting, representational, advisory or other services by himself or herself or another in connection with any proposed or pending bill or resolution in the senate or assembly.

§ 5. Subdivision 18 of section 73 of the public officers law, as amended by chapter 14 of the laws of 2007, is amended to read as follows:

18. In addition to any penalty contained in any other provision of law, any person who knowingly and intentionally violates the provisions of subdivisions two through five, seven, seven-a, eight, twelve or fourteen through seventeen of this section shall be subject to a civil penalty in an amount not to exceed forty thousand dollars and the value of any gift, compensation or benefit received in connection with such violation. Assessment of a civil penalty hereunder shall be made by the state oversight body with jurisdiction over such person. A state oversight body acting pursuant to its jurisdiction, may, in lieu of a civil penalty, with respect to a violation of subdivisions two through five, seven or eight of this section, refer a violation of any such subdivision to the appropriate prosecutor and upon such conviction such violation shall be punishable as a class A misdemeanor.

§ 6. Subdivisions (k) and (t) of section 1-c of the legislative law, subdivision (k) as amended and subdivision (t) as added by chapter 1 of the laws of 2005, are amended to read as follows:

(k) The term "municipality" shall mean any jurisdictional subdivision of the state, including but not limited to counties, cities, towns, villages, improvement districts and special districts, with a population of more than [~~fifty~~] five thousand, and industrial development agencies in jurisdictional subdivisions with a population of more than [~~fifty~~] five thousand; and public authorities, and public corporations [~~but shall not include school districts~~].

(t) The term "local legislative body" shall mean the board of supervisors, board of aldermen, common council, council, commission, town board, board of trustees or other elective governing board or body of a municipality now or hereafter vested by state statute, charter or other law with jurisdiction to initiate and adopt local laws [~~and~~] ordinances and budgets, whether or not such local laws [~~or~~] ordinances or budgets require approval of the elective chief executive officer or other official or body to become effective.

§ 7. Subdivision 2 of section 5 of the legislative law is REPEALED and a new subdivision 2 is added to read as follows:

2. (a) Each member of the legislature, upon verification of attendance, which shall be by electronic verification when practicable, in compliance with the policies set forth by the speaker of the assembly and the temporary president of the senate for their respective bodies, shall be eligible to receive payment of actual and necessary travel expenses and a per diem equivalent to the most recent federal per diem rates published by the general services administration as set forth in 41 CFR (Code of Federal Regulations) Part 301, App. A, for the time in which the member was in travel status in the performance of his or her

[SECTIONS 4-13 OMITTED]

graph d of subdivision five of part B of section two hundred thirty-six of the domestic relations law shall be considered by the court. However, when determining such apportionment, the court shall not annul or modify any prior court order regarding such benefits.

§ 13. Subdivision 8 of section 157 of the retirement and social security law, as added by section 1 of part C of chapter 399 of the laws of 2011, is amended to read as follows:

8. In determining whether the pension shall be reduced or revoked, the supreme court shall consider and make findings of fact and conclusions of law that include, but shall not be limited to, a consideration of the following factors:

(a) Whether the defendant stands convicted of such a felony of a crime related to public office, and the specific paragraph or paragraphs of subdivision one of section one hundred fifty-six of this article that have been proven or not proven;

(b) The severity of the crime related to public office of which the defendant stands convicted;

(c) The amount of monetary loss suffered by such state or municipality as a result of such crime related to public office;

(d) The degree of public trust reposed in the public official by virtue of the person's position as a public official;

(e) If the crime related to public office was part of a fraudulent scheme against the state or a municipality, the role of the public official in such fraudulent scheme against such state or a municipality;

(f) The defendant's criminal history, if any;

(g) The impact of forfeiture, in whole or in part, on defendant's dependents, present or former spouses, or domestic partners;

(h) The proportionality of forfeiture of all or part of the pension to the crime committed;

(i) The years of service in public office by the defendant where no criminal activity has been found by a court; and

~~(i)~~ (j) Any such other factors as, in the judgment of the supreme court, justice may require.

§ 14. The office of court administration shall promulgate rules to effectuate the amendments to section 73-a of the public officers law made by sections two and three of this act which require it to establish a "locked box" and establish a mechanism to process and consider claims by individuals required to file financial disclosure statements for exempting the disclosure of clients.

§ 15. Severability clause. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 16. This act shall take effect immediately; provided, however, the amendments made to subparagraph (c) of paragraph 8 of subdivision 3 of section 73-a of the public officers law by section one of this act shall take effect December 31, 2015; provided, further, that sections ten, eleven, and twelve of this act shall take effect on the first of January next succeeding the date upon which the people shall approve and ratify amendments to section 7 of article V of the constitution by a majority of the electors voting thereon relating to the reduction of pension benefits for public officials convicted of certain felony offenses

related to public office and shall only apply to offenses committed on or after such first of January.