S T A T E  O F  N E W  Y O R K

3495--A

2015-2016 Regular Sessions

I N  S E N A T E

February 10, 2015

Introduced by Sen. COMRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- recommitted to the Committee on Finance in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public officers law and the executive law, in relation to the business or professional activities of state employees

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Paragraph 8 of subdivision 3 of section 73-a of the public officers law, as amended by section 37 of subpart A of part H of chapter 55 of the laws of 2014, subparagraphs (a), (b) and (c) as amended by section 1 and subparagraphs (b-1) and (b-2) as added by section 2 of part CC of chapter 56 of the laws of 2015, is amended to read as follows:

8. (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, 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.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD09072-03-6

_____
_____
_____ ]

IDENTIFY AND SPECIFICALLY DESCRIBE THE SOURCE, INCLUDING THE NAME OF EACH CLIENT OR CUSTOMER, AND THE NATURE OF ANY INCOME OR FEES EARNED BY THE REPORTING INDIVIDUAL OR, IN THE CASE OF A CLIENT OR CUSTOMER REFERRED TO A FIRM OR CORPORATION WITH WHICH THE REPORTING INDIVIDUAL PRACTICES, THE FIRM OR CORPORATION, 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) A GRANT OF $25,000 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.

ANY DESCRIPTION OF THE NATURE OF INCOME OR FEES EARNED BY THE REPORTING INDIVIDUAL, OR THE FIRM OR CORPORATION WITH WHICH SUCH INDIVIDUAL PRACTICES, SHALL INCLUDE A CLEAR AND COMPLETE EXPLANATION OF THE SERVICES RENDERED IN EXCHANGE FOR THE INCOME OR FEES EARNED BY THE REPORTING INDIVIDUAL, OR BY THE FIRM OR CORPORATION WITH WHICH SUCH INDIVIDUAL PRACTICES.

FOR PURPOSES OF THIS QUESTION, "REFERRED TO A FIRM OR CORPORATION" SHALL MEAN: HAVING INTENTIONALLY AND KNOWINGLY TAKEN A SPECIFIC ACT OR SERIES OF ACTS TO INTENTIONALLY PROCURE FOR THE REPORTING INDIVIDUAL'S FIRM OR CORPORATION OR KNOWINGLY SOLICIT OR DIRECT TO THE REPORTING INDIVIDUAL'S FIRM OR CORPORATION IN WHOLE OR SUBSTANTIAL PART, A PERSON OR ENTITY THAT BECOMES A CLIENT OF THAT FIRM OR CORPORATION FOR THE PURPOSES OF REPRESENTATION FOR A MATTER AS DEFINED IN SUBPARAGRAPHS (I) THROUGH (V) OF THIS PARAGRAPH, AS A 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 OR 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 THE 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-1) OF SUBDIVISION NINE OF SECTION NINETY-FOUR OF THE EXECUTIVE LAW.

| NAME OF CLIENT/ CUSTOMER | ADDRESS | NATURE OF SERVICES RENDERED | CATEGORY OF VALUE OF EARNED INCOME/FEES (IN TABLE II) |
|---|---|---|---|

_____
_____
_____
_____
_____

(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 contract in an amount totaling $50,000 or more from the state or any state agency for services, materials, or property;

(ii) A grant of $25,000 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 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) 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, 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

(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.

| Client | Matter | Nature of Services Provided | Category of Amount (in Table I) |
|---|---|---|---|

(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.

| Client | Services Actually Provided | Category of Amount (in Table I) |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |

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, pharmaceu-

tical 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.

| Client | Services Actually Provided | Category of Amount (in Table I) |
|---|---|---|
| | | |
| | | |
| | | |
| | | |

(c)] APPLICABLE ONLY TO NEW CLIENTS OR CUSTOMERS FOR WHOM SERVICES ARE PROVIDED ON OR AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND [FIFTEEN] SIXTEEN, 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] SIXTEEN:

If the reporting individual receives income of 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 five thousand dollars. Report only 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 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 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) |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |

[(d)] (C) List the name, principal address and general description or the nature of the business activity of any entity in which the reporting individual or such individual's spouse had an investment in excess of $1,000 excluding investments in securities and interests in real property.

_____
_____
_____
_____
_____

S 2. Paragraph (i-l) of subdivision 9 of section 94 of the executive law, as added by section 6 of part A of chapter 399 of the laws of 2011, is amended to read as follows:

(i-1) Permit any person required to file a financial disclosure statement to request an exemption from any requirement to report the identity of a client pursuant to question [8(b)] 8(A) in such statement based upon an exemption set forth in that question. The reporting individual need not seek an exemption to refrain from disclosing the identity of any client with respect to any matter he or she or his or her firm provided legal representation to the client in connection with an investigation or prosecution by law enforcement authorities, bankruptcy, or domestic relations matters; in addition, clients or customers receiving medical or dental services, mental health services, residential real estate brokering services, or insurance brokering services need not be disclosed.

S 3. This act shall take effect immediately.