

**STATE OF NEW YORK  
JOINT COMMISSION ON PUBLIC ETHICS**

**Advisory Opinion No. 17-02:**

Whether a Client Filer’s Source of Funding disclosure report that identifies a law firm as the source of contributions complies with the Lobbying Act, when such funds were donated – with the knowledge of the Client Filer – from an escrow account held by the law firm on behalf of another.

**FACTS, AUTHORITIES AND BACKGROUND**

As part of the Public Integrity Reform Act of 2011 (“PIRA”, Chapter 399 of the Laws of 2011), certain<sup>1</sup> clients of lobbyists and lobbyists who lobby on their own behalf must disclose each source of funding who contributed more than \$2,500 in a year<sup>2</sup> (“Source of Funding”), as part of the Client Semi-Annual Report or Lobbyist Bimonthly Report, as applicable. See Legislative Law Article 1-A (the “Lobbying Act”) Sections 1-h, 1-j.<sup>3</sup>

This statutory requirement to disclose Source of Funding provided greater transparency about lobbying and those interests that pay for it. The “Statement in Support”, articulated in the “Memorandum in Support” of the legislation included in the Bill Jacket accompanying PIRA, notes:

*This legislation also sheds sunlight on the activities of lobbyists and clients of lobbyists that devote substantial resources to such activities by requiring that they disclose each source of funding over \$5,000 used for such lobbying... New York State must enhance disclosure of the sources of funding for advocacy across numerous areas of public concern. This bill would take a critical first step to provide such disclosure with respect to lobbying so that **the public could better understand the real parties in interest** behind substantial lobbying initiatives. (Emphasis added).<sup>4</sup>*

Pursuant to PIRA, the Joint Commission on Public Ethics (the “Commission”) promulgated regulations addressing the new Source of Funding disclosure requirements, codified at 19 NYCRR Part 938, to require that a Client Filer<sup>5</sup> disclose the:

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<sup>1</sup> Source of Funding reporting is only required for an entity that expends more than \$15,000 in a year on lobbying in New York, and such spending constitutes more than three percent of the entity’s total expenditures.

<sup>2</sup> Chapter 286 of the Laws of 2016 decreased the minimum contribution amount for disclosing a Source to \$2,500, from \$5,000, and also reduced the threshold spending amount to \$15,000, from \$50,000.

<sup>3</sup> The Commission subsequently determined that the Source of Funding reports should be reported in the Client Semi-Annual Report. 19 NYCRR 938.3(b).

<sup>4</sup> <http://www.governor.ny.gov/sites/governor.ny.gov/files/archive/assets/GPB9PUBLICINTEGRITYREFORMACTMEMO.pdf>. Notably, Susan Lerner, Executive Director of Common Cause/NY stated that the legislation provided the public with “relevant information about who is paying for certain groups’ lobbying activities.”

<http://www.governor.ny.gov/news/governor-cuomo-majority-leader-skelos-speaker-silver-announce-agreement-historic-ethics-reform>

<sup>5</sup> Pursuant to the Regulations, a client or lobbyist required to file Source of Funding Reporting is referred to as a “Client Filer”. See 19 NYCRR 938.2.

- (i) Name of person, corporation, partnership, organization, or entity making the Contribution(s)
- (ii) Name and address of principal place of business, if any;
- (iii) Date the Client Filer received the Contribution(s);
- (iv) Reportable Amount of the Contribution(s).<sup>6</sup>

This opinion addresses a question, the answer to which is self-evident: whether an entity (the “Donor”) that seeks to make monetary contributions to an organization that engages in lobbying (the “Client Filer”) on an issue of interest to the Donor, can avoid being identified in the Client Filer’s lobbying reports as the Source of the contributions by coordinating with a law firm that is unaffiliated with the Client Filer to deposit such contributions in an escrow account from which the funds would be contributed to the Client Filer.

### ANALYSIS

The statute and regulations governing Source of Funding reporting require disclosing sources of funds used for lobbying activity including, but not limited to, the name and address of the Source of funds. As discussed in the scenario above, if the Client Filer were aware of the path of the funds from the Donor to the escrow account at the law firm to the Client Filer, could the Client Filer report the law firm as the Source of the Funds?

#### *Escrow Accounts – Ownership*

Pursuant to the New York Rules of Professional Conduct (“Rules”)<sup>7</sup>, an attorney possessing funds belonging to another person that are incident to the attorney’s practice of law must maintain such funds in a segregated bank account. 22 NYCRR 1200.0, Rule 1.15. Such account is referred to as an “attorney special account,” “attorney trust account,” or “attorney escrow account”, or pursuant to Judiciary Law § 497, an Interest on Lawyer Account (“IOLA”) (hereinafter collectively referred to as “Attorney Escrow Accounts”) and must be completely separate and distinct from any of the attorney’s personal or law firm accounts.

The attorney acts only as a fiduciary for the client funds, and – subject to certain exceptions – possesses but does not own such funds;<sup>8</sup> the client or client’s designee is the legal owner of the funds that are segregated in the separate account. The attorney is merely a stakeholder and must follow strict bookkeeping and recordkeeping requirements with respect to Attorney Escrow Accounts, and must use checks and deposit slips that distinguish such accounts from all other bank accounts that are maintained by the attorney or the attorney’s firm. 22 NYCRR 1200.0, Rule 1.15(b)(2).

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<sup>6</sup> *Id.* at 938.5(e).

<sup>7</sup> New York Rules of Professional Conduct govern the professional standards of conduct for attorneys. These rules were promulgated as Joint Rules of the Appellate Divisions of the Supreme Court, effective April 1, 2009, and amended thereafter. The rules supersede the former part 1200, known as the “Disciplinary Rules of the Code of Professional Responsibility.”

<sup>8</sup> *See* *People v. Keeffe*, 50 NY2d 149 (1980) (Where the attorney is entitled to fees in exchange for his or her services, there is only a contract right to recover such funds).

The rules against commingling of funds, the strict bookkeeping and recordkeeping requirements, and the requirement for separate checks and deposit slips all demonstrate the importance of ensuring not only the safety of the client funds, but also a clear demarcation of the lines separating the client funds from those of the attorney.

### CONCLUSION

The Commission’s opinion affirms its position on the question before it. There has been and is no basis for confusion on this issue.

As discussed above, funds held in an Attorney Escrow Account are held by the attorney in a fiduciary role and always remain the client’s funds. In such case, the attorney (or law firm, as the case may be) would not be the Source of the contribution under the Lobbying Act. A Client Filer who is aware of the provenance of the funds, but nonetheless identifies as the Source of the contribution the attorney or law firm, rather than the owner of the funds in the Attorney Escrow Account, would violate the law and could be subject to civil and other penalties.

To find any other way would subvert a public policy identified by the Legislature and Governor as critical to uncovering the “real parties in interest” to a lobbying campaign.

Concur:

Michael K. Rozen, Chair

Gary J. Lavine

Robert Cohen

J. Gerard McAuliffe, Jr.

James E. Dering

Dawn L. Smalls

Marvin E. Jacob

George H. Weissman

Seymour Knox, IV

Absent:

James A. Yates

Dated: June 27, 2017