

## Proposal 1: ACCESSORIAL (ACCOMPLICE) LIABILITY FOR VIOLATIONS OF ETHICS AND LOBBYING LAWS



### THE ISSUE

*The amendment would make clear that those who solicit, request, command, importune, or intentionally aid a state officer or employee, or a lobbyist or lobbying client, to engage in conduct that violates the ethics or lobbying laws, cannot avoid civil liability by claiming that they did not themselves directly engage in conduct violative of those laws, which include sections 73, 73a and 74 of the Public Officers Law, section 107 of the Civil Service Law and article 1-A of the Legislative Law.*

Ample provisions exist in the state's criminal law to impose criminal liability upon those who aid, abet, assist or act in concert with criminal actors or who facilitate the latter's criminal conduct (see, e.g., Penal Law, article 20). Further, state officials and employees who fail to report official misconduct, or misconduct by those having business dealings with a government agency, are subject to disciplinary action, including discharge or removal from office (see Executive Law § 55). However, in the state's current ethics and lobbying laws, there is currently no provision expressly providing for the imposition of civil penalties on those who assist, enable or encourage others to violate those laws.

### PROPOSAL

*Amend Executive Law 94(10)(n) to ensure those who aid, abet, encourage or induce violations of the ethics or lobbying laws and do so with the requisite intent are subject to the same civil penalties as those who act directly to violate those laws.*

When an individual intentionally and/or knowingly aids, abets encourages or induces another person to engage in conduct that violates the state's ethics or lobbying laws, there should be no doubt that both the direct actor and the accomplice are subject to the same civil penalties.

The proposed amendment to the ethics and lobbying laws would make clear that those who enable, help or induce others to engage in conduct that violates those laws are also subject to civil penalties if they act with the same knowledge and intent as those who directly violate those provisions. This would ensure that those who assist, abet or encourage others to knowingly and intentionally violate the ethics laws or to knowingly and willfully violate the lobbying laws are subject to the same penalties as those who violate those laws directly.

Specifically, this proposal would amend section 94(10)(n)(i) through (iii) of the Executive Law to provide explicitly for the sanctioning of individuals and entities from soliciting, aiding or importuning others to engage in conduct that violates the State's ethics and lobbying laws by expressly imposing accessorial (or accomplice) liability for any violation of the Public Officers Law, Civil Service Law, or Legislative Law under the jurisdiction of the Commission.

Adding an express "accessorial liability" provision to the law would strengthen the Commission's enforcement arm and promote compliance with the state's ethics and lobbying laws.

*Please note, draft bill language is available upon request.*