

**Statement of New York Advocacy Association
On Proposed Amendment to Rules of the City Clerk
Relating to the Lobbying Laws**

May 18, 2015

Fees:

We have previously noted our disagreement with current § 1-02 Fees for Lobbyist Registration insofar as fees are higher for a lobbyist's first client and lower for subsequent clients. We note that this provision has been removed in the proposed amendment. However, there does not appear to be a provision replacing it. We reserve our right to comment at later date if and when a rule setting forth a fee regimen under the proposed law is itself proposed or sought to be enacted or instituted in any other manner.

§ 1-02 ADVISORY OPINIONS:

COMMENT: By definition, requests for advisory opinions contemplate that there is some gap or ambiguity in the law, rules or previous advisory opinions. Currently, there are no time limits for either a determination that an opinion will be issued or for issuance and those that are issued may take months. Consequently, the requestor may be facing legal exposure without any confidence on how to proceed. The Clerk should allocate sufficient resources to provide timely advisory opinions.

Add subsection (d): The City Clerk will advise the requestor if the requested advisory opinion will be issued within thirty days of the request and if so, issue such advisory opinion within ninety days thereafter. Nothing herein shall prohibit the City Clerk from issuing guidance in such cases where a request for an advisory opinion is declined.

§ 103 E-LOBBYIST ENROLLMENT (d)(2)(ii)(C)

COMMENT: The provisions for administrative enrollment where a client is not required to enroll because the unenrolled client does not anticipate exceeding the reporting threshold highlights the flaw in requiring a lobbyist to register for a pro bono client, i.e. a client from whom no compensation will be received, because under the current interpretation, a lobbyist must register every client even if they reasonably anticipate that the lobbying activities will always be under the threshold. Lobbyist registration should be triggered by the expectation that more than the threshold amount will be incurred, not any lobbying by the registered lobbyist even if under the threshold.

§ 1-04 (b) (5) (iv) and (v) PRINCIPAL OFFICER

COMMENT: The NYAA strongly objects to the proposed requirement that the Principal Officer sign all Retainers and payment plans. In many organizations, any number of people may be authorized to sign engagement agreements and related amendments. Requiring that all such documents be signed by a single person is an administrative burden which may slow the registration process and an unwarranted interference with the client-lobbyist relationship, as the client may not have any idea who the Principal Officer is. Moreover, such provision appears to conflict with New York State Law regarding the delegation of corporate, limited liability company and partnership authority. This provision does nothing to advance compliance with the Lobbying Law.

§ 1-04 (c) (2) LOBBYIST ENROLLMENT

COMMENT: This provision prohibits a Principal Officer from disclosing that person's password "under any circumstances." This provision, potential criminalizing an inadvertent disclosure, is impractical and unreasonable. A Principal Officer may choose to provide their password to someone in the lobbying organization for backup. The better provision would be to prohibit the use of the password by anyone other than the Principal Officer and to require the Principal Officer to take reasonable steps to protect against unauthorized use.

§ 1-05 DESIGNEE

COMMENT: NYAA supports the provision for Designees, except that Designees should be authorized to certify all matters of the E-Lobbying system under their own names. This will facilitate timely reporting, without diminishing accountability. The software can be adjusted to automatically notify the Principal Officer of such certifications and that unless objected to within a specified time, such as ten days, will be deemed certified by the Principal Officer as well.

§ 1-08 (a)(1)(ii) and (iv), (b)(1)(ii)

COMMENT: Requiring an end date to be provided in the Retainer letter is an unreasonable burden on the parties' right to association and serves no public purpose. At the outset of most lobbying engagement no outside date can be anticipated because the City Council, unlike the State Legislature, meets year-round and because there is no way to predict when a ULURP application will be certified into public review, for example. Such matters often extend beyond the end of the calendar year, resulting in additional annual registrations which demonstrate that the authorization is continuing. Further, should a relationship end at any time there is an affirmative duty to report the same. Requiring amendments to the engagement letter or new

ones based upon an arbitrary termination date is an administrative burden and could create discord in the client-lobbyist relationship.

§ 1-10 (a) (2) EXTENSION OF A FILING DEADLINE

COMMENT: In addition to the death of the Principal Officer or family member, or the illness of the Principal Officer, an extension should be available under the same circumstances relating to a designee or additional lobbyist as they may be the source of information needed by the Principal Officer.

Further, the Rule should provide for such an extension “for-good cause shown” to cover unforeseeable circumstances.

§ 1-10 (b) EXTENSION OF FILING DEADLINE, TECHNICAL EXTENTION

COMMENT: Technical failures identified by the City Clerk or DOIT should result in an automatic extension, for example, where the system is overloaded or otherwise fails. Where the Clerk notifies the lobbyist community of such issues, no further obligation should be imposed on the reporters. Similarly, the verified inability of a Principal Officer to retrieve, change or reset a password should be the basis for granting an extension.

§ 1-11 (c) (1) (iii), (c)(3) and (f) (3) ENFORCEMENT OF LOBBYING LAW AND WAIVER OR REDUCTION OF LATE FILING PENALTIES

COMMENT: The Clerk should have the authority to extend cure periods under the same criteria as granting an extension of a filing period, including for good cause shown, as well as to waive or reduce penalties under the same criteria.

§ 1-13 DUTY TO COOPERATE

COMMENT: The requirement to cooperate should not extend to the Department of Investigations. Under §1-13 (b) the Clerk refers to DOI potential violations of criminal law. The assertion of Fifth Amendment rights cannot be the basis of an independent violation. Unlike a vender or City employee, a reporting party has a constitutional right to engage in lobbying activity and the regulation of same cannot be unduly burdensome. This includes requiring of the waiver of one constitutional right (against self-incrimination) in order to enjoy others.

§ 1-15 AMNESTY PROGRAM

COMMENT: Potential participants should not be disqualified solely by having filed one or more registrations or annual reports after December 10, 2006, as proposed. As currently drafted, a party who became aware of the requirement of the lobbying law as a result of the activities of

the Commission on Lobbying, or the subsequent City Council deliberation on the amendments enacted in 2013, and registered in good faith in 2014 or 2015 would be penalized, whereas a party who deliberately chose not to file while waiting for the amnesty program to be announced, would be eligible. This is especially unfair as registrations may have occurred for activities which the Clerk subsequently determines by Advisory Opinion or Rule do not constitute lobbying activity. Certainly, any party considering but not yet registered would be incentivized not to register for the balance of 2015.

Further, for a variety of reasons, a party may have reported in some years and not others, or in the case of lobbyists, may have reported for certain matters on clients and not others. A typical example may be land use attorneys who regularly registered for ULURP applications but overlooked the requirement to report community board lobbying on applications before the Board of Standards and Appeals or Landmark Preservation Commission (or applications before the State Liquor Authority where community board review is not pursuant to city Law). Similarly, many organizations receiving discretionary funding from the City Council may not have been aware of the lobbying law requirements prior to having been contracted by the City Clerk in 2014, but registered thereafter. It was not the intent of the law to exclude them from the amnesty program. This is especially the case where the program has taken a year and a half to be announced, and another half year before it becomes effective.

Simply put, the Amnesty should be available to any party who otherwise qualifies for matters for which they didn't register, even if they registered for other. This will further disclosure and compliance.

Finally, section (f) (iii) (3) should be amended to eliminate criminal action in any case where an amnesty application is denied, except where the applicant has notice of being the subject of a criminal investigation, and being the subject of criminal investigation should not be the basis for denial unless the applicant is on notice thereof. In addition, to self-incrimination issues, fundamental due process issues are raised for an applicant who can be denied amnesty on the basis of facts not disclosed to the applicant.