

TITLE 19 NYCRR PART 942

Procedure for Requesting an Exemption from Publicly Disclosing Client Information Pursuant to Questions 8(b-1), 8(b-2) or 8(c) on a Financial Disclosure Statement

942.1 Preamble

The purpose of this Part is to implement the legislative direction set forth in Chapter 56 of the Laws of 2015 that the Joint Commission on Public Ethics 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 in accordance with section 73-a of the Public Officers Law. The statute provides that disclosure of client information is not required in certain cases delineated in sections 73-a(3)(8)(b-2) and 73-a(3)(8)(c). With respect to clients represented in other matters not otherwise exempt, this Part provides a procedure to request an exemption from publicly disclosing the name of such clients.

942.2 Definitions.

- (a) *Commission* shall mean the New York State Joint Commission on Public Ethics.
- (b) *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.
- (c) *Exemption* shall mean a waiver from publicly disclosing Client Information pursuant to questions 8(b-1), 8(b-2) or 8(c) of the Financial Disclosure Statement.
- (d) *Financial Disclosure Statement* shall mean the annual statement that must be filed pursuant to section 73-a of the Public Officers Law.
- (e) *Client Information* shall mean the identity of a client, customer, person or entity required to be publicly disclosed pursuant to questions 8(b-1), 8(b-2) or 8(c) on the Financial Disclosure Statement.
- (f) *Client* shall mean the specific client, customer, person or entity referenced in Section 942.1(e).
- (g) *Ministerial Matter* shall mean an administrative act carried out in a prescribed manner not allowing for substantial personal discretion.
- (h) *Title* shall mean the name of the position or job in which a Covered Person serves or, in the case of a Covered Person who is a candidate for statewide office or a member of the legislature, the name of the office for which the Covered Person is a candidate.

(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.

942.3 Procedure.

(a) Pursuant to Executive Law §94(9) and questions 8(b-1), 8(b-2) and 8(c) on the Financial Disclosure Statement set forth in Public Officers Law §73-a, the Commission permits a Covered Person to make a confidential request, in accordance with this Section, for an Exemption from the requirement to publicly disclose Client Information. If requesting an Exemption from the Commission, such Covered Person shall file the Exemption request with the Commission on or before the deadline to file a Financial Disclosure Statement that applies to said Covered Person pursuant to Public Officers Law section 73-a(2). A Covered Person may not file an Exemption request with the Commission for a client matter which the Covered Person has previously addressed in an Exemption request filed with the Office of Court Administration.

(b) The filing of an Exemption request pursuant to this Part shall not toll a deadline to file a Financial Disclosure Statement. A Financial Disclosure Statement filed during the pendency of a request for Exemption shall include all required information except the Client Information.

(c) In response to questions 8(b-1), 8(b-2) and 8(c) of the Financial Disclosure Statement, a Covered Person need not report clients or customers with respect to matters for which the Covered Person (or his or her firm) was retained prior to entering public office in accordance with §73-a(3)(8) of the Public Officers Law.

(d) The Exemption request shall be made in writing, signed by the Covered Person requesting such exemption, and sent to the Commission via email at jcope@jcope.ny.gov. The exemption request shall be deemed to be a part of his or her Financial Disclosure Statement and subject to all applicable enforcement and penalty provisions of Public Officers Law §73-a and Executive Law §94.

(e) In the request for Exemption, the Covered Person shall state that:

(1) “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,” and

(2) The information contained in the foregoing statement is true to the best of his or her knowledge and that he or she is aware that anyone who knowingly and willfully makes a false statement pursuant to section 942.3(e)(1) of this Part, shall be subject to all applicable enforcement and penalty provisions of Public Officers Law §73-a and Executive Law §94.

(f) The request for Exemption should include but need not be limited to the following information:

- (1) the name and work address of the Covered Person;
- (2) the Title of the Covered Person;
- (3) a description of the specific duties and responsibilities of the Covered Person;
- (4) the Client Information for which the Covered Person seeks an Exemption, and with respect to each matter on which the Covered Person has provided or will provide services to the Client, a description of the services rendered or to be rendered, the actual or estimated fee amount, and the actual or estimated duration of such services;
- (5) a general description of the business activities in which the Client engages;
- (6) to the best of the Covered Person’s knowledge, a description of any specific business the Client has before the state;
- (7) to the best of the Covered Person’s knowledge, a description of any particularized interest the Client has in any pending legislation;
- (8) if applicable, a description of any action taken by the Covered Person relating to the Client and any interaction the Covered Person has had with the Client in the course of performing the Covered Person’s official duties;
- (9) a statement explaining why the Covered Person should receive the requested exemption rather than be required to disclose the Client Information;
- (10) a description of any public disclosure of the Client Information in any other public filing or public appearance including regulatory filings and litigation papers and appearances;
- (11) a description of any prior applications submitted by the Covered Person to JCOPE or the Office of Court Administration for an Exemption from public disclosure of Client Information for the Client on any matter (including pending applications) and the results of such applications; and
- (12) any other relevant information which may support the Exemption request.

~~(g) If the Commission denies the request for Exemption, and the Covered Person agrees to represent the Client, such Covered Person must file with the Commission an amended Financial Disclosure Statement that includes the subject Client Information by the later of 15 days from receipt of the denial or the date the Financial Disclosure Statement is due~~

942.4 Commission action.

(a) Upon receipt of a request for Exemption, the Commission shall review the material filed to determine whether the Exemption shall be granted. If no further information is required, the Commission shall render its decision on the material before it.

(b) In reviewing a request for an Exemption, the Commission shall conduct its own inquiry and, being mindful of the need to preserve the confidentiality of Client Information prior to public disclosure, may consult with a variety of sources including bar or other professional associations, or with the office of court administration or the legislative ethics commission in the case of individuals subject to its jurisdiction, and may consider rules of professional conduct.

(c) The factors the Commission shall consider in determining a request for Exemption shall include, but not be limited to:

- (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;
- (7) whether disclosure may result in an unnecessary invasion of privacy to the client; and
- (8) any other factors that the Commission deems relevant to the Exemption request.

(d) The Commission 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 Exemption request. After considering all the information submitted in support of the request for Exemption and any other information received by the Commission, the Commission shall determine whether the totality of the circumstances support granting the request for Exemption.

(e) The determination of the Commission shall be set forth in writing and provided to the Covered Person. Any denial shall include an explanation for the determination.

(f) If the Commission denies the request for Exemption, and the Covered Person agrees to represent the Client, such Covered Person must include the Client Information in his or her Financial Disclosure Statement when it is due, or, if his or her Financial Disclosure Statement was filed during the pendency of a request for Exemption, such Covered Person must file with the Commission an amended Financial Disclosure Statement that includes the subject Client Information by the later of within 15 days from receipt of the denial. or the date the Financial Disclosure Statement is due

(g) Where the Commission denies a request for Exemption, and thereafter there occurs a material

change of facts or circumstances, including a change in the Covered Person's Title or duties, a change in the nature of the services provided to the Client, or a change in the nature of the Client's business, a Covered Person may seek reconsideration of that denial following the procedures set forth in section 942.3.

(h) An Exemption, once granted, shall remain in effect in each subsequent year in which such disclosure would otherwise be required unless and until:

- (1) the Covered Person is appointed or promoted to a new Title in which such a filing is required; or
- (2) there is a material change in the duties of the Covered Person; or
- (3) there is a material change in the nature of the Client's business before the State, if applicable.

(i) After an Exemption has been granted for which there has been no change as described in Section 942.3(f) of this Part, the Covered Person shall continue to disclose the Client Information to the Commission in any subsequent year for which disclosure would otherwise be required. Such information, however, shall remain confidential and the Commission shall delete such information from the copy of the Covered Person's financial disclosure statement that is made available for public inspection.

(j) If the Commission receives new facts or other information relevant to the Exemption, it may reconsider a prior determination by the Commission to grant such Exemption.