



NEW YORK
CITY BAR

Contact: Maria Cilenti - Director of Legislative Affairs - mcilenti@nycbar.org - (212) 382-6655

**REPORT ON LEGISLATION BY
THE COMMITTEE ON STATE AFFAIRS,
THE COMMITTEE ON GOVERNMENT ETHICS AND
THE COMMITTEE ON PROFESSIONAL RESPONSIBILITY**

**REFORMING NEW YORK STATE'S FINANCIAL DISCLOSURE
REQUIREMENTS FOR ATTORNEY-LEGISLATORS**

Introduction

In light of the recent honest-services-fraud conviction of Joseph L. Bruno, the former Senate Majority Leader, New York's ineffective ethics laws have been under increasing scrutiny¹ and a new reform ethics bill (S.6457/A.9544) was passed by the Legislature on January 20, 2010. Bruno was found guilty of concealing substantial payments from a businessman who sought Bruno's help on a number of ventures. Earlier in 2009, former Queens Assemblyman Anthony Seminerio pled guilty to charges of corruption, having disguised illegal payments from various sources as income from his "consulting" practice.² These events underscore the need for reforming mandatory personal financial disclosures for those individuals covered by Section 73-A of the Public Officers Law, especially legislators, who are allowed to maintain personal business alongside their official duties. Lawmakers should be required to disclose sources and amounts of outside income³ including the identity of paying clients, and provide a description of

¹ See, e.g., Nicholas Confessore and Danny Hakim, Bruno, Former State Leader, Guilty of Corruption, N.Y. Times, December 7, 2009, at A1, available at <http://www.nytimes.com/2009/12/08/nyregion/08bruno.html>; Glenn Blain, On Heels of Joe Bruno Conviction, Governor Paterson Ripped for Not Cleaning Up Albany, N.Y. Daily News, December 10, 2009, available at http://www.nydailynews.com/news/2009/12/10/2009-12-10_cmon_gov_get_going_on_cleanup.html; James Odat, Conviction Offers Material for State Ethics Law Reform, Times Union, December 8, 2009, available at <http://blog.timesunion.com/bruno/conviction-offers-material-for-state-ethics-law-reform/2181/>.

² See, e.g., Colin Moynihan, Democratic Assemblyman Pleads Guilty to Soliciting Payments, N.Y. Times, June 25, 2009, at A20, available at http://www.nytimes.com/2009/06/25/nyregion/25fraud.html?_r=1; Elizabeth Benjamin, Seminerio Pleads Guilty, Faces 20 Years Behind Bars, N.Y. Daily News, June 24, 2009, available at <http://www.nydailynews.com/blogs/dailypolitics/2009/06/seminerio-pleads-guilty-faces.html>.

³ In other states, "sources" is defined to include the names of clients.

the services rendered.⁴ Such disclosure is necessary to restore public confidence in New York's governing process and the impartiality of its lawmakers.

While we believe that mandatory personal disclosures should apply to a broad range of legislators and other public officers, the purpose of this report is to highlight the need and justification for including attorney-legislators in any disclosure system. Attorney-legislators make up 17.4% of the current New York Legislature, and many earn outside income as attorneys.⁵

There is no basis for excluding lawyers from the public scrutiny to which legislators should be held. Requiring attorney-legislators to make these disclosures will not violate the rules governing attorney conduct and will go a long way toward restoring public confidence in New York State's governing process and the independence of legislators. Similar financial-disclosure requirements have applied to legislators, including those who are attorneys, for decades in other states.⁶ The type of information we believe should be disclosed is not, in the ordinary situation, entitled to protection under either a claim of privilege or confidence, and in any event a system can be designed to address particular situations where the public's interest in disclosure is outweighed by a client's interest in secrecy.

For the reasons set forth in this report, we urge that Section 73-A of the Public Officers Law require attorney-legislators to disclose, subject to the limited exceptions that we discuss later in this report, the following information with regard to all clients:

- client identity;
- the amount and nature of all fees and income above a minimum threshold; and
- a clear description of services provided in exchange for the fees.

⁴ In many states, a large group of people, including state and local elected officials, appointees and professional staff members are required to file financial disclosure statements. For simplicity's sake, in this report, we refer only to changing disclosure requirements for lawmakers, the largest group of officials in New York State with significant sources of outside income causing conflict issues, but it is our recommendation that the disclosure requirements be extended beyond lawmakers after a public discussion.

⁵ Telephone interview with Morgan Cohen, Policy Specialist, National Conference of State Legislatures (December 22, 2009).

⁶ At least four states have a disclosure requirement that extends to attorneys: Washington, California, Alaska and Louisiana. Washington and California adopted such requirements through referenda. In 2007 and 2008, the Alaska and Louisiana legislatures respectively passed ethics reform bills. Due to how recently these statutes passed, this report does not discuss Alaska and Louisiana. Both states require public officials, including attorneys, provide detailed disclosure of outside income, including client names.

The law should (i) apply prospectively, i.e. only to new clients and new matters for existing clients as of the law's effective date, and (ii) direct that attorney-legislators inform clients in writing of their disclosure obligations under Section 73-A.

The disclosures we advocate are required, in our view, to protect the public interest. The law governing lawyers presents no obstacle to such disclosures.

Current Law and Legislation

Section 73-A of the Public Officers Law creates the financial disclosure requirements for public officers.⁷ Section 74 of the Public Officers Law contains the State government's Code of Ethics.⁸ Under New York's current financial disclosure requirements, legislators who are attorneys are only required to give a "general description of the principal subject areas of matters undertaken by such individual."⁹

The recently-passed legislation requires "consultants" (an undefined term) to report the names of clients who provide compensation in excess of \$1,000, but exempts attorneys from any disclosure, and requires only limited disclosure by those who are covered.¹⁰

The legislation does not go far enough in requiring more robust disclosure of the economic activities of legislators, including attorney-legislators.¹¹ The gravity of recent breaches of public trust in New York State and the failure of the existing ethics structure necessitate a simple, transparent system of disclosure that applies to all officials with private sources of income, even income from law practices.

⁷ See appendix A for a summary and discussion of the current financial disclosure requirements.

⁸ See appendix A for a summary and discussion of the Code of Ethics.

⁹ N.Y. Pub. Off. §73-A(3) Annual Statement of Financial Disclosure, Item 8(a)

¹⁰ The new legislation also exempts real estate brokers and many others from such disclosures. While the City Bar opposes such additional exemptions, this report focuses on attorney-legislators.

¹¹ The new legislation provides separate rules requiring registered lobbyists to make certain disclosures when they or their clients have a business relationship with a legislator. Section 3, S.6457/A.9544. These new rules do not accomplish what our proposals do for at least three reasons. First, they shift responsibility for meaningful personal financial disclosure from our elected public officials to "registered lobbyists." Second, legislators who accept paid work and whose outside employer fails to file the proper forms will face no consequences, presumably even if they have knowledge of this failure. Third, there are many corporations and individuals who have a vested interest (financial and otherwise) in actions of the State Legislature who are not registered lobbyists, and who have not hired lobbyists but they do retain or consult attorney-legislators.

The Recommendations

A. Required Disclosures

Subject to certain limited exceptions discussed below, New York should establish a system in which all lawmakers, including attorney-legislators, are required to disclose with respect to each client (i) client identity, (ii) the amount of the income over a minimum threshold from each such client (description should be by category of value), and (iii) a meaningful description of the services rendered in exchange for such income (including the making of referrals). With regard to lawyers, disclosure should specify whether the fee arrangements are based on hours worked or contingency, whether a referral fee is involved, and whether any premium or other add-ons are involved. This requirement should also apply to candidates for the Legislature who are attorneys.

B. An Independent Commission Should be Established to Grant Exceptions

There will be limited circumstances when the public interest in disclosure required by Section 73-A should yield to a client's interest in confidentiality with regard to a particular matter. So, for example, when family, criminal, or transactional matters (e.g., a planned hostile take-over) that have not been revealed in the public records are involved, such matters could be shielded from disclosure.¹² In addition, exceptions would be made in the exceptional circumstance where disclosure of the fact of representation itself is privileged, or where disclosure is likely to be embarrassing or detrimental to the client.

An independent commission should be established to determine whether an exception is warranted under particular cases or whether certain information should be kept confidential in a case of extreme hardship that would not violate the public interest.¹³ As discussed below, other states such as Washington and California have established such regimes and provide guidance in

¹² While we conclude that there are likely to be few areas of representation that should be entitled to blanket exceptions, this list is not necessarily meant to be exhaustive.

¹³ For the purposes of the report, we have only provided the bare outlines for how such a process might work; the legislature may want to explore whether clients have an opportunity to participate in claims of privilege or confidence where appropriate. The City Bar would be pleased to participate in the development of such a Commission.

setting up such a commission. However the commission is established, the legislation must ensure a process that is independent from the Legislature itself.¹⁴

C. Prospective Application

To protect clients involved in existing relationships with an attorney-legislator, the disclosure statute should operate prospectively. It should apply to new clients and to new matters undertaken by the attorney for existing clients. Attorney-legislators should be required to inform any new client or any existing client seeking to retain the lawyer on a new matter of the disclosure this statute would require, and have the client consent to the disclosure in writing, such as by signing an engagement letter. There should be a reasonable period of time between the passage of the statute and the enactment date to allow for the education of both clients and legislators, and to allow for the establishment of the independent commission.¹⁵

In making these recommendations, we are sensitive to the attorney-client privilege and to lawyers' ethical responsibilities with regard to clients' confidential information. As discussed below, our proposals do not impinge on those important interests, but rather accommodate those interests while meeting the important need for public disclosure of legislators' business dealings.

This Approach is Consistent with the Rules Governing Attorney-Client Privilege and Confidentiality

Arguments by some legislators that, as attorneys, they cannot reveal such information because of the attorney-client privilege and the restriction in New York's Rules of Professional Conduct¹⁶ should be rejected. Under existing law, the identity of an attorney's clients and his or her sources and amounts of income are almost always subject to disclosure. While the content of

¹⁴ See descriptions of California and Washington State Commissions below.

¹⁵ We note that where the lawyer has a business relationship that is not an attorney-client relationship, there should be full disclosure, as the concerns we outline above do not apply.

¹⁶ During the January 13, 2010 press conference on the new legislation, it was asserted that legislators in "protected" professions (including the practice of law) would be exempted from disclosure requirements because of privilege or ethical considerations. See also Danny Hakim, *Regulator Criticizes Ethics Plan*, N.Y. Times, December 19, 2009, at A20 (reporting Speaker Silver's belief that listing attorney clients would be inconsistent with legal ethics).

the lawyer's communications with clients are afforded far greater protection, the disclosures we support do not include privileged attorney-client communications.

A. Attorney-Client Privilege

In New York, CPLR 4503(a) defines an attorney-client privileged communication as "a confidential communication made between the attorney or his employee and the client in the course of professional employment." Generally, the privilege covers communications made in confidence by the lawyer to the client (or vice versa) for the purpose of giving or receiving legal advice. Courts have routinely held that the identity of a client does not come within the purview of the attorney-client privilege, because the disclosure of representation does not reveal the substance of any such communications between the attorney and client.¹⁷ Courts have limited the attorney-client privilege to encompass only confidential communications, and have consistently held that, absent special circumstances, client identity and fee arrangements are not considered privileged communications.¹⁸

B. Confidentiality

Rule 1.6 of the New York Rules of Professional Conduct requires attorneys to preserve the confidences of their client. Rule 1.6(a) defines confidential information as "information gained during or relating to the representation of a client, whatever its source, that is protected by the attorney-client privilege, likely to be embarrassing or detrimental to the client if disclosed, or

¹⁷ See e.g., *Colton v. United States*, 306 F.2d 633 (2d Cir. 1962); *U.S. v. Pape*, 144 F.2d 778, 782 (2nd Cir. 1944); *United States v. Hunton & Williams*, 952 F. Supp 843 (D.C. 1997); *Dietz v. Doe*, 935 P.2d 611 (Wash. 1997); *Splash Design Inc. v Lee*, 14 P.3d 879 (Wash. App. 2001). See also *Hays v. Wood*, 25 Cal.3d 772 (Cal. 1979) (holding that requirements to disclose sources in financial-disclosure statutes do not dilute attorney-client privilege).

¹⁸ See e.g., *In Re Kaplan*, 168 N.E.2d 660, 661 (N.Y. 1960) (stating that great weight of authority does not recognize client's identity within scope of confidential communications and will not treat identity as privileged information); *Colton*, 306 F.2d at 637 (stating that, even though "communications" must be interpreted broadly, privilege extends only to those matters communicated to attorney in professional confidence); *Lefcourt v. U.S.*, 125 F.3d 79, 86 (2nd Cir. 1997) (stating that client identity and fee information are not, absent special circumstances, privileged because privilege is defined to encompass only confidential communications); *United States v. Goldberger & Dubin, P.C.*, 935 F.2d 501 (2nd Cir. 1991) (holding that outside of special circumstances, identification of clients who make substantial cash payments is not disclosure of privileged information); *United States v. Liebman*, 742 F.2d 807 (3rd Cir. 1984); *Reiserer v. U.S.*, 479 F.3d 1160, 1165 (9th Cir. 2007) (stating that attorney-client privilege ordinarily protects neither client's identity nor information regarding fee arrangements reached with that client).

information that the client has requested be kept confidential.”¹⁹ Rule 1.6 (b) permits an attorney to “reveal or use confidential information...to comply with other law or court order.”²⁰ Existing law and practice is entirely consistent with a financial-disclosure law that requires attorney-legislators to disclose client identity, fee information and a description of services that we advocate.

In the vast majority of circumstances, identifying the name of a client will not breach a client-confidence.²¹ While “information” may include the identity of a client,²² courts have found that revealing client identities does not breach ethical obligations because attorneys may be obligated or permitted by law to provide this information.²³ Indeed, Rule 1.6(b)(6) permits a lawyer to reveal information when required to comply with a law and courts have noted that such a legal obligation would override any claimed ethical duty of secrecy to a client.²⁴ Furthermore, such information is regularly disclosed during the course of civil-litigation discovery and criminal investigations.

In addition, as a practical matter, the existence of the attorney-client relationship is most frequently a matter open to the public through any number of means, such as court documents, administrative and other public hearings, real estate transactions, and even promotional materials from law firms including websites. This reality lowers the client’s expectations that identity will be kept private.²⁵

C. Client Consent

Where particular disclosures are required by law, courts have typically found that it is the attorney’s duty to explain this to clients.²⁶ Consistent with those decisions, our proposal requires attorney-legislators to disclose in writing to a client what would have to be disclosed under the law. This could easily be done in an engagement letter, which is already required by Court

¹⁹ 22 NYCRR 1200.1.6(a) (April 1, 2009).

²⁰ 22 NYCRR 1200.1.6(b) (April 1, 2009).

²¹ 22 NYCRR 1200.1.6(a)-(b) (April 1, 2009).

²² See American Bar Association, Annotated Model Rules of Professional Conduct, 6th Ed. (2007).

²³ U.S. v. Legal Services for New York City, 100 F. Supp 2d 42, 47 (D.D.C. 2000).

²⁴ U.S. v. Hunton & Williams, 952 F. Supp. 843, 856 (D.D.C. 1997).

²⁵ See e.g. Monnat, 853 F. Supp. 1304, 1306 (D. Kan. 1994); 1st Technology, LLC v. Rational Enterprises Ltd., 2008 WL 4571258, *4 (D. Nev. 2008).

²⁶ U.S. v. Monnat, 853 F. Supp. at 1307 (D. Kan. 1994).

rule.²⁷ And, a client's consent to that disclosure provides a separate and independent ground for legitimate disclosure under Rule 1.6.²⁸

Our proposal to mandate disclosure for attorney-legislators explicitly recognizes all the exceptions and protections of existing law. Thus, the only additional requirement we propose is that such disclosure be automatically required of attorney-legislators on a periodic basis. In recognition of the change this reporting requirement will represent, we propose that it apply only to the future representation of and receipt of income from new clients and new matters with existing clients, all of whom shall be informed in writing of this requirement and their need to provide informed consent in writing in order to begin or continue to utilize for a new matter the services of the attorney-legislator. No client should have a reasonable claim that he or she is being unlawfully harmed by such disclosure because he or she will have been given the choice beforehand to either agree to such disclosure or engage an attorney who is not also a legislator.

D. A Public Body to Grant Exemptions in Exceptional Circumstances

As we have discussed, we propose that a separate, independent administrative body or commission be established to review claims that the public's interest in disclosure must yield to the particular client's interest in secrecy. Such public bodies have successfully been established in California and Washington. We discuss those regimes briefly below. New York should look to those models for guidance.

Washington and California Have Long and Successfully Required Client Disclosure

A number of states have put in place effective systems of financial disclosure for legislators that encompass private law practices. These states have rigorous financial disclosure

²⁷ See, 22 NYCRR § 1215.

²⁸ Rule 1.6 permits disclosure with client consent. See also, NY State Op. 645 (1993) (before attorney member of Town Board of Assessment Review could comply with town disclosure requirements that covered privileged or confidential information, lawyer could obtain client's consent, withdraw from representation, petition court or commission for relief from disclosure, or decline appointment to public office). NYS Op 645 implicitly endorses the kind of system we propose. Providing prior notice to clients would also preclude circumvention of the disclosure law by arguing that client identity must not be disclosed solely because the client requested that it be treated as confidential information.

systems that do not create special exceptions for attorneys, yet manage to protect the relevant privileges and sections of the ethics code in the rare instances in which an attorney would have a legitimate reason to not reveal the identity of a client. New York similarly should construct a system that requires attorney-legislators to disclose client information names without violating the relevant privileges or ethical principles.

The type of system we advocate has been in place for over 30 years in Washington and California. Both states require attorneys to disclose their client names without forcing attorney-legislators to violate the Code of Professional Conduct. Washington's disclosure requirement, which passed in 1972 by 73% of Washington State voters, extends to attorney-legislators because the commission and the State Bar Association agree that the fact of disclosure does not violate any secret or confidence.²⁹

California's disclosure requirement, which passed in 1974 as a ballot initiative by California voters, extends to attorneys, as long as it does not violate a recognized privilege under California law.³⁰

Washington State's disclosure statute requires the reporting of "the name of each governmental unit, corporation, partnership, joint venture, sole proprietorship, association, union, or other business or commercial entity from which such entity has received compensation in any form in the amount of ten thousand dollars or more during the preceding twelve months and the consideration given or performed in exchange for such compensation."³¹ This requires filers, including attorneys, to identify all reportable business clients, which are non-individuals (only business, corporate and government clients) providing compensation of \$10,000 or more during the reporting period.

²⁹ Telephone Interview with Nancy Krier, General Counsel, Washington Public Disclosure Commission (December 15, 2009). California successfully implemented this disclosure regime notwithstanding the fact that until 2004 California's statute obligating lawyers to keep client information confidential contained no exceptions. The exception adopted in 2004 permits disclosure only "to prevent a criminal act that the attorney reasonably believes is likely to result in death of, or substantial bodily harm to, an individual." See California Business and Professions Code § 6068(e)(2).

³⁰ Telephone Interview with Roman Porter, Executive Director, California Fair Practices Commission (December 16, 2009).

³¹ Wash. Rev. Code § 42.17.241(1)(g)(ii) (1973).

Under a very narrow set of circumstances, attorney-legislators in Washington State may receive exemptions from the disclosure requirements for “undue hardship.” The Washington Public Disclosure Commission, which is made up of five members from different political parties, is authorized to allow modification or suspensions of these reporting requirements in a particular case when it finds that “literal application” of the chapter “works a manifestly unreasonable hardship” and that the suspension or modification of the reporting requirements “will not frustrate the purpose of the chapter.”³² No commission member may hold or campaign for elective office, serve as an officer of any political party or political committee, solicit or make contributions to a candidate or in support or opposition of a candidate, or lobby.³³ Any modification should only be to the extent necessary to relieve the hardship.³⁴ The standard of proof is clear and convincing evidence of undue hardship.

The commission issued an interpretation outlining how it will generally consider modification requests from attorneys. The commission’s interpretation states that the identity of a client does not fall within the purview of the attorney-client privilege unless there is a “strong probability” that the disclosure would convey the substance of a confidential communication between client and attorney.³⁵ This interpretation firmly relies on well-established law stating that, absent special circumstances, identity of a client of an attorney or law firm is not protected by attorney-client privilege.³⁶

California’s system is similar to that of Washington State. California’s statute provides that, when required to report, the filer’s “statement shall contain: (1) the name, address, and a general description of the business activity of the business entity and (2) the name of every person from whom the business entity received payments if the filer’s pro rata share of gross receipts from that person was equal to or greater than ten thousand dollars during a calendar

³² Wash. Rev. Code § 42.17.370(10) (1973).

³³ Wash. Rev. Code § 42.17.350 (1973).

³⁴ Id.

³⁵ Washington Public Disclosure Commission 02-03, Requests for Modification of the Requirements to Report Information on the Personal Financial Affairs Statement for Lawyers and Law Firms, (January 28, 2003), available at <http://www.pdc.wa.gov/archive/guide/pdf/02-03.pdf>.

³⁶ Id. (citing *Splash Design Inc. v Lee*, 14 P.3d 879 (Wash. App. 2001); *Dietz v. Doe*, 935 P.2d 611 (Wash. 1997); *United States v. Hunton & Williams*, 952 F. Supp 843 (D.C. 1997)).

year.”³⁷ This requires filers, including attorneys, to report business and individual clients who provide compensation of at least \$10,000 in a reportable cycle.

Officials may request exemptions from the Act’s requirement if the disclosure would violate a legally recognized privilege under California law.³⁸ Based on California law, the California Fair Practices Commission, which is also an independent, non-partisan body of five members, does not consider a client’s identity or fee arrangements to be protected by the attorney-client privilege.³⁹ Similarly to Washington State, a limited exception to this rule exists where disclosure of representation could implicate the client in unlawful activities.⁴⁰

Conclusion

In order to restore public confidence in the New York governing process, all lawmakers, including attorney-legislators, should be required to disclose information about their sources of outside income, including the identity of their clients, their fees and a clear description of the services rendered. There should be no blanket exception for attorney-legislators. Such disclosures generally do not violate ethical codes and privileges, except in limited instances, and specific and appropriate exceptions should be provided, along with a mechanism, fully independent from the Legislature, for individual consideration of those cases where the attorney-client privilege or client confidential information is implicated, or in cases of extreme hardship that would not violate the public interest.

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³⁷ Cal. Gov. Code §87207(b)(1)-(2) (1974).

³⁸ Cal. Code of Regulation § 18740.

³⁹ Hays, 25 Cal. 3d at 772.

⁴⁰ Hays, 25 Cal. 3d at 785.

Appendix A

Section 73-A of the Public Officers Law

Statewide elected officials, state officers or employees, members of the legislature, legislative employees and political party chairmen and every candidate for statewide elected office or for member of the legislature shall disclose in a form set forth by law, *inter alia*, the following information:

- i. Position of any nature at any organization other than the State of New York (but not uncompensated honorary positions), held by the reporting person and the reporting person's spouse or unemancipated child. Also requires listing of any state or local agency by which this organization was regulated.
- ii. Any occupation, employment, trade, business or profession engaged in by the reporting individual and the reporting person's spouse or unemancipated child. Also requires listing of any state or local agency by which this activity was regulated.
- iii. Income, deferred income, or assignment of income (other than transfer to relative) in excess of \$1,000 by source for the reporting person, the reporting person's spouse or unemancipated child.
- iv. Any interest in excess of \$1,000 held by the reporting individual and the reporting person's spouse or unemancipated child, or owns business 10% or more ownership or control of the stock of an entity of that business.
- v. Real property interest in excess of \$1,000 or real property owned by a corporation more than fifty percent of the stock of which is owned or controlled by the reporting person or such individual's spouse.
- vi. List of liabilities of the reporting person or such individual's spouse, in excess of \$5,000 (other than to a relative).
- vii. If the reporting individual practices or is a shareholder of a law, real estate brokerage, or a profession licensed by the Department of Education, the individual is required to provide a general description of the principal subject areas of matters undertaken by such businesses. Not required to list name of individual clients, customers, or patients.
- viii. Source, nature, and value of gifts in excess of \$1,000 (excluding campaign contributions and gifts from a relative) received by reporting person, the reporting person's spouse or unemancipated child.
- ix. Contract or promise for employment after reporting individual leaves office.

Importantly, monetary values are not required to be disclosed in specific amounts, but rather in categories: Category A-under \$5,000; Category B- \$5,000 to under \$20,000; Category C- \$20,000 to under \$60,000; Category D- \$60,000 to under \$100,000; Category E- \$100,000 to under \$250,000; Category F- \$250,000 or over.

These annual financial disclosures are filed with the Commission on Public Integrity (“CPI”). The CPI makes available for public inspection and copying the annual statement of financial disclosure, except the categories of value or amount, which shall remain confidential.

A reporting individual who “knowingly and willfully fails to file,” or who “knowingly and willfully with intent to deceive makes a false statement” in a filing, may be subject to a civil penalty. Penalties for violations of § 73-A are limited to forty thousand dollars plus the value of any gift or benefit given. In lieu of a penalty, the CPI may refer the violation to an appropriate prosecutor. The violation is then punishable upon conviction as a class A misdemeanor.⁴¹

Section 74 of the Public Officers Law

The Code prohibits public officers from taking upon themselves additional employment or engaging in business which may cause them to disclose confidential information obtained by reason of official position, or which would impair their judgment in connection with their duties as a public officers. The actual disclosure of such confidential information is prohibited too, as is the use of official positions to secure unwarranted privileges. Knowing and intentional violations of the provisions of this section of law are punishable by a civil penalty, which is capped at ten thousand dollars plus the value of any gift, compensation, or benefit received for violations of the prohibitions above.⁴² In addition, section 74 prohibits accepting other employment which may impair the public officer’s independence, acting as an agent for the state in a transaction in which the officer has a “direct or indirect financial interest” that might conflict with the proper discharge of official duties, and making investments in enterprises which may be affected by decisions made by him in his official capacity. Violations of these prohibitions are capped at the value of any gift, compensation, or benefit received as a result of the violation, with no additional civil penalty attached.

⁴¹ Public Officers Law §73-a (4).

⁴² Public Officers Law §74(4); Executive Law §94(13).