



**NEW YORK  
CITY BAR**

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**STATEMENT TO GOVERNOR-ELECT ANDREW CUOMO  
REGARDING ETHICS REFORM**

**COMMITTEE ON GOVERNMENT ETHICS  
COMMITTEE ON STATE AFFAIRS**

**DECEMBER 2010**

The New York City Bar Association is an organization of over 23,000 lawyers and judges dedicated to improving the administration of justice. The Committees on Government Ethics and State Affairs focus and deliberate on legal, policy and ethical issues relating to New York State government and its officials and employees. The Committees respectfully submit this joint statement to Governor-elect Cuomo in order to convey the City Bar's position regarding much-needed ethics reform in Albany.

**I. GOVERNMENT ETHICS REFORM**

The City Bar shares the objective of proponents of ethics reform legislation to meaningfully improve the quality of ethics oversight in New York and we applaud those who took the initiative to develop legislation in this area during the 2010 session. However, we are concerned that the structure proposed by the Legislature last session - a substantial decentralization of regulation, with three new commissions and two new enforcement offices - would result in dispersed oversight and investigatory authority and possible overlaps and gaps in their operations. We propose a different approach, based on the following five core principles:

- Creating a single independent ethics agency that would be principally responsible for overseeing and enforcing ethics laws for the executive branch, the Legislature and lobbyists alike;
- Safeguarding the independence and integrity of the ethics agency by designating a commission to appoint it, with input from multiple elected officials; only appointing former elected officials or lobbyists after a substantial cooling-off period; appointing agency officials for fixed terms longer than the governor's term; and ensuring due process for individuals investigated by the agency;
- Safeguarding the strength and effectiveness of the agency by giving the agency powers to subpoena, impose civil sanctions, make criminal referrals, audit, and issue advisory opinions;

- Providing for full and meaningful disclosure of legislators' outside income, including that of legislators who are also attorneys (with limited exceptions); full disclosure of such income on the web; and express forbiddance of the use of public resources for private endeavors; and
- Assuring that Senators and Assembly Members are no longer the principal police of their own ethics, by assigning that role to the independent ethics agency.

In addition, our study of the bills which were given prime focus in the Legislature last session yielded several serious concerns – concerns which we urge you to consider as you contemplate legislation in this area:

- The Legislature's proposed Executive Ethics and Compliance Commission only imposed penalties for "knowingly and willfully" violating Public Officers Law §73, §74, and Civil Service Law §107, in contrast to the current "knowingly and intentionally" standard. We believe that the substitution of "willfully" for "intentionally" would heighten the showing of *mens rea* needed to establish a violation and impede the finding of a violation because "willfully" requires "specific intent" to violate the law.
- The Legislature's proposed Joint Legislative Commission on Ethics Standards would be exempted from key requirements of the State Administrative Procedure Act ("SAPA"). We believe there is no justification for such an exemption in legislation that is designed to improve transparency and accountability in the area of government ethics.
- The proposed bills excluded attorney-legislators from financial disclosure regulations. The City Bar believes that lawmakers should be required to disclose sources and amounts of outside income, including the identity of paying clients, and provide a description of the services rendered. Such disclosures would not violate the rules governing attorney-client privilege and confidentiality, as a client would have to give written consent for disclosure before being represented by an attorney-legislator. The City Bar also recommends that an independent commission be established to determine whether an exception to such disclosure 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.
- The proposed bills included a "sunset" provision in which certain provisions would expire four years after the effective date. We oppose a system that will have to be revisited in such a short time.
- The creation of three new oversight commissions with an even number of commissioners is an invitation for inaction because it could lead to determinations that are supported by half of the members and opposed by the other half. We recommend that every commission have an odd number of commissioners to prevent tie votes. In addition, commissioners should serve fixed terms longer than the Governor's, and should be removed only for cause.

Moreover, just as procedural safeguards within the act will be an important determinant of how well ethics requirements are truly reformed, we believe the procedures followed on the road to

ethics reform are also important. The potential transformative effect that sweeping ethics reform could have would, in our view, be greatly reduced if the public saw such reform enacted without hearings, opportunities for public comment, and other steps to ensure transparency, accountability, and openness. Accordingly, we recommend that these steps be a fundamental feature of the road to ethics reform.

## **II. EXECUTIVE ORDERS**

One important tool of any new Governor is the authority vested in him by the Constitution and laws of the State of New York to review and evaluate all Executive Orders and amendments previously issued and currently in effect before determining which shall remain in full force and effect until otherwise continued, modified or revoked, as well as the authority to issue new Executive Orders. Many Executive Orders set the tone for a new administration and establish important policies and procedures for the Executive branch of the government. While the issuance of Executive Orders is clearly within the province and sole discretion of the Chief Executive, we encourage the Governor to provide an opportunity for the public to comment on proposed orders that are not time-sensitive and will have a significant impact on the way the Executive branch conducts the public's business. This simple mechanism to promote a deliberative and transparent process should help engage our citizens and secure public support for those policies and procedures that are a priority for the new administration.

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We greatly appreciate the opportunity to express our thoughts regarding these important issues. We look forward to working with the Governor's office in the months ahead.

Respectfully,

Gregory G. Ballard  
*Chair, Government Ethics Committee*

Loren Gesinsky  
*Chair, State Affairs Committee*