



December 4, 2015

Mr. Daniel J. Horwitz, Chair  
Mr. David Arroyo, Commissioner  
Hon. Joseph Covello, Commissioner  
Mr. Marvin E. Jacob, Commissioner  
Mr. Seymour Knox, IV, Commissioner  
Hon. Eileen Koretz, Commissioner  
Mr. Gary J. Lavine, Commissioner  
Hon. Mary Lou Rath, Commissioner  
Mr. David A. Renzi, Commissioner  
Hon. Renee R. Roth, Commissioner  
Mr. Michael K. Rozen, Commissioner  
Ms. Dawn L. Smalls, Commissioner  
Mr. George H. Weissman, Commissioner  
Joint Commission on Public Ethics  
540 Broadway  
Albany, NY 12207

Dear Commissioners of the Joint Commission on Public Ethics,

I write to offer Citizens Union's support for the Commission's draft regulations, as currently published on your website, for the process by which public officials request exemptions from publicly disclosing client information in financial disclosure statements.

I also write to express alarm over a suggestion made during the discussion at the November 17<sup>th</sup> meeting of the Joint Commission on Public Ethics ("the Commission"), in which it was suggested that those applying for exemptions be allowed to submit requests via hand delivery. Citizens Union strongly believes that the proposed regulations should stand as currently published, with § 942.2(d) requiring that requests for exemptions be submitted via email to the Commission.

It is inconceivable that a member of the JCOPE board – who is there to protect the public interest by ensuring our public officials' sound ethical conduct – would recommend a method of delivery that provides an opportunity for our public officials to evade the law and avoid the net of federal wire and mail fraud.

This proposal has the potential to undermine federal prosecutions of those who submit false statements under the federal mail fraud statute. It is also commonplace and almost universal practice for agencies to require electronic receipt of information, and to revert back to an old practice of allowing hand delivery would not only be antiquated, but also lessen transparency and make public access to this information cumbersome.

For an ethics watchdog agency to authorize or even contemplate this proposal runs in direct opposition to the intent of the law to increase accountability and strengthen enforcement through updating and modernizing the state's financial disclosure requirements.

Given former Assembly Speaker Silver's conviction on corruption charges, aided in part by his filing of a false and incomplete financial disclosure form, the mere suggestion of providing a hand delivery option offers up a path to lawmakers to exempt themselves from criminal liability. It also serves to increase public suspicion of the intent of the regulation, given the ramifications for federal prosecutions. Citizens Union therefore recommends that the Commission hold true to its commitment to the public interest through tough enforcement and effective compliance, and retain the language to only allow submissions via email.

Citizens Union also supports the language in § 942.3(g) to require submission of names of clients to the Commission in the event that it denies a request for exemption, regardless of whether the Office of Court Administration (OCA) approves such a request. As drafted, the names would not be made public, but only be made available to the Commission. Citizens Union opposes the dual approval process, as stated at the time of the new law's passage, given that it allows for "venue shopping" and can be construed to limit information sharing between the OCA and the Commission. We believe that the draft regulations strike the right balance of following the intent of the law to keep exemption information confidential, while still providing the Commission with information necessary to analyze disclosure forms for possible conflicts.

We also recommend that the Commission provide aggregate information regarding exemptions requested and the determinations made by the Commission in its annual reports. This would preserve the confidentiality of requests as required by the Public Officers Law, while allowing the public to better understand the scope of exemptions sought and approved and/or denied.

The Commission's mission includes to "provid[e] accountability through enforcement actions to address ethical misconduct."<sup>1</sup> We believe that the regulations as currently published best follow this mission, and therefore recommend that they be adopted as is.

Sincerely,

Dick Dadey  
Executive Director

cc. Monica Stamm, General Counsel

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<sup>1</sup> "About the Commission." NYS Joint Commission on Public Ethics. <http://www.jcope.ny.gov/about/commission.html>