



Lawyers Alliance
for New York

Connecting lawyers, nonprofits, and communities

May 15, 2015

Lobbying Bureau
Office of the City Clerk
141 Worth Street
New York, New York 10013
lobbyist_helpdesk@cityclerk.nyc.gov

Re: Comments on Proposed Rules

To the Lobbying Bureau,

I write to provide comments on behalf of Lawyers Alliance for New York and Human Services Council regarding the proposed changes to Chapter 1 of Title 51 of the Rules of the City of New York.

Lawyers Alliance for New York is the leading provider of business and transactional legal services for nonprofit organizations that are improving the quality of life in New York City neighborhoods. By connecting lawyers, nonprofits, and communities, we help nonprofits to develop affordable housing, stimulate economic development, promote community arts, strengthen urban health, and operate and advocate for vital programs for children and young people, the elderly, and other low-income New Yorkers. Each year our legal staff, joined by more than 1,500 volunteer attorneys from more than 125 law firms and corporate legal departments, serves thousands of nonprofits working in all five boroughs. Compliance with the New York City Lobbying Law is among the many matters with which we assist clients.

Human Services Council (“HSC”) is the voice of New York City’s human services community because of our members. We count among our member organizations 200 human services organizations—including all major federations and coalitions in the sector, as well as direct service organizations. HSC works with its broad member base to identify areas of concern shared by the sector. We address sector issues and proactively negotiate for budget, policy, and legislative reform. With the support of members and funders, we clear the way so that the City’s thousands of human services providers can deliver their often life-saving help unobstructed.

Lawyers Alliance and HSC support many of the proposed rules, particularly those regarding the amnesty period proposed for the first six months of 2016 and deactivation of erroneously filed statements of registration and reports. At the same time, we suggest several areas for improvement:

1. A Principal Officer should be allowed to authorize other people to certify a registration statement or client or lobbyist report, and to disclose his or her e-Lobbyist password to such people
2. The proposed rules should list the factors that the City Clerk will take into account in considering whether to reduce or waive a late filing penalty
3. The proposed rules should define “force majeure,”
4. Deadlines should instead be calculated from the date the notice was *received*, and
5. It should not be a violation of the Lobbying Law or rules to fail to punctually complete any portion of a required report unless that portion is a required portion, and it should not be a violation to fail to punctually supply correct information unless the omission was knowing and willful.

We discuss each of these points in turn, below.

Disclosure of Passwords

A Principal Officer should be allowed to authorize other people to certify a registration statement or client or lobbyist report, and to disclose his or her e-Lobbyist password to such people. Section 1-04(c)(2) of the proposed rules states that a Principal Officer “must not...disclose his or her e-Lobbyist password under any circumstances,” and section 1-11(b)(8) states that lobbyists and clients may be subject to a penalty for “the intentional disclosure by a Principal Officer of his or her e-Lobbyist password” This would prohibit a Principal Officer from disclosing that password even to others within the registered lobbying organization who are instrumental in effectuating required filings on a timely basis. This prohibition on disclosing an e-Lobbyist password will impede compliance with the Lobbying Law’s filing deadlines, particularly when a Principal Officer is on vacation, ill, or extremely busy. That is why, for example, the generally accepted protocol for e-signatures that are accomplished by entry of a password is to allow the signer to authorize other people to sign on his or her behalf. For instance, New York State’s electronic signature guidelines state, “The behavioral standards followed by signers should include...[n]ot disclosing information used to create a signature to a person not authorized to sign on his or her behalf.” N.Y. State Office of Information Technology Services, Electronic Signatures and Records Act Guidelines, § 3.2.9 (2007), available at <https://its.ny.gov/sites/default/files/documents/G04-001.pdf>. This prohibition should instead be limited to disclosure to anyone *outside* the registered organization.

Penalty Factors

The proposed rules should list the factors that the City Clerk will take into account in considering whether to reduce or waive a late filing penalty. Pursuant to Lobbying Law § 3-223(c)(2), those factors are:

- (i) whether and how often the lobbyist or client has filed late in the past;
- (ii) the annual operating budget of the lobbyist or client;
- (iii) whether the lobbyist lobbies solely on its own behalf;
- (iv) for periodic reports, the number of lobbying matters, number of hours spent working on those matters, and amount of compensation and expenditures that were not reported during the relevant period; and

(v) the significance of the impediments to timely filing faced by the lobbyist or client.

However, section 1-11(f)(3) of the proposed rules identifies only three “valid reasons for not filing a Report on time: (i) the death of the Principal Officer or his or her immediate family member; (ii) the illness of the Principal Officer; or (iii) force majeure.” As such, the proposed regulations are inconsistent with the statute and are in violation of law and subject to challenge. That list should be expanded to include the Lobbying Law § 3-223(c)(2) factors.

Force Majeure

The proposed rules should define “force majeure,” which is a legal term that may not be comprehensible to nonlawyers. That term is used in sections 1-10(a)(2)(iii) and 1-11(f)(3)(iii) of the proposed rules. We propose that the term be defined as an “unforeseeable event outside the control of the lobbyist or client.” *See, e.g., Phillips Puerto Rico Core, Inc. v. Tradax Petroleum Ltd.*, 782 F.2d 314, 319 (2d Cir. 1985) (providing that force majeure usually applies to a force beyond a party’s control).

Providing Notice and Calculating Filing Deadlines

Throughout the proposed rules, many 14-day and 10-day deadlines are calculated from the date that the City Clerk sends a notice certified mail. These deadlines should instead be calculated from the date the notice was *received*. Delivery of mail in New York City can be unreliable in its timing, particularly in some parts of the city, and recipients should not be disadvantaged by that unreliability. *See Apparently “Neither Rain Nor Snow” Means Little at One Bronx Post Office*, CBS New York, Feb. 18, 2014, available at <http://newyork.cbslocal.com/2014/02/18/apparently-neither-rain-nor-snow-means-little-at-one-bronx-post-office/>. However, the date of *receipt* of these notices can be established definitively in each instance, as the notices are sent by certified mail.

Additionally, the Clerk should provide notification by email, in addition to certified mail. Sending notice via email will enhance the likelihood that notice will be received and acted on promptly. It is appropriate to continue to send notice via certified mail, as well, so that the Clerk can be sure that the notice is received.

Partial and Inaccurate Completion of Reports

It should not be a violation of the Lobbying Law or rules to fail to punctually complete any portion of a required report, as section 1-11(b)(7)(ii) of the proposed rules states. Rather, it should be a violation to punctually file any *applicable* portion of such report. Filers should not be penalized for failing to complete portions of the reporting forms that are inapplicable to their circumstances and would logically be left blank. It should also not be a violation to fail to punctually supply correct information, as that same subsection provides. Rather, it should be a violation to *knowingly and willfully* fail to punctually supply correct information. Filers who provide information that they believe to be complete and accurate at the time of filing should not be penalized when that information is later determined to be incorrect.

Thank you for your kind attention to our comments. Please do not hesitate to contact me with any questions, at (212) 219-1800 x283, or label@lawyersalliance.org.

Sincerely,

A handwritten signature in cursive script that reads "Laura Abel".

Laura Abel
Senior Policy Counsel