

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, and with the advice and consent of the Administrative Board of the Courts, I hereby promulgate a new Part 154 of the Rules of the Chief Administrator of the Courts, relating to requests for exemption from public disclosure of client information under Public Officers Law §73-a, to read as follows, effective December 31, 2015:

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PART 154. Requests for Exemption From Public Disclosure of Client Information Under Public Officers Law §73-a.

§154.1. Preamble.

The purpose of this Part is to implement the legislative direction in Part CC of Chapter 56 of the Laws of 2015 that the Office of Court Administration 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 by legislators and other State employees in accordance with section 73-a of the Public Officers Law. To ensure the fullest compliance with this legislative direction, the rules in this Part have incorporated express language in the relevant statutory provisions in Part CC. Where, however, Part CC does not provide all necessary procedural specifics, these rules include additional procedures that harmonize with the overall legislative intent so far as it is apparent in the statutory text.

§154.2. Definitions.

- (a) *Applicant* shall mean a covered person seeking an exemption pursuant to this Part.
- (b) *Client information* shall mean the identity of a person or entity required to be publicly disclosed pursuant to questions 8(b-1), 8(b-2) or 8(c) of the financial disclosure statement.
- (c) *Commission* shall mean the New York State Joint Commission on Public Ethics.
- (d) *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.
- (e) *Exemption* shall mean a waiver from the duty to publicly disclose client information pursuant to questions 8(b-1), 8(b-2) or 8(c) of the financial disclosure statement.
- (f) *Financial disclosure statement* shall mean the annual statement that must be filed pursuant to section 73-a of the Public Officers Law.

(g) *Ministerial matter* shall mean an administrative act carried out in a prescribed manner not allowing for substantial personal discretion.

(h) *OCA* shall mean the Office of Court Administration.

(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.

§154.3. Exemption Request Procedure.

(a) A covered person may apply to OCA for an exemption from the requirement to disclose client information by filing an application (“exemption request”), on a form promulgated by OCA, no later than thirty days prior to the deadline by which such covered person must file a financial disclosure statement pursuant to Public Officers Law §73-a(2) that otherwise must disclose such client information. Applications may be filed in advance of the applicant’s commencement of work on the client matter. An applicant may not file an exemption request with OCA for a client matter which the applicant has previously addressed in an exemption application filed with the Commission.

(b) The exemption request shall be made in writing, signed by the applicant, and filed electronically in a manner specified by OCA.

(c) The applicant shall state the following in the exemption request, as required by statute:

“My client is not currently receiving my services or seeking my services in connection with:

- (1) a proposed bill or resolution in the Senate or Assembly during the reporting period;
- (2) a contract in an amount totaling \$10,000 or more from the state or any state agency for services, materials or property;
- (3) a grant of \$10,000 or more from the state or any state agency during the reporting period;
- (4) a grant obtained through a legislative initiative during the reporting period;
or
- (5) a case, proceeding, application or other matter that is not a ministerial matter before a state agency during the reporting period.”

(d) The exemption request shall include the following information, to the best of the applicant's knowledge and upon professionally appropriate inquiry:

(1) the applicant's name, title and work address, and a description of the applicant's duties and responsibilities;

(2) a description of the services rendered or to be rendered in each matter on which the applicant has provided or anticipates providing services to the client during the reporting period, including the actual or estimated duration of such services;

(3) a statement explaining why the applicant should receive the requested exemption, with reference to the factors set forth in section 154.4(a) of this Part;

(4) 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;

(5) a description of any action relating to the client taken by the applicant in the course of performing the applicant's official duties;

(6) whether or not the applicant has publicly disclosed the client relationship in any public filing or public appearance; and

(7) whether or not the applicant has applied to OCA or the Commission for an exemption from disclosure of the client's identity on any matter (including pending applications) and the result of such applications;

(8) any other relevant information, including statements from clients and third parties, which the applicant believes may support the exemption request.

(e) The applicant need not initially disclose the identity of the client or the compensation earned or expected to be earned in the course of the engagement. However, if disclosure of this information by the applicant is necessary in furtherance of a proper determination of the exemption request, OCA may require such disclosure.

§154.4. Action by OCA.

(a) Upon receipt of an exemption request pursuant to section 154.3 of this Part, OCA shall review the material filed to determine whether the exemption request shall be granted. The factors OCA shall consider in determining an exemption request shall include, but not be limited to, the following statutory factors:

(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; and

(7) whether disclosure may result in an unnecessary invasion of privacy to the client.

(b) In reviewing an exemption request, OCA may consult with bar or other professional associations, or with the Commission or the Legislative Ethics Commission for individuals subject to its jurisdiction, and may consider the rules of professional conduct.

(c) OCA 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 request. OCA shall provide the applicant with a written explanation of its determination, which shall clearly state that such determination is based solely upon the information furnished by the applicant in support of his or her exemption request and that, upon any subsequent change in such information, the determination may be reconsidered as provided in this Part. The OCA determination shall neither address nor alter the applicant's disclosure or confidentiality obligations under any law or authority other than Public Officers Law §73-a.

(d) OCA shall determine an exemption request not later than three days following the day on which such request is received; provided, however, where the last of such days is a Saturday, Sunday or a public holiday, OCA may render its determination on the next succeeding business day as provided by the General Construction Law. When the request contains information deemed insufficient for the rendering of a determination, OCA may direct the applicant to provide additional information in a further submission, whereupon it shall render its determination within three business days from receipt of such additional information.

(e) Where OCA denies an exemption request, and thereafter there occurs a material change of facts or circumstances – including a change in the applicant's title or duties, a change in the nature of the services provided to the client, or a change in the nature of such client's business – an applicant may seek reconsideration of that denial by following the procedures set forth in section 154.3.

(f) Where OCA grants an exemption request, it shall be unnecessary for the applicant to make the same request in subsequent years, except that the applicant shall thereafter annually review the application submitted in support of the exemption request to determine whether there has been a material change in the facts and circumstances reported in such application – including a change in the facts attested pursuant to section 154.3(c) of this rule; or in the scope of the services provided by an applicant to the client; or in the applicant’s title, responsibilities, or assignments. In the event of such change, the applicant shall promptly report that change to OCA, which may, in appropriate cases, withdraw the exemption. Where OCA withdraws an exemption pursuant to this subdivision, OCA shall provide the applicant with a written explanation for such action.

(g) Determinations pursuant to this Part shall not be deemed judicial determinations and shall not be subject to judicial review except as may otherwise be authorized by law.

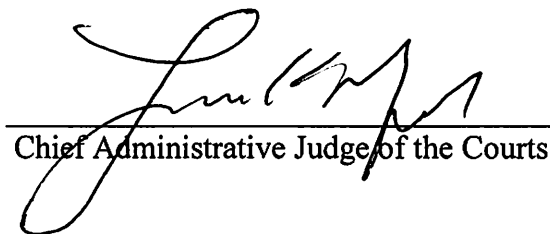
§ 154.5. Confidentiality.

OCA shall keep confidential all information submitted to it which is subject of or part of an exemption request pursuant to this Part, and shall release such information only upon authorization of a court of competent jurisdiction.

§ 154.6. Initial Public Offerings.

When a covered person, or his or her firm, has provided legal representation to a client with respect to an initial public offering, and federal law or regulations restrict the disclosure of information relating to such work, the covered person shall deliver electronically, in a manner set forth by OCA, a signed written statement, disclosing the identity of the client and the services relating to the initial public offering.

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Chief Administrative Judge of the Courts

Dated: December 29, 2015

AO/326/15