

**The Webster-Batchelder American Inn of Court
December 6, 2017**

LOBBYING IN NEW HAMPSHIRE

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Inns of Court
December 6, 2017
The Juice You Need on Lobbying in New Hampshire



1. Lobbyists help make the world go round. Really.
 - Key source of information for policymakers, especially volunteer legislators
 - Clients and legislators often don't speak the same language; we translate and help drive solutions
2. Credibility is your stock in trade
 - Trust
 - Political trust
3. Relationships matter
 - Political relationships
 - Local connections
 - What about fundraising?
4. Substance is king
5. But context is queen
 - Politics, politics, politics
 - Who's with you; who's against you
 - What matters to your audience?
 - Timing
6. Keeping it simple
 - Legislators tend not to be subject matter experts
 - They are dealing with hundred (or thousands) of bills, with little staff support
 - Arguments must be compelling; understandable; concise
7. Understanding your client
 - What do they really want to achieve?
8. Who is the best voice for your client's interest
 - It may not be you...
 - Building coalitions and alliances
9. Ethics
 - No one is entitled to a lobbyist
 - Managing potential business conflicts
 - Rules of professional conduct
10. "New Hampshire" solutions

Scenarios

Scenario 1 – A Chance Encounter

You provide strategic advice and legal work for the New Hampshire Emergency Room Physician Association, but you are not registered to lobby. You have been working on obtaining group insurance for them. You run into a State Representative at a BIA dinner. The Rep knows you work for the ER Docs and are trying to get them better insurance rates; he asks how things are going. You know that the Rep is on the Transportation Committee and that there is a mandatory seat belt bill (HB100) pending before the Committee that was getting a lot of press. Seeing the Rep reminds you that HB100 had come up in conversation at your last meeting with the ER Docs; they are wildly in favor of it because of the potential of reducing death and serious head injuries in the trauma patients they treat. You respond to the Rep that you are making headway on your insurance project, but blurt out that we could sure use your help on HB100 as that would make a huge difference in improving outcomes in the ER.

- Is this lobbying?
- Why or why not?
- Does it matter whether the communication was incidental?
- Does the client's expectation matter?

Would the answer be different if HB100 required insurers who want to write medical malpractice insurance to offer coverage to groups like the NHERPA on a more favorable basis than current practices?

Scenario 2 – A Coffee Shop Meeting

You represent Environmental Gas Company, which is trying to build a gas pipeline in New Hampshire. You are not registered to lobby. You arrange a coffee meeting with your old law school acquaintance to discuss the project and urge local support for the project. She is a selectwoman for the town of Greenacre, which would be impacted by the proposed pipeline. During the conversation, you learn that the selectwoman is also a state representative who sits on the Science, Technology and Energy Committee, which is hearing a bill that would make it harder to build the project. The selectwoman asks you about the bill.

- Is the initial conversation lobbying?
- Does it matter that the selectwoman is a law school friend?
- Does it matter that you were only discussing the issue in the context of local approval and not the state bill?
- How do you answer the selectman's question about the bill?

Key Sections from NH Lobbying Statutes

Inns of Court
Key Sections from New Hampshire Lobbying Statutes
December 6, 2017

15:1 Registration. –

I. Any person who is employed for a consideration by any other person, except the state of New Hampshire, in a representative capacity for the purposes specified in paragraph II of this section shall first register as a lobbyist with the secretary of state. Each registration shall report the existence of a relationship between a single client and either a single lobbyist or a partnership, firm, or corporation with one or more partners, members, or employees of a firm acting as lobbyist.

II. Registration is required where the person, partnership, firm, or corporation is employed:

(a) To promote or oppose, directly or indirectly, any legislation pending or proposed before the general court, or;

(b) To promote or oppose, directly or indirectly, any action by the governor, governor and council, or any state agency, as defined in RSA 15-A:2, where such action concerns legislation or contracts pending or proposed before the general court, any pending or proposed administrative rule, or the procurement of goods or services that are being or may be purchased by the state, subject to the exclusions in paragraph III.

III. Such registration is not required where the person:

(a) Is employed to represent another only in an adjudicative proceeding or nonadjudicative process as defined or described in RSA 541-A, other than a rulemaking proceeding or any process related to the purchasing of goods or services by the state, and who files an appearance with the authority conducting the matter; or

(b) Is an owner or employee, of a business seeking to do business with the state or communicating with an executive branch official or employee, a state agency, or an administrative official of the general court regarding goods or services that are being or may be purchased by the state.

IV. All registrations required under this section shall expire on December 31.

V. The following communications are excluded from the regulation imposed by this chapter and shall not be considered in a determination of whether a person is required to register and report as a lobbyist:

(a) Public testimony before a legislative committee or subcommittee.

(b) Public testimony before any entity subject to RSA 91-A, the right-to-know law.

(c) A written document filed in the course of a public proceeding or any other communication that is made on the record in a public proceeding.

(d) Communication made by a public official acting in the public official's official capacity.

(e) Communication made by a representative of a media organization if the purpose of the communication is gathering or disseminating news and information to the public.

(f) Communication made in a speech, article, publication, or other material that is distributed and made available to the public, or through radio, television, cable television, the Internet, or other medium of mass communication.

(g) Communication made in writing which becomes a public record subject to the provisions of RSA 91-A, the right-to-know law, provided in response to a written request by a legislative or executive branch official.

(h) Communication made to the governor or to any member of the executive council, member of the general court, or public official as defined in RSA 15-B:2, IX by an employee on behalf of his or her employer that would otherwise require registration under RSA 15:1, II, provided that the person making the communication:

(1) Is not required to register and report as a lobbyist for any person, including the employer on whose behalf the communication exempted under this subparagraph is made;

(2) Is not specifically compensated by the employer or any other person for making the communication;

(3) Has not been required to make the communication by the employer or any other person required to register and report under this chapter; and

(4) The purpose of the communication is to allow the employee to communicate the employer's views or his or her personal views on any matter within the scope of RSA 15:1, II that may affect the employer and/or the employee in his or her capacity as an employee.

15:2 Name Tag. –

I. Any person who is required to register as a lobbyist under RSA 15:1 shall wear on his or her outer garment a clearly visible name tag when lobbying in the state house or the legislative office building, or before the governor, governor and council, or a state agency. Such name tag shall have white lettering on a hunter orange background and shall be at least 1 1/2 inches high and 2 1/2 inches long. This name tag shall consist of lobbyist's first and last name and the word "lobbyist" or the name of the organization represented in letters at least 1/4 inch high.

15:3 Registration Form. –

I. The lobbyist registration shall be on a form prescribed by the secretary of state that shall at a minimum include:

(a) The full name of the person registering, if that person is affiliated with a partnership, firm, or corporation, the name of that partnership, firm, or corporation, the name of the client who has employed the person registering, his or her respective business addresses, or if none, his or her residence address.

(b) The usual occupation or primary field of business of each.

(c) The date and character of the employment or agreement therefor.

(d) The duration of the employment if it can be determined.

(e) The special subjects of legislation or executive branch action, if any, to which the employment relates.

(f) If the person registering is a member of or affiliated with a partnership, firm, or corporation that has other members or employees who are also registered as a lobbyist, a list of the full name of each such person. Being listed in this subparagraph does not relieve anyone who will be lobbying for this client from being listed individually under subparagraph (a).

(g) The following statement followed by a line for each person filing the form to sign and date the form: "I have read RSA 15 and hereby swear or affirm that the foregoing information is true and complete to the best of my knowledge and belief."

II. If the employment varies from time to time, a current registration shall be maintained for each employment.

15:4 Registration Fee. – The fee for registration as a lobbyist under RSA 15:1 for any one year shall be \$50 for each person lobbying for each reported client or employer. A fee shall be paid for each individual who acts as a lobbyist for each client or employer regardless of his or her affiliation with any other registered lobbyist.

15:6 Statements. –

I. Each lobbyist shall file with the secretary of state itemized statements under oath of:

(a) All fees received from any lobbying client that are related, directly or indirectly, to lobbying, such as public advocacy, government relations, or public relations services including research, monitoring legislation, and related legal work.

(b) All expenditures made from lobbying fees, including by whom paid or to whom charged.

(c) Any honorarium or expense reimbursement, as defined in RSA 15-B or RSA 14-C, or political contribution, as defined in RSA 664, made by the lobbyist in his or her professional or personal capacity, on behalf of the lobbyist, the partnership, firm, or corporation or by the lobbyist on behalf of the client or employer or by a family member of the lobbyist. The statements shall be open to public inspection.

For the purposes of this chapter, "family member" shall mean any person related to and living in the same domicile as the lobbyist, who shares a common economic interest in the expenses of daily living, including, but not limited to, a spouse, child, or parents.

II. Lobbyists shall file statements no later than the last Wednesday of each January, April, July, and October covering all fees received and expenditures, contributions, honorariums, or expense reimbursements made since the last required filing, from fees received at any time from a lobbying client or employer or from funds otherwise provided by the lobbyist, partnership, firm, or corporation, or from the client or employer.

III. In this chapter "value" means the amount at which property or services would change hands between a willing buyer and a willing seller when neither is under any compulsion to buy or sell and both have reasonable knowledge of the relevant facts.

IV. A lobbyist, in his or her professional or personal capacity, or a family member of a lobbyist making a contribution, honorarium, or expense reimbursement, in a form other than cash, check or negotiable instrument, to a person with a duty to report that contribution, honorarium, or expense reimbursement pursuant to RSA 15-B, RSA 14-C, or RSA 664 shall provide the recipient with a written statement of the value of the contribution, honorarium, or expense reimbursement if the value is different than any price or value printed on the contribution, honorarium, or expense reimbursement or if the contribution, honorarium, or expense reimbursement does not have a price affixed to it.

V. The lobbyist statement shall be in the form prescribed by the secretary of state, may be in paper or electronic form, and shall include at a minimum:

(a) The full name of each lobbyist covered by the report.

(b) The name of the lobbyist partnership, firm, or corporation, if any.

(c) The business address and telephone number for the lobbyist, partnership, firm, or corporation.

(d) For each lobbying client, the full name and business address of the client, the scope of the representation or lobbyist services being paid for, the gross amount of all fees received from that client, not reduced by any expenses, that are related, directly or indirectly, to lobbying, such as public advocacy, government relations, or public relations services including research, monitoring legislation, and related legal work, a statement of the aggregate total of fees received that are related, directly or indirectly, to lobbying services during the calendar year, and a statement of any fee payment due, but not yet paid.

(e) For each honorarium or expense reimbursement made, that is reportable pursuant to RSA 15-B or RSA 14-C:

(1) The name of the client on whose behalf the expense reimbursement or honorarium was made, if any.

(2) The name of the person receiving the honorarium or expense reimbursement.

(3) A brief description of the event to which the honorarium or expense reimbursement relates.

(4) The value of the honorarium or expense reimbursement.

(f) For each political contribution made that is reportable pursuant to RSA 664:

- (1) The name of the candidate.
- (2) The office the candidate is seeking.
- (3) The value of the contribution.
- (4) If the contribution is an in-kind contribution, a brief description of the contribution.

(g) For all expenditures for salaries, benefits, support staff, and office expenses, related directly or indirectly to lobbying, a statement of the total aggregate expenses for salaries, support staff, and office expenses related directly or indirectly to lobbying shall satisfy the requirement that an itemized statement of these expenses be filed.

(h) The following statement followed by a line for each person filing the form to sign and date the form: "I have read RSA 15, RSA 15-B, RSA 14-C, and RSA 664 and hereby swear or affirm that the foregoing information is true and complete to the best of my knowledge and belief."

VI. The secretary of state shall maintain the statements required by this section for 6 years from the date of filing, after which time the statements may be destroyed. The public information on the forms shall be available to the public in the form of a photocopy or an electronic record. The secretary of state shall, as soon as is practical, implement an electronic record keeping system that makes lobbyist registration forms and fee and expense reports available to the public through the internet.

Related Statutes:

21-G:25 Restrictions on Simultaneous Employment and Public Service. — Volunteer service shall not be used, directly or indirectly, for personal financial gain, or to facilitate non-public communications with executive branch officials or classified employees for the purpose of promoting or advancing any matter on behalf of a third party, or to influence executive branch officials or classified employees in the performance of their duties. In furtherance of this prohibition:

I. No person shall serve as a public employee, as defined by RSA 15-B:2, VIII, or serve as an appointee or volunteer for any multi-branch commission, committee, board, or similar governmental entity, and simultaneously be a person who has a duty to register as a lobbyist pursuant to RSA 15, or is employed by, or maintains an ownership interest in, any entity which employs a registered lobbyist.

II. No person shall serve as a public employee in a position that establishes policy or adjudicates matters before any agency while maintaining any ownership interest in, or being employed by, any entity, engaged in promoting or opposing, directly or indirectly, any legislation pending or proposed before the general court, or promoting or opposing any action or inaction on any matter, contract, license, permit, or administrative rule, proposed or pending, before the executive branch.

III. Unless otherwise prohibited by law, the prohibitions of RSA 21-G:25, I and II, shall not apply to:

(a) Appearances before the courts or any adjudicative proceedings, or non-adjudicative processes, as defined by RSA 541-A;

(b) Service in a position subject to appointment by the governor and council;

(c) Testimony or participation in any public meeting, or service on any commission, committee, board, panel, or other similar governmental entity that is subject to the public meeting and notice requirements of RSA 91-A, or the public right of access mandated by part 1, article 8 of the New Hampshire constitution.

(d) Volunteer public service related entirely to a ceremonial, celebratory, historical, or recreational program or event; public health or safety incident or drill, or consumer protection assistance;

(e) Ownership of publicly-traded stock; or

(f) A public employee, appointee, or volunteer's personal application for any license, permit, or ruling from a state agency.

Notes

- RSA 15-B:2 defines "Public employee" as "any person, including but not limited to a classified or non-classified employee **or volunteer**, who conducts state business on behalf of the governor, any executive branch official, or agency.

See Generally CHAPTER 15-B

GIFTS, HONORARIUMS, AND EXPENSE REIMBURSEMENTS (Executive Branch)

15-B:2 Definitions. – For the purposes of this chapter:

...

V. (a) "Gift" means:

(1) Money in any amount, whether in the form of cash, check or any other negotiable or non-negotiable instrumentality for the transfer of money.

(2) Any other tangible thing, intangible thing, service, or the use thereof having more than insignificant economic value. Any such item with a value of less than \$25 is presumed to be of insignificant economic value.

(b) Notwithstanding subparagraph (a), "gift" shall not include:

(1) A political contribution as defined in RSA 664.

(2) A commercially reasonable loan, made in the ordinary course of business.

(3) Repayment to an elected official, public official, public employee, or constitutional official of a bona fide loan made by such a person.

(4) A ceremonial plaque, award, or other commemorative object, which is personally inscribed to the recipient and which has inconsequential economic value. A ceremonial object or award with a value of \$150 or less is presumed to be of inconsequential economic value.

(5) Objects or services which primarily serve an informational purpose provided in the ordinary course of business, such as reports, books, maps, or charts.

(6) Money in any form, an object, or any tangible or intangible thing or service of economic value, where the donor's act of giving is purely private and personal in nature and the money, object, or tangible or intangible thing or service of economic value would have been given and received even if the person were not an elected official, public official, public employee, or constitutional official.

(7) Wages, salary, benefits, mileage, or payment for expenses received by the person in his or her regular course of employment or business which is unrelated to the government position held.

(8) Wages, salary, benefits, mileage, or payment for expenses paid to the person by the state, a county, or the United States of America related to performance of official duties.

(9) Tickets or free admission to a charitable, ceremonial, or political event provided that:

(A) The proceeds of the event are subject to the political contributions and expenditure reporting law, RSA 664; or

(B) The event is sponsored by a charitable organization that is registered with the division of charitable trusts, department of justice, or which is a charitable organization pursuant to section 501(c)(3) of the federal tax code.

(10) Meals, beverages, lodging, or transportation associated with attendance at:

(A) Any event for which the primary significance is ceremonial or celebratory, provided the event is public or, if by invitation only, is planned to have an attendance greater than 50 people; or

(B) Any event where the person is attending in an official capacity representing the state or the agency of which the person is a member.

(11) Expense reimbursement or an honorarium.

(12) Meals and beverages consumed at a meeting or event, the purpose of which is to discuss official business.

(13) Monetary or non-monetary awards or recognition issued under the suggestion and extraordinary service award program under RSA 99-E.

VI. "Honorarium" means a payment in any form to an elected official, public official, public employee, or constitutional official for an appearance, speech, written article or other document, service as a consultant or advisor, or participation in a discussion group or similar activities. Honorarium does not include a payment for such activities for which the person is being compensated by the state, a county, the United States of America, or any other employer or client, where the activity giving rise to the honorarium is not related to or associated with any public office or government employment.

VII. "Family member" shall mean any person related to and living in the same domicile as the elected official, public official, public employee, or constitutional official who shares a common economic interest in the expenses of daily living, including, but not limited to, a spouse, child, or parent.

VIII. "Public employee" means any person, including but not limited to a classified or non-classified employee or volunteer, who conducts state business on behalf of the governor, any executive branch official, or agency.

IX. "Public official" means a commissioned, unclassified, or nonclassified executive branch employee, but shall not include any commissioned, unclassified, or nonclassified employee elected by the legislature.

X. "Value" means the amount at which property or services would change hands between a willing buyer and a willing seller when neither is under any compulsion to buy or sell and both have reasonable knowledge of the relevant facts.

See Generally CHAPTER 14-C

GIFTS, HONORARIUMS, AND EXPENSE REIMBURSEMENTS REQUIREMENTS FOR LEGISLATORS AND LEGISLATIVE EMPLOYEES

14-C:2 Definitions. – In this chapter:

I. "Ceremonial event" means an event held by a recognized civic organization to present awards.

II. "Charitable event" means an event sponsored by a charitable organization that is registered with the division of charitable trusts, department of justice, or which is a charitable organization pursuant to section 501(c)(3) of the Internal Revenue Code held for the purpose of raising charitable donations.

III. "Expense reimbursement" shall mean any price, charge, fee, expense, or other cost which is waived, forgiven, reduced, prepaid, or reimbursed in any form for the reasonable expenses of attendance, registration, travel, meals, or lodging related to a bona fide conference, meeting, seminar, or educational, cultural, or informational program, or an event to which the recipient is invited in his or her official capacity as a representative of the senate or the house of representatives of which the recipient is a member.

IV. (a) "Gift" means:

(1) Money in any amount, whether in the form of cash, check, or any other negotiable or non-negotiable instrumentality for the transfer of money.

(2) Any other tangible thing, intangible thing, service, or the use thereof having an individual value of greater than \$50.

(3) Multiple tangible things, intangible things, services, or the use thereof having an individual value \$50 or less with an aggregate value greater than \$250 from any single source during any calendar

year.

(b) Notwithstanding subparagraph (a), "gift" shall not include:

(1) A political contribution as defined in RSA 664.

(2) A commercially reasonable loan, made in the ordinary course of business.

(3) Repayment to a legislator or legislative employee of a bona fide loan made by such a person.

(4) A ceremonial plaque, award, or other commemorative object, which is personally inscribed to the recipient and which has a value of \$150 or less.

(5) Objects or services which primarily serve an informational purpose provided in the ordinary course of business, such as reports, books, maps, or charts.

(6) Money in any form, an object, or any tangible or intangible thing or service of economic value, where the donor's act of giving is purely private and personal in nature and the money, object, or tangible or intangible thing or service of economic value would have been given and received even if the person were not a legislator or legislative employee.

(7) Wages, salary, benefits, mileage, or payment for expenses received by the person in his or her regular course of employment or business which is unrelated to the legislative position held.

(8) Wages, salary, benefits, mileage, or payment for expenses paid to the person by the state, a county, or the United States of America related to performance of official duties.

(9) Tickets or free admission from any source to a political, charitable, or ceremonial event provided that acceptance of any tickets or free admission as permitted by this subparagraph shall be limited to \$250 in the aggregate from any single source during any calendar year and:

(A) The proceeds of the event are subject to the political contributions and expenditure reporting law, RSA 664, or the Federal Election Campaign Act of 1971 as amended, provided that the recipient reports the source of the tickets or free admission pursuant to RSA 14-C:4; or

(B) The event is sponsored by a charitable organization that is registered with the division of charitable trusts, department of justice, or which is a charitable organization pursuant to section 501(c)(3) of the Internal Revenue Code, provided that the recipient reports the source of the tickets or free admission pursuant to RSA 14-C:4; or

(C) The event is primarily ceremonial or celebratory in nature and is public or, if by invitation only, is planned to have an attendance greater than 50 people, provided that the recipient reports the source of the tickets or free admission pursuant to RSA 14-C:4; or

(D) The event is published as an event open for attendance by any legislator or legislative employee in the calendar of the senate or the house of representatives.

(10) An expense reimbursement.

(11) An honorarium.

(12) Meals and beverages having a value of more than \$50 consumed at a meeting or event, the purpose of which is to discuss official business, provided that acceptance of such meals and beverages as permitted by this subparagraph shall be reported pursuant to RSA 14-C:4 and limited to \$250 in the aggregate from any single source during any calendar year.

(13) Monetary or non-monetary awards or recognition issued under the suggestion and extraordinary service award program under RSA 99-E.

V. "Honorarium" means a payment in any form to a legislator or legislative employee for an appearance, speech, written article or other document, service as a consultant or advisor, or participation in a discussion group or similar activities. Honorarium does not include a payment for such activities for which the person is being compensated by the state, a county, the United States of America, or any other employer or client, where the activity giving rise to the honorarium is not related to or associated with any legislative office or employment.

VI. "Household member" shall mean any person living in the same domicile as the legislator or legislative employee, who shares a common economic interest in the expenses of daily living, including,

but not limited to, a spouse, child, or parent.

VII. "Legislative employee" means any person employed by the legislative branch.

VIII. "Legislator" means a member of the general court.

IX. "Official business" means the discussion or transaction of legislative business, namely, any official action or non-action with regard to any potential pending or existing bill, resolution, amendment, report, or study, any other matter pending or proposed in a committee or in either body of the general court, or an issue of public policy which is or may be the subject of legislative attention, or any other matter which is within the official jurisdiction or cognizance of the general court.

X. "Political event" means an event of any kind or nature including, but not limited to, receptions, breakfasts, luncheons, dinners, dances, testimonials, or picnics, held for the sole purpose of raising political contributions.

XI. "Value" means the amount at which property or services would change hands between a willing buyer and a willing seller when neither is under any compulsion to buy or sell and both have reasonable knowledge of the relevant facts.

Source. 2016, 328:9, eff. Dec. 7, 2016.

Relevant New Hampshire Statutes

TITLE I

THE STATE AND ITS GOVERNMENT

CHAPTER 15

LOBBYISTS

Section 15:1

15:1 Registration. –

I. Any person who is employed for a consideration by any other person, except the state of New Hampshire, in a representative capacity for the purposes specified in paragraph II of this section shall first register as a lobbyist with the secretary of state. Each registration shall report the existence of a relationship between a single client and either a single lobbyist or a partnership, firm, or corporation with one or more partners, members, or employees of a firm acting as lobbyist.

II. Registration is required where the person, partnership, firm, or corporation is employed:

(a) To promote or oppose, directly or indirectly, any legislation pending or proposed before the general court, or;

(b) To promote or oppose, directly or indirectly, any action by the governor, governor and council, or any state agency, as defined in RSA 15-A:2, where such action concerns legislation or contracts pending or proposed before the general court, any pending or proposed administrative rule, or the procurement of goods or services that are being or may be purchased by the state, subject to the exclusions in paragraph III.

III. Such registration is not required where the person:

(a) Is employed to represent another only in an adjudicative proceeding or nonadjudicative process as defined or described in RSA 541-A, other than a rulemaking proceeding or any process related to the purchasing of goods or services by the state, and who files an appearance with the authority conducting the matter; or

(b) Is an owner or employee, of a business seeking to do business with the state or communicating with an executive branch official or employee, a state agency, or an administrative official of the general court regarding goods or services that are being or may be purchased by the state.

IV. All registrations required under this section shall expire on December 31.

V. The following communications are excluded from the regulation imposed by this chapter and shall not be considered in a determination of whether a person is required to register and report as a lobbyist:

(a) Public testimony before a legislative committee or subcommittee.

(b) Public testimony before any entity subject to RSA 91-A, the right-to-know law.

(c) A written document filed in the course of a public proceeding or any other communication that is made on the record in a public proceeding.

(d) Communication made by a public official acting in the public official's official capacity.

(e) Communication made by a representative of a media organization if the purpose of the communication is gathering or disseminating news and information to the public.

(f) Communication made in a speech, article, publication, or other material that is distributed and made available to the public, or through radio, television, cable television, the Internet, or other medium of mass communication.

(g) Communication made in writing which becomes a public record subject to the provisions of RSA 91-A, the right-to-know law, provided in response to a written request by a legislative or executive branch official.

(h) Communication made to the governor or to any member of the executive council, member of the general court, or public official as defined in RSA 15-B:2, IX by an employee on behalf of his or her employer that would otherwise require registration under RSA 15:1, II, provided that the person making the communication:

(1) Is not required to register and report as a lobbyist for any person, including the employer on whose behalf the communication exempted under this subparagraph is made;

(2) Is not specifically compensated by the employer or any other person for making the communication;

(3) Has not been required to make the communication by the employer or any other person required to

register and report under this chapter; and

(4) The purpose of the communication is to allow the employee to communicate the employer's views or his or her personal views on any matter within the scope of RSA 15:1, II that may affect the employer and/or the employee in his or her capacity as an employee.

Source. 2006, 21:7. 2009, 203:1, eff. Sept. 13, 2009. 2016, 328:15, eff. Dec. 7, 2016.

Section 15:2

15:2 Name Tag. –

I. Any person who is required to register as a lobbyist under RSA 15:1 shall wear on his or her outer garment a clearly visible name tag when lobbying in the state house or the legislative office building, or before the governor, governor and council, or a state agency. Such name tag shall have white lettering on a hunter orange background and shall be at least 1 1/2 inches high and 2 1/2 inches long. This name tag shall consist of lobbyist's first and last name and the word "lobbyist" or the name of the organization represented in letters at least 1/4 inch high.

II. [Repealed.]

Source. 2006, 21:7, eff. June 2, 2006.

Section 15:3

15:3 Registration Form. –

I. The lobbyist registration shall be on a form prescribed by the secretary of state that shall at a minimum include:

- (a) The full name of the person registering, if that person is affiliated with a partnership, firm, or corporation, the name of that partnership, firm, or corporation, the name of the client who has employed the person registering, his or her respective business addresses, or if none, his or her residence address.
- (b) The usual occupation or primary field of business of each.
- (c) The date and character of the employment or agreement therefor.
- (d) The duration of the employment if it can be determined.
- (e) The special subjects of legislation or executive branch action, if any, to which the employment relates.
- (f) If the person registering is a member of or affiliated with a partnership, firm, or corporation that has other members or employees who are also registered as a lobbyist, a list of the full name of each such person. Being listed in this subparagraph does not relieve anyone who will be lobbying for this client from being listed individually under subparagraph (a).
- (g) The following statement followed by a line for each person filing the form to sign and date the form: "I have read RSA 15 and hereby swear or affirm that the foregoing information is true and complete to the best of my knowledge and belief."

II. If the employment varies from time to time, a current registration shall be maintained for each employment.

Source. 2006, 21:7, eff. June 2, 2006.

Section 15:4

15:4 Registration Fee. – The fee for registration as a lobbyist under RSA 15:1 for any one year shall be \$50 for each person lobbying for each reported client or employer. A fee shall be paid for each individual who acts as a lobbyist for each client or employer regardless of his or her affiliation with any other registered lobbyist.

Source. 2006, 21:7, eff. June 2, 2006.

Section 15:5

15:5 Prohibited Activities. –

I. Except as provided in paragraph II, no recipient of a grant or appropriation of state funds may use the state funds to lobby or attempt to influence legislation, participate in political activity, or contribute funds to any entity engaged in these activities.

II. Any recipient of a grant or appropriation of state funds that wishes to engage in any of the activities prohibited in paragraph I, or contribute funds to any entity engaged in these activities, shall segregate the state funds in such a manner that such funds are physically and financially separate from any non-state funds that may be used for any of these purposes. Mere bookkeeping separation of the state funds from other moneys shall not be sufficient.

Source. 2006, 21:7, eff. June 2, 2006.

Section 15:6**15:6 Statements. –**

I. Each lobbyist shall file with the secretary of state itemized statements under oath of:

(a) All fees received from any lobbying client that are related, directly or indirectly, to lobbying, such as public advocacy, government relations, or public relations services including research, monitoring legislation, and related legal work.

(b) All expenditures made from lobbying fees, including by whom paid or to whom charged.

(c) Any honorarium or expense reimbursement, as defined in RSA 15-B or RSA 14-C, or political contribution, as defined in RSA 664, made by the lobbyist in his or her professional or personal capacity, on behalf of the lobbyist, the partnership, firm, or corporation or by the lobbyist on behalf of the client or employer or by a family member of the lobbyist. The statements shall be open to public inspection. For the purposes of this chapter, "family member" shall mean any person related to and living in the same domicile as the lobbyist, who shares a common economic interest in the expenses of daily living, including, but not limited to, a spouse, child, or parents.

II. Lobbyists shall file statements no later than the last Wednesday of each January, April, July, and October covering all fees received and expenditures, contributions, honorariums, or expense reimbursements made since the last required filing, from fees received at any time from a lobbying client or employer or from funds otherwise provided by the lobbyist, partnership, firm, or corporation, or from the client or employer.

III. In this chapter "value" means the amount at which property or services would change hands between a willing buyer and a willing seller when neither is under any compulsion to buy or sell and both have reasonable knowledge of the relevant facts.

IV. A lobbyist, in his or her professional or personal capacity, or a family member of a lobbyist making a contribution, honorarium, or expense reimbursement, in a form other than cash, check or negotiable instrument, to a person with a duty to report that contribution, honorarium, or expense reimbursement pursuant to RSA 15-B, RSA 14-C, or RSA 664 shall provide the recipient with a written statement of the value of the contribution, honorarium, or expense reimbursement if the value is different than any price or value printed on the contribution, honorarium, or expense reimbursement or if the contribution, honorarium, or expense reimbursement does not have a price affixed to it.

V. The lobbyist statement shall be in the form prescribed by the secretary of state, may be in paper or electronic form, and shall include at a minimum:

(a) The full name of each lobbyist covered by the report.

(b) The name of the lobbyist partnership, firm, or corporation, if any.

(c) The business address and telephone number for the lobbyist, partnership, firm, or corporation.

(d) For each lobbying client, the full name and business address of the client, the scope of the representation or lobbyist services being paid for, the gross amount of all fees received from that client, not reduced by any expenses, that are related, directly or indirectly, to lobbying, such as public advocacy, government relations, or public relations services including research, monitoring legislation, and related legal work, a statement of the aggregate total of fees received that are related, directly or indirectly, to lobbying services during the calendar year, and a statement of any fee payment due, but not yet paid.

(e) For each honorarium or expense reimbursement made, that is reportable pursuant to RSA 15-B or RSA 14-C:

- (1) The name of the client on whose behalf the expense reimbursement or honorarium was made, if any.
- (2) The name of the person receiving the honorarium or expense reimbursement.
- (3) A brief description of the event to which the honorarium or expense reimbursement relates.
- (4) The value of the honorarium or expense reimbursement.
- (f) For each political contribution made that is reportable pursuant to RSA 664:
 - (1) The name of the candidate.
 - (2) The office the candidate is seeking.
 - (3) The value of the contribution.
 - (4) If the contribution is an in-kind contribution, a brief description of the contribution.
- (g) For all expenditures for salaries, benefits, support staff, and office expenses, related directly or indirectly to lobbying, a statement of the total aggregate expenses for salaries, support staff, and office expenses related directly or indirectly to lobbying shall satisfy the requirement that an itemized statement of these expenses be filed.
- (h) The following statement followed by a line for each person filing the form to sign and date the form: "I have read RSA 15, RSA 15-B, RSA 14-C, and RSA 664 and hereby swear or affirm that the foregoing information is true and complete to the best of my knowledge and belief."

VI. The secretary of state shall maintain the statements required by this section for 6 years from the date of filing, after which time the statements may be destroyed. The public information on the forms shall be available to the public in the form of a photocopy or an electronic record. The secretary of state shall, as soon as is practical, implement an electronic record keeping system that makes lobbyist registration forms and fee and expense reports available to the public through the internet.

Source. 2006, 21:7; 312:3, 4. 2009, 203:2, 3, eff. Sept. 13, 2009. 2016, 328:10, eff. Dec. 7, 2016.

Section 15:7

15:7 Blanks. – The secretary of state shall provide suitable forms in paper or electronic form to carry out the requirements of this chapter.

Source. 2006, 21:7, eff. June 2, 2006.

Section 15:8

15:8 Penalty. – Whoever violates any provision of this chapter shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person. Whoever shall make and file any statement under this chapter which is to his or her knowledge false shall be deemed guilty of perjury and punished accordingly.

Source. 2006, 21:7, eff. June 2, 2006.

Section 15:9

15:9 Examination of Statements of Fees and Expenditures. – It shall be the duty of the attorney general to examine the statements of fees and expenditures which are made under this chapter to the secretary of state and to compel such returns be made to comply with the law.

Source. 2006, 21:7, eff. June 2, 2006.

Section 15:10

15:10 Testimonial Privilege. – No person shall be excused from testifying in a proceeding instituted against another person under the foregoing sections for the reason that he might thereby incriminate himself; but no testimony so given by him shall be used directly or indirectly as evidence against him in any prosecution, nor shall he be prosecuted for any offenses so disclosed by him.

Source. 2006, 21:7, eff. June 2, 2006.

Section 15:11

15:11 Severability. — If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

Source. 2006, 21:7, eff. June 2, 2006.

TITLE I

THE STATE AND ITS GOVERNMENT

CHAPTER 21-G

ORGANIZATION OF EXECUTIVE BRANCH

Code of Ethics

Section 21-G:25

21-G:25 Restrictions on Simultaneous Employment and Public Service. – Volunteer service shall not be used, directly or indirectly, for personal financial gain, or to facilitate non-public communications with executive branch officials or classified employees for the purpose of promoting or advancing any matter on behalf of a third party, or to influence executive branch officials or classified employees in the performance of their duties. In furtherance of this prohibition:

I. No person shall serve as a public employee, as defined by RSA 15-B:2, VIII, or serve as an appointee or volunteer for any multi-branch commission, committee, board, or similar governmental entity, and simultaneously be a person who has a duty to register as a lobbyist pursuant to RSA 15, or is employed by, or maintains an ownership interest in, any entity which employs a registered lobbyist.

II. No person shall serve as a public employee in a position that establishes policy or adjudicates matters before any agency while maintaining any ownership interest in, or being employed by, any entity, engaged in promoting or opposing, directly or indirectly, any legislation pending or proposed before the general court, or promoting or opposing any action or inaction on any matter, contract, license, permit, or administrative rule, proposed or pending, before the executive branch.

III. Unless otherwise prohibited by law, the prohibitions of RSA 21-G:25, I and II, shall not apply to:

(a) Appearances before the courts or any adjudicative proceedings, or non-adjudicative processes, as defined by RSA 541-A;

(b) Service in a position subject to appointment by the governor and council;

(c) Testimony or participation in any public meeting, or service on any commission, committee, board, panel, or other similar governmental entity that is subject to the public meeting and notice requirements of RSA 91-A, or the public right of access mandated by part 1, article 8 of the New Hampshire constitution.

(d) Volunteer public service related entirely to a ceremonial, celebratory, historical, or recreational program or event; public health or safety incident or drill, or consumer protection assistance;

(e) Ownership of publicly-traded stock; or

(f) A public employee, appointee, or volunteer's personal application for any license, permit, or ruling from a state agency.

Source. 2004, 214:1. 2006, 21:2, eff. June 2, 2006. 2016, 57:5, eff. July 4, 2016; 328:16, eff. Dec. 7, 2016.

TITLE I

THE STATE AND ITS GOVERNMENT

CHAPTER 15-B

GIFTS, HONORARIUMS, AND EXPENSE REIMBURSEMENTS

Section 15-B:1

15-B:1 Purpose. – The purpose of this chapter is to ensure that the performance of official duties does not give rise to a conflict of interest, by prohibiting certain gifts and by requiring certain persons to file with the secretary of state a report of any honorariums or expense reimbursements received. This chapter shall be liberally construed to effect this purpose.

Source. 2006, 21:9, eff. June 2, 2006.

Section 15-B:2

15-B:2 Definitions. – For the purposes of this chapter:

I. "Agency" means the executive branch and any department, division, board, commission, or equivalent entity of the executive branch.

II. "Constitutional official" means the secretary of state, the state treasurer, their deputies, assistants, and all employees of their departments.

III. "Elected official" means the governor, members of the executive council, county commissioners, county sheriffs, county treasurers, county attorneys, registers of deeds, and registers of probate.

IV. "Expense reimbursement" shall mean any price, charge, fee, expense, or other cost which is waived, forgiven, reduced, prepaid, or reimbursed in any form for the reasonable expenses of attendance, registration, travel, meals, or lodging related to a bona fide conference, meeting, seminar, or educational or informational program, when the source of such reimbursement is other than the state, a county, or the United States of America.

V. (a) "Gift" means:

(1) Money in any amount, whether in the form of cash, check or any other negotiable or non-negotiable instrumentality for the transfer of money.

(2) Any other tangible thing, intangible thing, service, or the use thereof having more than insignificant economic value. Any such item with a value of less than \$25 is presumed to be of insignificant economic value.

(b) Notwithstanding subparagraph (a), "gift" shall not include:

(1) A political contribution as defined in RSA 664.

(2) A commercially reasonable loan, made in the ordinary course of business.

(3) Repayment to an elected official, public official, public employee, or constitutional official of a bona fide loan made by such a person.

(4) A ceremonial plaque, award, or other commemorative object, which is personally inscribed to the recipient and which has inconsequential economic value. A ceremonial object or award with a value of \$150 or less is presumed to be of inconsequential economic value.

(5) Objects or services which primarily serve an informational purpose provided in the ordinary course of business, such as reports, books, maps, or charts.

(6) Money in any form, an object, or any tangible or intangible thing or service of economic value, where the donor's act of giving is purely private and personal in nature and the money, object, or tangible or intangible thing or service of economic value would have been given and received even if the person were not an elected official, public official, public employee, or constitutional official.

(7) Wages, salary, benefits, mileage, or payment for expenses received by the person in his or her regular course of employment or business which is unrelated to the government position held.

(8) Wages, salary, benefits, mileage, or payment for expenses paid to the person by the state, a county, or the United States of America related to performance of official duties.

(9) Tickets or free admission to a charitable, ceremonial, or political event provided that:

(A) The proceeds of the event are subject to the political contributions and expenditure reporting law, RSA 664; or

(B) The event is sponsored by a charitable organization that is registered with the division of charitable trusts, department of justice, or which is a charitable organization pursuant to section 501(c)(3) of the federal tax code.

(10) Meals, beverages, lodging, or transportation associated with attendance at:

(A) Any event for which the primary significance is ceremonial or celebratory, provided the event is public or, if by invitation only, is planned to have an attendance greater than 50 people; or

(B) Any event where the person is attending in an official capacity representing the state or the agency of which the person is a member.

(11) Expense reimbursement or an honorarium.

(12) Meals and beverages consumed at a meeting or event, the purpose of which is to discuss official business.

(13) Monetary or non-monetary awards or recognition issued under the suggestion and extraordinary service award program under RSA 99-E.

VI. "Honorarium" means a payment in any form to an elected official, public official, public employee, or constitutional official for an appearance, speech, written article or other document, service as a consultant or advisor, or participation in a discussion group or similar activities. Honorarium does not include a payment for such activities for which the person is being compensated by the state, a county, the United States of America, or any other employer or client, where the activity giving rise to the honorarium is not related to or associated with any public office or government employment.

VII. "Family member" shall mean any person related to and living in the same domicile as the elected official, public official, public employee, or constitutional official who shares a common economic interest in the expenses of daily living, including, but not limited to, a spouse, child, or parent.

VIII. "Public employee" means any person, including but not limited to a classified or non-classified employee or volunteer, who conducts state business on behalf of the governor, any executive branch official, or agency.

IX. "Public official" means a commissioned, unclassified, or nonclassified executive branch employee, but shall not include any commissioned, unclassified, or nonclassified employee elected by the legislature.

X. "Value" means the amount at which property or services would change hands between a willing buyer and a willing seller when neither is under any compulsion to buy or sell and both have reasonable knowledge of the relevant facts.

Source. 2006, 21:9. 2007, 354:2-4. 2008, 89:1. 2009, 203:6, eff. Sept. 13, 2009. 2016, 328:11, eff. Dec. 7, 2016.

Section 15-B:3

15-B:3 Prohibition on Gifts. –

I. It shall be unlawful to knowingly give any gift as defined in this chapter, directly or indirectly, to any elected official, public official, public employee, or constitutional official.

II. It shall be unlawful to knowingly give any gift as defined in this chapter, directly or indirectly, to any family member, as defined in this chapter, of any elected official, public official, public employee, or constitutional official with a purpose of influencing or affecting the official conduct of such official or employee.

III. No elected official, public official, public employee, or constitutional official shall knowingly accept, directly or indirectly, any gift, as defined in this chapter.

Source. 2006, 21:9, eff. June 2, 2006. 2016, 328:12, eff. Dec. 7, 2016.

Section 15-B:4

15-B:4 Limitation on Receipt of an Honorarium. – No public official or public employee shall accept an honorarium from a person who is subject to or likely to become subject to or interested in any matter or action pending before, or contemplated by, the public official, public employee, or the governmental body with which that

person is affiliated.

Source. 2006, 21:9, eff. June 2, 2006.

Section 15-B:5

15-B:5 Expense Reimbursement. – An elected official, public official, public employee, or constitutional official may accept expense reimbursement for the reasonable expenses for attendance, registration, travel, meals, and lodging for a bona fide conference, meeting, seminar, or educational or informational program which the person attends and that is related to the office, position, or employment held with the state or county, provided that the person attaches to the disclosure report a copy of the agenda or an equivalent document which discloses the subjects addressed and the time schedule of all activities at the event. This provision shall not be construed to require reporting of an expense reimbursement made by an organization to which the state or county pays dues, when the prepayment, underwriting or reimbursement is provided because of the dues paid.

Source. 2006, 21:9. 2007, 354:5, eff. Sept. 15, 2007. 2016, 328:13, eff. Dec. 7, 2016.

Section 15-B:6

15-B:6 Duty to Report. – An elected official, public official, or public employee who receives an, honorarium or expense reimbursement shall file a report with the secretary of state no later than the last day of the month following the month during which the honorarium or expense reimbursement was received.

Source. 2006, 21:9. 2007, 354:6, eff. Sept. 15, 2007. 2016, 328:14, eff. Dec. 7, 2016.

Section 15-B:7

15-B:7 Honorarium, or Expense Reimbursement Report. – The secretary of state shall establish a uniform report of receipt of an honorarium or expense reimbursement, which may be in paper or electronic form.

I. The report shall include at a minimum the following information, which shall be public:

(a) The full name, work address, work phone number, the office, appointment, or employment held by person subject to the reporting requirement.

(b) The full name, post office address, occupation, and principal place of business, if any, of the source of any reportable honorarium or expense reimbursement. When the source is a corporation or other entity, the name and work address of the person representing the corporation or entity in making the honorarium or expense reimbursement must be provided in addition to the name of the corporation or entity.

(c) The value of the honorarium or expense reimbursement. When the exact value is unknown, the person filing the report shall provide an estimate of the value of the gift or honorarium and identify the value as an estimate.

(d) A brief description of the service or event that gave rise to the honorarium or expense reimbursement. Reports of expense reimbursement must include a copy of the agenda or an equivalent document.

(e) The date on which the honorarium or expense reimbursement was received.

(f) The following statement followed by a line for the person filing the form to sign and date the form: "I have read RSA 15-B and hereby swear or affirm that the foregoing information is true and complete to the best of my knowledge and belief."

II. The secretary of state may also require information such as home phone numbers, home addresses, and other information helpful to the administration and enforcement of laws relating to honorariums or expense reimbursements. This information shall be non-public and shall not be subject to the provisions of RSA 91-A.

Source. 2006, 21:9, eff. June 2, 2006.

Section 15-B:8

15-B:8 Forms; Place of Filing. – The secretary of state shall furnish all forms required under this chapter. All

persons filing a report under this chapter shall file with the secretary of state. The reports shall be held in the original form for 6 years from the date of filing, after which time they may be destroyed. The public information on the forms shall be available to the public in the form of a photocopy or an electronic record. The secretary of state shall, as soon as is practical, implement an electronic record keeping system that makes the public information in the reports required by this chapter available to the public through the Internet.

Source. 2006, 21:9, eff. June 2, 2006.

Section 15-B:9

15-B:9 Penalty. – Any person who knowingly fails to comply with the provisions of this chapter or knowingly files a false report shall be guilty of a misdemeanor. It shall be an absolute defense in any prosecution under this chapter that the person acted in reliance upon an advisory opinion on the subject issued under RSA 14-B:3, I(c) or RSA 21-G:30, I(c).

Source. 2006, 21:9. 2007, 194:3, eff. Jan. 1, 2008.

Section 15-B:10

15-B:10 Examination of Reports. – It shall be the duty of the attorney general to examine the reports which are made under this chapter to the secretary of state and to compel such returns be made to comply with the law.

Source. 2006, 21:9, eff. June 2, 2006.

Section 15-B:11

15-B:11 Limitations. – This chapter shall not be construed to:

- I. Prevent receptions, breakfasts, luncheons, dinners, dances, or picnics or like events from being held for the sole purpose of raising political contributions, provided such contributions comply with and are reported as required by RSA 664.
- II. Prohibit gifts or expense reimbursements made to the state of New Hampshire and accepted in accordance with the law.

Source. 2006, 21:9, eff. June 2, 2006.

Section 15-B:12

15-B:12 Severability. – If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

Source. 2006, 21:9, eff. June 2, 2006.

TITLE I

THE STATE AND ITS GOVERNMENT

CHAPTER 14-C

GIFTS, HONORARIUMS, AND EXPENSE REIMBURSEMENTS

REQUIREMENTS FOR LEGISLATORS AND LEGISLATIVE

EMPLOYEES

Section 14-C:1

14-C:1 Purpose. – The purpose of this chapter is to ensure that persons charged with carrying out the duties and activities of the legislative branch of state government do so in an atmosphere that supports the independent judgment of such persons and minimizes the opportunity for inappropriate influence by persons or organizations subject to or likely to become subject to or interested in any matter or action pending in the legislative branch. To that end, this chapter defines gifts that may not be given to, solicited by, or accepted by persons subject to the provisions of the chapter and establishes requirements for the reporting of honorariums, expense reimbursements, and certain other receipts. This chapter shall be liberally construed to effect this purpose.

Source. 2016, 328:9, eff. Dec. 7, 2016.

Section 14-C:2

14-C:2 Definitions. – In this chapter:

- I. "Ceremonial event" means an event held by a recognized civic organization to present awards.
- II. "Charitable event" means an event sponsored by a charitable organization that is registered with the division of charitable trusts, department of justice, or which is a charitable organization pursuant to section 501(c)(3) of the Internal Revenue Code held for the purpose of raising charitable donations.
- III. "Expense reimbursement" shall mean any price, charge, fee, expense, or other cost which is waived, forgiven, reduced, prepaid, or reimbursed in any form for the reasonable expenses of attendance, registration, travel, meals, or lodging related to a bona fide conference, meeting, seminar, or educational, cultural, or informational program, or an event to which the recipient is invited in his or her official capacity as a representative of the senate or the house of representatives of which the recipient is a member.
- IV. (a) "Gift" means:
 - (1) Money in any amount, whether in the form of cash, check, or any other negotiable or non-negotiable instrumentality for the transfer of money.
 - (2) Any other tangible thing, intangible thing, service, or the use thereof having an individual value of greater than \$50.
 - (3) Multiple tangible things, intangible things, services, or the use thereof having an individual value \$50 or less with an aggregate value greater than \$250 from any single source during any calendar year.
- (b) Notwithstanding subparagraph (a), "gift" shall not include:
 - (1) A political contribution as defined in RSA 664.
 - (2) A commercially reasonable loan, made in the ordinary course of business.
 - (3) Repayment to a legislator or legislative employee of a bona fide loan made by such a person.
 - (4) A ceremonial plaque, award, or other commemorative object, which is personally inscribed to the recipient and which has a value of \$150 or less.
 - (5) Objects or services which primarily serve an informational purpose provided in the ordinary course of business, such as reports, books, maps, or charts.
 - (6) Money in any form, an object, or any tangible or intangible thing or service of economic value, where the

donor's act of giving is purely private and personal in nature and the money, object, or tangible or intangible thing or service of economic value would have been given and received even if the person were not a legislator or legislative employee.

(7) Wages, salary, benefits, mileage, or payment for expenses received by the person in his or her regular course of employment or business which is unrelated to the legislative position held.

(8) Wages, salary, benefits, mileage, or payment for expenses paid to the person by the state, a county, or the United States of America related to performance of official duties.

(9) Tickets or free admission from any source to a political, charitable, or ceremonial event provided that acceptance of any tickets or free admission as permitted by this subparagraph shall be limited to \$250 in the aggregate from any single source during any calendar year and:

(A) The proceeds of the event are subject to the political contributions and expenditure reporting law, RSA 664, or the Federal Election Campaign Act of 1971 as amended, provided that the recipient reports the source of the tickets or free admission pursuant to RSA 14-C:4; or

(B) The event is sponsored by a charitable organization that is registered with the division of charitable trusts, department of justice, or which is a charitable organization pursuant to section 501(c)(3) of the Internal Revenue Code, provided that the recipient reports the source of the tickets or free admission pursuant to RSA 14-C:4; or

(C) The event is primarily ceremonial or celebratory in nature and is public or, if by invitation only, is planned to have an attendance greater than 50 people, provided that the recipient reports the source of the tickets or free admission pursuant to RSA 14-C:4; or

(D) The event is published as an event open for attendance by any legislator or legislative employee in the calendar of the senate or the house of representatives.

(10) An expense reimbursement.

(11) An honorarium.

(12) Meals and beverages having a value of more than \$50 consumed at a meeting or event, the purpose of which is to discuss official business, provided that acceptance of such meals and beverages as permitted by this subparagraph shall be reported pursuant to RSA 14-C:4 and limited to \$250 in the aggregate from any single source during any calendar year.

(13) Monetary or non-monetary awards or recognition issued under the suggestion and extraordinary service award program under RSA 99-E.

V. "Honorarium" means a payment in any form to a legislator or legislative employee for an appearance, speech, written article or other document, service as a consultant or advisor, or participation in a discussion group or similar activities. Honorarium does not include a payment for such activities for which the person is being compensated by the state, a county, the United States of America, or any other employer or client, where the activity giving rise to the honorarium is not related to or associated with any legislative office or employment.

VI. "Household member" shall mean any person living in the same domicile as the legislator or legislative employee, who shares a common economic interest in the expenses of daily living, including, but not limited to, a spouse, child, or parent.

VII. "Legislative employee" means any person employed by the legislative branch.

VIII. "Legislator" means a member of the general court.

IX. "Official business" means the discussion or transaction of legislative business, namely, any official action or non-action with regard to any potential pending or existing bill, resolution, amendment, report, or study, any other matter pending or proposed in a committee or in either body of the general court, or an issue of public policy which is or may be the subject of legislative attention, or any other matter which is within the official jurisdiction or cognizance of the general court.

X. "Political event" means an event of any kind or nature including, but not limited to, receptions, breakfasts, luncheons, dinners, dances, testimonials, or picnics, held for the sole purpose of raising political contributions.

XI. "Value" means the amount at which property or services would change hands between a willing buyer and a willing seller when neither is under any compulsion to buy or sell and both have reasonable knowledge of the relevant facts.

Source. 2016, 328:9, eff. Dec. 7, 2016.

Section 14-C:3

14-C:3 Prohibition on Gifts; Duty to Report. –

I. It shall be unlawful to knowingly give any gift as defined in this chapter, directly or indirectly, to any legislator or legislative employee.

II. It shall be unlawful to knowingly give any gift as defined in this chapter, directly or indirectly, to any household member, as defined in this chapter, of any legislator or legislative employee, with a purpose of influencing or affecting the official conduct of such legislator or employee.

III. It shall be unlawful for any legislator or legislative employee to solicit or to knowingly accept, directly or indirectly, any gift, as defined in this chapter, or to fail to meet the reporting requirements of this chapter.

IV. Under no circumstances shall the prohibitions in this section be nullified by filing an honorarium or expense reimbursement report pursuant to RSA 14-C:4 or a declaration of intent under the guidelines enforced by the legislative ethics committee.

Source. 2016, 328:9, eff. Dec. 7, 2016.

Section 14-C:4

14-C:4 Duty to Report and Reporting Deadlines. –

I. A legislator or legislative employee who receives an honorarium, expense reimbursement, or tickets or free admission with a value of greater than \$50 to a political, charitable, or ceremonial event under RSA 14-C:2, IV(b)(9)(A), (B), or (C) shall file a report with the secretary of state no later than the last day of the month following the month during which the honorarium or expense reimbursement or tickets or free admission was received.

II. A legislator or legislative employee who consumes meals or beverages with a value of greater than \$50 at a meeting or event the purpose of which is to discuss official business pursuant to RSA 14-C:2, IV(b)(12) shall file a report with the secretary of state no later than 10 days following the meeting or event at which the meals or beverages were consumed, which report shall be established by the secretary of state, shall be public, and shall contain the same information and affirmations required under RSA 14-C:5.

Source. 2016, 328:9, eff. Dec. 7, 2016.

Section 14-C:5

14-C:5 Form Established by the Secretary of State. – The secretary of state shall establish a form for reporting of receipt of an honorarium or expense reimbursement, or other such report required by this chapter, which may be in paper or electronic form.

I. The report shall include at a minimum the following information, which shall be public:

(a) The full name, work address, work phone number, and office, appointment, or employment held by the person subject to the reporting requirement.

(b) The full name, post office address, occupation, and principal place of business, if any, of the source of any reportable honorarium or expense reimbursement. When the source is a corporation or other entity, the name and work address of the person representing the corporation or entity in making the honorarium or expense reimbursement shall be provided in addition to the name of the corporation or entity.

(c) The value of the honorarium or expense reimbursement. When the exact value is unknown, the person filing the report shall provide an estimate of the value of the gift or honorarium and identify the value as an estimate.

(d) A brief description of the service or event that gave rise to the honorarium or expense reimbursement. Reports of expense reimbursement or honorariums shall include a copy of the agenda or an equivalent document which addresses the subjects addressed and the time schedule of all activities at the event. To the extent practicable, the recipient shall report the names of the sponsors of activities in cases where they are not indicated on the agenda or equivalent document.

(e) The date on which the honorarium or expense reimbursement was received.

(f) The following statement followed by a line for the person filing the form to sign and date the form: "I have read RSA 14-C and hereby swear or affirm that the foregoing information is true and complete to the best of my knowledge and belief."

II. The secretary of state may also require information such as home phone numbers, home addresses, and other

information helpful to the administration and enforcement of laws relating to honorariums or expense reimbursements. The information provided under this paragraph shall be nonpublic and shall not be subject to the provisions of RSA 91-A.

Source. 2016, 328:9, eff. Dec. 7, 2016.

Section 14-C:6

14-C:6 Forms; Place of Filing. – The secretary of state shall furnish all forms required under this chapter. All persons filing a report under this chapter shall file with the secretary of state. The reports shall be held in the original form for 6 years from the date of filing, after which time they may be destroyed. The public information on the forms shall be available to the public in the form of a photocopy or an electronic record. The secretary of state shall, as soon as is practical, implement an electronic record keeping system that makes the public information in the reports required by this chapter available to the public through the Internet.

Source. 2016, 328:9, eff. Dec. 7, 2016.

Section 14-C:7

14-C:7 Penalty. – Any person who knowingly fails to comply with the provisions of this chapter or knowingly files a false report shall be guilty of a misdemeanor. It shall be an absolute defense in any prosecution under this chapter that the person acted in reliance upon an advisory opinion on the subject issued under RSA 14-B:3, I(c).

Source. 2016, 328:9, eff. Dec. 7, 2016.

Section 14-C:8

14-C:8 Examination of Reports. – It shall be the duty of the attorney general to examine the reports which are made under this chapter to the secretary of state and to compel such returns be made to comply with the law.

Source. 2016, 328:9, eff. Dec. 7, 2016.

Section 14-C:9

14-C:9 Limitations. – This chapter shall not be construed to:

I. Prevent receptions, breakfasts, luncheons, dinners, dances, or picnics or like events from being held for the sole purpose of raising political contributions, provided such contributions comply with and are reported as required by RSA 664 or the Federal Election Campaign Act of 1971, as amended.

II. Prohibit gifts or expense reimbursements made to the state of New Hampshire and accepted in accordance with the law.

Source. 2016, 328:9, eff. Dec. 7, 2016.

Section 14-C:10

14-C:10 Severability. – If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

Source. 2016, 328:9, eff. Dec. 7, 2016.

2017 Lobbyist Registration Form

**2017 Lobbyist Registration Form
RSA Chapter 15**



A lobbyist registration form reports the existence of a relationship between a single client and either a single lobbyist or a partnership, firm, or corporation with one or more partners, members, or employees who will be acting as lobbyists for that client. A lobbyist is a person employed in a representative capacity to promote or oppose, directly or indirectly, any legislation pending or proposed before the general court, or to promote or oppose, directly or indirectly, any action by the governor, governor and council, or any state agency, where such action concerns legislation or contracts pending or proposed before the general court, any pending administrative rule, or the procurement of goods or services that are being or may be purchased by the state. RSA 15:1: See also RSA 15:1, III (for a description of persons who fall within this definition but who are not required to register).

PLEASE PRINT:

I. Lobbyist Registering

Last Name			First Name			Middle Name/Initial		
()			()					
(telephone)			(fax)			(e-mail)		
(mailing address)			(city)			(state)		
						(zip code)		
Usual occupation or primary field of business: (circle one or fill in): Lobbyist Attorney Other								

II. Name of the lobbyist's partnership, firm, or corporation

If the lobbyist(s) listed above is affiliated with a partnership, firm, or corporation please provide:

Lobbyist's partnership, firm, or corporation name

()	()	
(telephone)	(fax)	(e-mail)
(mailing address)	(city)	(state)
		(zip code)

III. Character of Employment (circle one or fill in):

- a. Full-time/part-time employee of Client
- b. Independent Contractor working directly for Client
- c. Contract between Client and Lobbyist/Lobbyist's Firm
- d. Other: _____

IV. Duration of employment *All registrations for 2017 legislative session END on December 31, 2017*

- a. Ongoing full-time employee of Client
- b. Representation period starts ____/____/____

V. Client

Where the client is a corporation, a registered business (doing business as), a legally established non-profit, a political committee, or other legally recognized entity provide both the name of the entity and the name of either the principal or a designated representative of that client. Where the client is an individual, list only the individual's name.

Business, Corporation, Organization, entity name

Last Name

First Name

Middle Name/Initial

Usual Occupation or primary field of business: _____

Provide business address and contact information or if none, residence address and contact information for individual client or principal/representative:

() _____ () _____ _____
(telephone) (fax) (e-mail)

(mailing address) (city) (state) (zip code)

VI. Subject

Describe the subjects of legislative or executive branch action to which the lobbying relationship being reported relates:

VII. Signature of Registering Lobbyist

I have read RSA Chapter 15 and hereby swear or affirm that the foregoing information is true and complete to the best of my knowledge and belief.

Signature

____/____/____
Date

Return to: Secretary of State's Office, State House, Room 204, Concord, N.H. 03301

Fee: \$50

FOR OFFICE USE ONLY:

Registration Fee Paid: _____ Check No. _____ Amount _____

2017 Statement of Income and Expenses



STATE OF NEW HAMPSHIRE
2017 Statement of Income and Expenses
for LOBBYISTS
(RSA Chapter 15)

PLEASE PRINT

I. Name of Lobbyist(s) _____

II. Name of lobbyist's partnership, firm or corporation, if any:

(Name of partnership, firm or corporation)

Business Address: (Street) _____ (Town/City) _____ (State) _____ (Zip Code) _____

() _____ () _____ e-mail _____
(Telephone) (Fax)

III. This statement covers: (Choose one – file separate reports for each client, OR you may file a separate report for reportable expense transactions which are not attributable to any one client).

☐ All reportable transactions occurring in the months prior to the reporting date relative to the following client:

(Full Name of Client as it appears on the Lobbyist Registration Form)

OR

☐ All reportable transactions by the lobbyist (including the lobbyist's family), or the lobbying firm listed below which are unrelated to any particular client.

IV. Date of Report April 26, 2017 ☐

July 26, 2017 ☐

Reports cover: activity from date of registration to 3/31/17

activity from 4/1/17 to 6/30/17

October 25, 2017 ☐

January 31, 2018 ☐

activity from 7/1/17 to 9/30/17

activity from 10/1/17 to 12/31/17

V. There have been no fees received and no reportable transactions made since the last report. ☐

If this box is checked, complete just this form and submit it to the Secretary of State's Office, State House, Room 204, Concord, NH 03301.

VI. Check if additional reports are attached:

☐ If you have received fees or made expenditures, you must file **Addendum A– Fees and Expenses**

☐ If you have paid an honorarium or reimbursed expenses, you must file **Addendum B– Report of Honorariums or Expense Reimbursement**

☐ If you, your firm, or your family has made political contributions, you must file **Addendum C– Political Contributions**

Sworn Statement/Affirmation by Lobbyist

I have read RSA 15, RSA 15-B, RSA 14-C and RSA 664 and hereby swear or affirm that the foregoing information is true and complete to the best of my knowledge and belief.

(Signature of lobbyist)

(Date)

(Print Name of lobbyist)



STATE OF NEW HAMPSHIRE

Lobbyists Fees and Expenses

Addendum A

(RSA Chapter 15:6)

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I. Name of Lobbyist(s) _____

II. Name of lobbyist's partnership, firm or corporation, if any:

(Name of partnership, firm or corporation)

III. Name of Client _____ Date _____

IV. Fees Received

Indicate the gross amount of all fees received from the client identified above that are related, directly or indirectly, to lobbying, including fees for services such as public advocacy, government relations, or public relations services including research, monitoring legislation, and related legal work. The gross fee amount reported shall not be reduced by any expenses:

- a) Total of all fees received in this reporting period a) \$ _____
- b) Total of all fees received this calendar year, prior to this reporting period b) \$ _____
(This should equal the total of all prior monthly reports for this calendar year)
- c) Total of all fees received to date c) \$ _____
(Add lines a and b)
- d) Indicate the amount of any such fees that are due, but have not yet been paid d) \$ _____

V. Expenses:

Lobbyist(s)/Lobbying partnerships, firms, or corporations are required to report all expenses made from lobbying fees. Separate reports are to be filed for expenditures made relative to each client and if expenditures are made by the lobbyist(s)/firm that are unrelated to any one client a separate report may be filed for the lobbyist(s)/firm. Expenses are to be reported in one of three categories of expenses: (a) the aggregate total of all expenses paid during the reporting period for salaries, benefits, support staff, and office expenses; (b) the aggregate total of all individual expenses where the expenditure was of \$25.00 or less (for example: meals purchased during a business lunch where the cost was \$25.00 or less, purchase of a pen with a value of less than \$10 that is given to the person being lobbied, purchase of a ceremonial object given to a person being lobbied with a value of \$25.00 or less); and (c) an itemized statement of each individual expenditure made during this reporting period of greater than \$25.00 for any purpose not covered by (a) (for example: purchase of a meal with value of greater than \$25, purchase of a ceremonial object to be given to the subject of lobbying with a value greater than \$25, but not greater than \$50, restaurant expenses for a legislative reception). Expenses for honorariums, expense reimbursement, or political contributions will be reported on separate addendums and should not be reported on Addendum A.

- a) Total aggregate expenses for this reporting period for salaries, benefits, support staff, and office expenses, related directly or indirectly to lobbying. a) \$ _____
- b) Total aggregate of expenditures during this reporting period, not reported in a), of \$25 or less. b) \$ _____
- c) Total of all itemized expenditures reported in detail in section VI. c) \$ _____

- d) Total expenses for this reporting period (Add lines a, b and c) d) \$ _____
- e) Total of expenses paid this calendar year, prior to this reporting period e) \$ _____
(This should be the amount on line f of addendum A for last month's report)
- f) Total of all expenses year to date f) \$ _____

VI. Other Expenses:

Provide the following detail for all expenditures of more than \$25 made from lobbying fees during this reporting period, including by whom paid or to whom charged.

Paid to:	Amount:
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

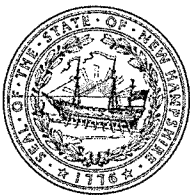
Sworn Statement/Affirmation by Lobbyist

I have read RSA 15, RSA 15-B and RSA 664 and hereby swear or affirm that the foregoing information is true and complete to the best of my knowledge and belief.

(Signature of lobbyist)

(Date)

(Print Name of lobbyist)



STATE OF NEW HAMPSHIRE

Lobbyists Report of Honorariums or Expense Reimbursement

Addendum B (RSA Chapter 15:6)

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I. Name of Lobbyist(s) _____

II. Name of lobbyist's partnership, firm or corporation, if any:

(Name of partnership, firm or corporation)

III. Name of Client _____ Date _____

State the full name of the person receiving the honorarium or expense reimbursement:

Last Name

First Name

Middle Name/Initial

What is the value of the honorarium or expense reimbursement? \$ _____

Describe the event to which the honorarium or expense reimbursement relates. (Include the date(s) and location(s) of the event).

(If there is more than one honorarium or expense reimbursement use a separate addendum B form for each.)

Sworn Statement/Affirmation by Lobbyist

I have read RSA 15, RSA 15-B and RSA 664 and hereby swear or affirm that the foregoing information is true and complete to the best of my knowledge and belief.

(Signature of lobbyist)

(Date)

(Print Name of lobbyist)



STATE OF NEW HAMPSHIRE

Lobbyists Report of Political Contributions Addendum C (RSA Chapter 15:6)

P I. Name of Lobbyist(s) _____

L

E II. Name of lobbyist's partnership, firm or corporation, if any:

A

S

E

(Name of partnership, firm or corporation)

P III. Name of Client _____ Date _____

R

I Political Contributions

N For each political contribution that is reportable pursuant to RSA Chapter 664 paid on behalf of the
T client/lobbyist and lobbying firm, indicate the following:

Full name of candidate: _____
(Last Name) (First Name) (Middle Name/Initial)

Amount of contribution \$ _____ Office Candidate is Seeking _____

If the contribution is an in-kind contribution, provide a description of the goods or services provided, and enter the actual cost of the in-kind contribution on the line above for amount of contribution. If the actual cost is not known, enter an estimated value and the word "estimate."

Full name of candidate: _____
(Last Name) (First Name) (Middle Name/Initial)

Amount of contribution \$ _____ Office Candidate is Seeking _____

If the contribution is an in-kind contribution, provide a description of the goods or services provided, and enter the actual cost of the in-kind contribution on the line above for amount of contribution. If the actual cost is not known, enter an estimated value and the word "estimate."

Full name of candidate: _____
(Last Name) (First Name) (Middle Name/Initial)

Amount of contribution \$ _____ Office Candidate is Seeking _____

(turn over to continue →)

If the contribution is an in-kind contribution, provide a description of the goods or services provided, and enter the actual cost of the in-kind contribution on the line above for amount of contribution. If the actual cost is not known, enter an estimated value and the word "estimate."

(If more than three contributions were made, report additional contributions on separate addendum C forms.)

Sworn Statement/Affirmation by Lobbyist

I have read RSA 15, RSA 15-B and RSA 664 and hereby swear or affirm that the foregoing information is true and complete to the best of my knowledge and belief.

(Signature of lobbyist)

(Date)

(Print Name of lobbyist)

Ethical Considerations in Lobbying

Ethics Opinion 344

Conflicts of Interest for Lawyers Engaged in Lobbying Activities that Are Not Deemed to Involve the Practice of Law

The District of Columbia Rules of Professional Conduct regulate “lobbying activity” by lawyers who practice law in the District of Columbia. The conflicts rules for lobbying matters are as follows:

- Rule 1.7(a) prohibits one lawyer or law firm from advancing opposing positions, in the same lobbying matter. This conflict cannot be waived.
- Lobbying representations are *not* subject to Rule 1.7(b)(1) because such representations are not “matters involving a specific party or parties,” a phrase which excludes lobbying, rulemaking and other matters of general government policy.
- Rules 1.7(b)(2), (b)(3) and (b)(4) prohibit lobbying representations if:
 - The proposed representation is likely to be adversely affected by another representation;
 - Another representation is likely to be adversely affected by the proposed representation; or
 - The lawyer-lobbyist’s professional judgment reasonably may be adversely affected by the lawyer’s responsibilities to or interests in a third party, or the lawyer’s own financial, business, property, or personal interests.

Typically apparent in “punch-pulling” situations where the lawyer’s zealotry in one representation may arguably be compromised by representations of other clients or by other interests of the lawyer, these conflicts can be waived in some circumstances through informed consent from the affected clients. See Rule 1.7(c).

Because nonlawyers may engage in lobbying activity, lawyers and their associates may remove such activities from the conflicts provisions of the Rules of Professional Conduct through strict compliance with the regulations of D.C. Rule 5.7 for “law-related services.” To do so, however, the lobbying client must receive clear notice that the services are not legal services and that the usual protections accompanying a client-lawyer relationship do not apply.

Applicable Rules

- Rule 1.0(h) (Terminology: Definition of “Matter”)
- Rule 1.6 (Confidentiality of Information)
- Rule 1.7 (Conflicts of Interest: General)
- Rule 1.10 (Imputed Disqualification General Rule)
- Rule 1.11 (Successive Government and Private or Other Employment)
- Rule 5.3 (Responsibilities Regarding Nonlawyer Assistants)
- Rule 5.4 (Professional Independence of a Lawyer)
- Rule 5.7 (Responsibilities Regarding Law-Related Services)

Inquiry

The Committee on Unauthorized Practice of Law of the District of Columbia Court of Appeals (the “UPL Committee”) recently issued an opinion concluding that “U.S. legislative lobbying does not constitute the practice of law under Rule 49, and Rule 49 does not require individuals engaged in such lobbying to be members of the D.C. Bar.” Unauthorized Practice of Law Opinion 19-07, *Applicability of Rule 49 to U.S. Legislative Lobbying* (Dec. 17, 2007) [hereinafter the “UPL Opinion”]. In the wake of that opinion, the Legal Ethics Committee has received an inquiry about the obligations of a lawyer-lobbyist who is a member of the D.C. Bar. The inquirer asked whether a lawyer has a conflict of interest under Rule 1.7 when she lobbies Congress in favor of a special tax break for her Client X even though she knows the break will directly disadvantage the lawyer’s other client, Client Y.

The specific holding of the UPL Opinion was that “U.S. legislative lobbying does not constitute the practice of law within the meaning of Rule 49(b).” For purposes of its opinion, the UPL Committee defined the phrase “U.S. legislative lobbying” in a way that “does not necessarily include all activities” related to congressional matters.[1] ([/bar-resources/legal-ethics/opinions/opinion344.cfm#ftn1](https://www.dcbar.org/bar-resources/legal-ethics/opinions/opinion344.cfm#ftn1)) The UPL Opinion is narrowly drawn – activities outside the scope of this definition may constitute the practice of law.[2] ([/bar-resources/legal-ethics/opinions/opinion344.cfm#ftn2](https://www.dcbar.org/bar-resources/legal-ethics/opinions/opinion344.cfm#ftn2))

Having defined an area that does not involve the practice of law, the UPL Opinion confirms that nonlawyers may establish offices in the District of Columbia for the purpose of “U.S. legislative lobbying.” Similarly, lawyers licensed in other jurisdictions, but not in the District of Columbia, may act as “U.S. legislative lobbyists” from offices in the District of Columbia. UPL Opinion, at 3-4.

Non-D.C. lawyers lobbying from the offices of law firms in the District of Columbia “must make clear that they are not engaged in the general practice of law in the District of Columbia.” *Id.* at 4. This is so because Rule 49 prohibits persons not licensed in D.C. to “hold [themselves] out” as being authorized to practice law in D.C.[3] (/bar-resources/legal-ethics/opinions/opinion344.cfm#ftn3) As the UPL Opinion notes, “[i]dentifying an individual as a lawyer in a D.C. law firm generally implies that the individual is authorized to practice law in the District of Columbia.” UPL Opinion at 4. Consistent with the approach used for several other limited practice exceptions to Rule 49, the UPL Opinion suggests certain disclaimers and notices on business cards, websites and correspondence that will avoid any impermissible holding out. *Id.* at 4-5.

The UPL Committee specifically declined to address “whether or to what extent (a) legislative lobbyists may be subject to the professional obligations of lawyers or (b) communications between lobbyists and clients may be protected by the attorney-client privilege.” UPL Opinion at 6. Like the UPL Committee, we also decline to address the applicability of the attorney-client privilege to communications between clients and lawyer-lobbyists.[4] (/bar-resources/legal-ethics/opinions/opinion344.cfm#ftn4)

The immediate question before us is how Rule 1.7 on conflicts of interest applies to cases in which a lawyer undertakes a lobbying activity as a legal representation. The principles stated in this Opinion regarding conflicts of interest apply to lobbying activities related to both legislative matters and executive branch rule-making matters. Implicit in the immediate question is the applicability of Rule 1.7 to lobbying services that do not themselves involve the practice of law but are provided by lawyers or nonlawyers affiliated with law firms.

Although the inquiry before us involves only lobbying before Congress, the established understanding of the phrase “involving a particular party or parties” means that the principles discussed in this opinion also apply to conflict-of-interest questions faced by lawyers who lobby other legislative bodies, or who lobby administrative agencies or executive branch officials on legislation, rulemaking or other matters of general policy. The Rules of Professional Conduct do not distinguish between lobbying at the federal level and lobbying at the state or local level.

Discussion

At one level, the inquiry asks whether lawyer conduct rules apply when non-legal lobbying services are performed. As discussed in Part I below, the D.C. Rules of Professional Conduct regulate “lobbying activity” when undertaken by lawyers. Specific conflict-of-interest rules apply to such activities. Part II discusses the ability of lawyers and law firms to take certain steps to avoid the application of those conflict rules to lobbying and other “law-related services” under the District of Columbia’s new Rule 5.7. Absent strict compliance with the requirements of Rule 5.7, the conflicts rules will apply to lobbying activities by D.C. lawyers, law firms, and their lobbying associates, partners and affiliates.

I. Prohibited Conflicts of Interest in Lobbying Activities Governed by the Rules of Professional Conduct

The Rules of Professional Conduct regulate a lawyer’s “lobbying activity.” Rule 1.0(h) defines “matter” to

mean[] any litigation, administrative proceeding, *lobbying activity*, application, claim, investigation, arrest, charge or accusation, the drafting of a contract, a negotiation, estate or family relations practice issue, or any other representation, *except as expressly limited in a particular rule.*

(emphasis added).[5] (/bar-resources/legal-ethics/opinions/opinion344.cfm#ftn5) The last clause of this definition is critical because, as discussed below, lobbying matters are effectively excluded from the operation of one of the prohibitions of Rule 1.7, specifically subsection (b)(1). But lobbying matters remain subject to the rest of the prohibitions, specifically subsections (a), (b)(2), (b)(3) and (b)(4) of Rule 1.7.

Rule 1.7 governs conflicts among current clients of the lawyer or law firm. It divides such conflicts into two broad categories, those that may be waived and those that cannot be waived. Rule 1.7(a) defines a situation in which a proposed representation is absolutely prohibited, even if all potentially affected clients are willing to consent. Rule 1.7(b) defines four situations in which a representation is only conditionally prohibited.

Representations governed by Rule 1.7(b) may be undertaken if each potentially affected client provides informed consent and the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each client. See Rule 1.7(c).

A. Rule 1.7(a) – Representation Absolutely Prohibited.

Rule 1.7(a) provides that “a lawyer shall not advance two or more adverse positions in the same matter.” This prohibition cannot be waived by the affected clients. It applies to lobbying activities by virtue of the underlying definition of “matter.” Indeed, the Peters Committee, which recommended the current formulation of the rules on these issues, specifically concluded that lobbying opposite sides of the same issue should be prohibited:

[T]he Committee rejected the concept that lobbying should be totally excluded from the reach of Rule 1.7 and expressly included lobbying in the definition of “matter” proposed in the Terminology section of the Rules. As a result, Rule 1.7(a) applies to lobbying activities and prevents a lawyer from lobbying for one position for one client in the same matter in which the lawyer (or the lawyer's firm, see Rule 1.10(a)) is lobbying for a conflicting position on behalf of a second client.

Peters Report at 18. Although ABA Model Rule 1.7 and D.C. Rule 1.7 “state the position differently, both rules prohibit the lawyer from advancing two adverse positions in the same matter or proceeding, even with the client’s consent. [D.C.] Rule 1.7(a) states the position succinctly: ‘A lawyer shall not advance two or more adverse positions in the same matter.’”[6] (</bar-resources/legal-ethics/opinions/opinion344.cfm#ftn6>)

The pending inquiry before the Committee does not involve Rule 1.7(a) because the lawyer-lobbyist has not been asked to advocate opposite sides of the same lobbying issue. Instead, she has been asked to pursue a tax break for Client X even though she knows that the tax break will directly disadvantage another client (Client Y) whom the lawyer (or the firm) is not representing in that particular lobbying matter.

B. Rule 1.7(b) – Representation Conditionally Prohibited.

Rule 1.7(b) defines four conflicts situations in which a representation is prohibited unless each potentially affected client gives informed consent and the other requirements of Rule 1.7(c) are satisfied. As discussed below, the first of the four does not apply to lobbying matters. The remaining three do.

1. Rule 1.7(b)(1) – Adversity to Another Client in a Matter Involving A Specific Party or Parties.

Rule 1.7(b)(1) provides:

[A] lawyer shall not represent a client with respect to a matter if... *that matter involves a specific party or parties* and a position to be taken by that client in that matter is adverse to a position taken or to be taken by another client in the same matter even though that client is unrepresented or represented by a different lawyer.

Rule 1.7(b)(1) (emphasis added).

The inquirer did not say whether the lawyer expects the other client to lobby against the tax break she will be seeking for the first client. If the other client’s active participation were expected in the lobbying matter, the representation of the first client would involve the lawyer taking a position known to be adverse to another client’s position in the same matter.

However, that alone is not enough to create a conflict under Rule 1.7(b)(1) because of the limitation of that rule to “matter[s] involv[ing] a specific party or parties.” That phrase is a term of art, which, for the reasons discussed below, has the effect of removing lobbying representations from the operation of Rule 1.7(b)(1).

Part (a) explains why the limitation of Rule 1.7(b)(1) to “matter[s] involv[ing] a specific party or parties” effectively excludes lobbying representations. Part (b) summarizes the history of revisions that led to the current rule, a history which confirms the conclusion in Part (a).

a. Meaning of Phrase “Matter Involving A Specific Party or Parties.”

The key to the analysis is the meaning of the phrase “matter involv[ing] a specific party or parties.” The phrase appears in only two places in the Rules of Professional Conduct: Rule 1.7(b)(1) and Rule 1.11, which

deals with the ability of a lawyer to represent clients after leaving government service for private practice. As discussed in Part (i) below, the phrase has a black-letter law meaning for purposes of Rule 1.11, a meaning that preceded incorporation of the phrase into Rule 1.7(b)(1) and that excludes lobbying matters from the conflicts rule. Under established principles of statutory and regulatory construction, the phrase must have the same meaning in each rule where it appears, as discussed in Part (ii). While there is some arguably inconsistent language in one of the comments to Rule 1.7, the text of the rules controls over the comments, as discussed in Part (iii).

i. Meaning of the Phrase “Matter Involving a Specific Party or Parties” in Rule 1.11.

Rule 1.11(g) confines the operation of the rule to a “matter involving a specific party or parties.” “‘Matter’ is defined in paragraph (g) so as to encompass only matters that are particular to a specific party or parties. *The making of rules of general applicability and the establishment of general policy will ordinarily not be a ‘matter’ within the meaning of Rule 1.11.*” Rule 1.11, Comment [3] (emphasis added).

This interpretation comes from the well-established understanding of the meaning of an analogous phrase in 18 U.S.C. §207, which imposes certain restrictions on the work that may be performed by former government employees and officials after they leave government service. Some of those restrictions apply only to a “matter... involv[ing] a specific party or specific parties.” 18 U.S.C. §207(a)(1)(C) & (a)(2)(C). “Legislation or rulemaking of general applicability and the formulation of general policies, standards or objectives, or other matters of general applicability are not particular matters involving specific parties.” *Post-Employment Conflict of Interest Restrictions*, 73 Fed. Reg. 36,168, at 36,193 (June 25, 2008) (to be codified at 5C.F.R. §2641.201(h)(2)) [hereinafter “*Federal Post-Employment Conflict of Interest Restrictions*”].^[7] ([/bar-resources/legal-ethics/opinions/opinion344.cfm#ftn7](https://www.dcb.org/bar-resources/legal-ethics/opinions/opinion344.cfm#ftn7))

In Opinion 297, we considered whether a former government lawyer’s participation in a negotiated rulemaking precluded him from subsequent representations involving those rules. We concluded that, because the former government lawyer’s work on a negotiated rulemaking did not involve a particular party or parties, “successive representation is not per se prohibited by Rule 1.11(a) and (g) where the initial representation is in connection with a rulemaking of general applicability.” D.C. Ethics Op. 297 (2000).

ii. The Phrase “Matter Involving a Specific Party or Parties” Must Have the Same Meaning in Rule 1.7(b)(1) As It Has in Rule 1.11

The phrase “matter involving a specific party or parties” cannot have one meaning in Rule 1.11 and a different meaning in Rule 1.7(b)(1). As a general principle of construction, “a particular term should be assumed to have a consistent definition throughout a statute.” *Dupont Circle Citizens Ass’n v. District of Columbia Board of Zoning Adjustment*, 749 A.2d 1248, 1263 n.12 (D.C. 2000) (citing *Carey v. Crane Serv. Co., Inc.*, 457 A.2d 1102, 1108 (D.C.1983)). Application of that principle compels the conclusion that Rule 1.7(b)(1) excludes legislative lobbying matters.

Moreover, the phrase had a clear meaning in the context of former government lawyers long before it was ever added to Rule 1.7. Where the lawmaker “borrows terms of art in which are accumulated the legal tradition and meanings of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken.” *1618 Twenty-First Street Tenants’ Ass’n v. Phillips Collection*, 829 A.2d 201, 202 (D.C. 2003) (quoting *Bates v. District of Columbia Bd. Of Elections & Ethics*, 625 A.2d 891, 894 (D.C. 1993)) (additional citations omitted).

Applying those principles here, the phrase “matter involv[ing] a specific party or parties” must be given the same meaning for purposes of Rule 1.7(b)(1) as it has for Rule 1.11 and the progenitor of Rule 1.11, 18 U.S.C. §207. Given the well-established meaning of that phrase for purposes of Rule 1.11 and 18 U.S.C. §207, Rule 1.7(b)(1) does not apply to lobbying representations involving legislation, rulemaking or other matters of general policy.

iii. The Text of Rule 1.7(b)(1) Controls Over Any Inconsistent Language in the Comments to Rule 1.7.

The analysis thus far has focused only on the text of Rule 1.7(b)(1), Rule 1.11, and the established meaning of the phrase “matter involving a specific party or parties” as used in Rule 1.11 and its predecessors. Rule 1.7 has a comment which, if read in isolation, could suggest a greater duty under Rule 1.7(b)(1) when the lawyer knows or has some way of discovering that another client is likely to oppose or disagree with the result being

sought through the lawyer's lobbying efforts.[8] (/bar-resources/legal-ethics/opinions/opinion344.cfm#ftn8) Such a reading cannot be reconciled with the limitation of Rule 1.7(b)(1) to a "matter involv[ing] a specific party or parties" because that phrase takes lobbying matters and other matters of general policy out of the rule. The use of the word "party" was intended to limit the scope of Rule 1.7(b)(1) to those situations that involve particular clients participating in a pending or threatened adjudicative proceeding, a negotiation of a contract, or other discrete and isolatable transactions between identifiable and specific persons.[9] (/bar-resources/legal-ethics/opinions/opinion344.cfm#ftn9) To the extent that the comment suggests otherwise, the language of the rule must control. As explained in Paragraph[6] of the Scope section of the Rules, "[t]he Comments are intended as guides to interpretation, but the text of each Rule is controlling."

Thus, whether the lawyer knows or has a way of knowing that other clients may have different views of the lobbying issue is irrelevant for purpose of Rule 1.7(b)(1) because Rule 1.7(b)(1) does not regulate lobbying matters or other matters of general policy.

b. The Legislative History of Rule 1.7(b)(1) Confirms That the Court of Appeals Adopted a Bright Line Test to Eliminate Substantial Uncertainties that Lawyer-Lobbyists Would Otherwise Face.

When the District of Columbia Bar recommended the initial adoption of Rule 1.7, it rejected the ABA's Model Rule 1.7. As explained by the Bar Committee's report:

[T]he ABA draft... is so confusingly organized and ambiguously worded that it gives little guidance to lawyers trying to understand it or conform to it. Although the ABA drafters state in their notes that their draft is intended to codify standards that have evolved in application of the preexisting disciplinary rule and the "appearance of impropriety" test, those standards are not self-evident from a reading of the proposed language. Instead, members of the Bar would be forced to parse ambiguous phraseology and even perform research concerning case law and D.C. Bar Legal Ethics Committee interpretations before they could get a clear idea of what this basic rule means.

Proposed Rules of Professional Conduct and Related Comments, Showing the Language Proposed by the American Bar Association, Changes Recommended by the District of Columbia Bar Model Rules of Professional Conduct Committee, and Changes Recommended by the Board of Governors of the District of Columbia Bar at 67 (Nov. 19, 1986) [hereinafter the "Jordan Report"].

Both the Jordan Committee and its successor, the Peters Committee, devoted extensive resources to consideration of what the rules should be in the context of lobbying, where the potentially affected or interested players are not readily apparent at the outset, and where the active players and positions shift and change over time. It was at the Peters Committee's recommendation that, in November of 1996, the District of Columbia Court of Appeals adopted the current general definition of "matter," which includes "lobbying activity... except as expressly limited in a particular rule," and the current formulation of Rule 1.7(b)(1), which applies only to a "matter involv[ing] a specific party or parties."

The Peters Committee explained that it had "attempted to fashion in amended Rule 1.7 detailed, 'black letter' guidance to the Bar regarding conflicts of interest." *Peters Report* at 11. The Committee limited Rule 1.7(b)(1) to matters involving specific parties because "it is not practical – and may well harm the interests of a new client – for a lawyer asked to represent that client in lobbying activities to take affirmative steps to obtain disclosure from other clients as to whether they have (or will have) an adverse position in the matter." *Peters Report* at 18.

Accordingly, the Committee has limited the obligations set out in Rule 1.7(b)(1) to situations involving "a specific party or parties." Because situations that may arise under Rule 1.7(b)(1) are numerous, the Committee has not attempted to define those matters that involve "a specific party or parties," but has left that definition to case-by-case development.

Id.

This bright line rule eliminates the need for lawyer-lobbyists to look to Rule 1.7(b)(1) for guidance on conflicts in lobbying matters. However, they must still consider potential conflicts under subsections (b)(2), (b)(3) and (b)(4). Such conflicts may exist when they know that another client strenuously objects to or will be seriously harmed by a lobbying result they are hired to pursue.

2. Rule 1.7(b)(2), (b)(3) and (b)(4) – Waivable Conflicts Rules that Do Apply to Lobbying Matters.

Rules 1.7(b)(2), (b)(3) and (b)(4) do apply to lobbying activities because, unlike Rule 1.7(b)(1), they contain no language that clearly limits their scope to adjudications and other discrete and isolatable transactions between identifiable persons. Rules 1.7(b)(2) and (b)(3) are mirror images of each other. Under the former, a lawyer may not represent a client with respect to a matter (including “lobbying activity” under Rule 1.0(h)) if “such representation will be or is likely to be adversely affected by representation of another client.” Under the latter, the lawyer may not undertake the representation if “representation of another client will be or is likely to be adversely affected by such representation.”

Rule 1.7(b)(4) looks beyond the potential effects of one client representation on another client representation. It asks if “the lawyer’s professional judgment on behalf of the client will be or reasonably may be adversely affected by the lawyer’s responsibilities to or interests in a third party or the lawyer’s own financial, business, property, or personal interest.”

Collectively, these three rules all apply to circumstances in which an objective observer would doubt the lawyer’s incentive to be a zealous advocate. For that reason, they are often referred to as the “punch-pulling” conflicts rules because the lawyer might be tempted to “pull her punches” on behalf of one client so as not to harm the interests of another. D.C. Ethics Op.309 (2001). *Accord* D.C. Ethics Op. 317 n.6 (2002).[10] (/bar-resources/legal-ethics/opinions/opinion344.cfm#ftn10)

The *Peters Report* specifically identified “punch-pulling” as a potential obstacle to a lobbying representation:

[W]hile the Committee believed it appropriate to narrow Rule 1.7(b)(1), the Committee recommends no change to Rules 1.7(b)(2) through 1.7(b)(4). Rule 1.7(b)(1) implements a general duty of loyalty and, where it applies, prohibits representation whether or not that representation would in fact have any adverse impact on another client. The remainder of Rule 1.7(b), however, defines situations where the representation of a client would likely be compromised by representation of another client. If, for example, a lawyer knows that there is a risk that he or she would “pull punches” for client A in a lobbying matter to avoid angering large client B represented solely in a litigation matter, then representation of client A is not proper whether or not client B will appear in the lobbying matter.

Peters Report at 18.

The inquiry before the Committee does not supply enough information to determine whether a “punch-pulling” issue exists here. Certainly, the lawyer should consider discussing with her lobbying client (Client X) the fact that she knows her other client (Client Y) will be harmed by the tax credit to be sought in the lobbying. If the lawyer-lobbyist perceives a basis for a concern that her zealousness on Client X’s behalf might be impaired by her knowledge of Client Y’s position, Rule 1.7(c) requires her to satisfy herself that she can provide competent and diligent representation to X in these circumstances, and to obtain an informed consent from X, the client whose representation might be affected by Y’s expected involvement. In some cases, Y’s consent might also be required because of a potential adverse effect of the proposed lobbying representation on the ongoing representation of Y.[11] (/bar-resources/legal-ethics/opinions/opinion344.cfm#ftn11)

3. Imputation of Conflicts of Interest.

Under Rule 1.10, while lawyers are associated in a law firm, none of them may knowingly represent a client when any one of them practicing alone would be precluded from doing so by Rule 1.7. This rule imputing each lawyer’s conflicts to all other lawyers in the firm applies to lobbying representations and lobbyists employed by a law firm. However, a conflict will not be imputed when “the prohibition of the individual lawyer’s representation is based on an interest of the lawyer described in Rule 1.7(b)(4) and that interest does not present a significant risk of adversely affecting the representation of the client by the remaining lawyers in the firm.” Rule 1.10(a)(1).

II. Avoiding Application of the Conflict Provisions to Lobbying and Other “Law-Related Services”

Lawyers and law firms must take steps to assure that the nonlawyers associated with them abide by the Rules of Professional Conduct.[12] (/bar-resources/legal-ethics/opinions/opinion344.cfm#ftn12) Moreover, lawyers themselves are governed by some of the Rules of Professional Conduct even when they act in a nonlawyer capacity.[13] (/bar-resources/legal-ethics/opinions/opinion344.cfm#ftn13) Because clients who procure legal services are entitled to certain protections that do not typically apply to the provision of nonlegal services (such as confidentiality and avoidance of conflicts), the rules effectively require the lawyer to abide

by all of the Rules of Professional Conduct, including the conflicts rules, when the client may reasonably believe that legal services are involved. Rule 5.7 addresses these issues for lawyer-lobbyists and their staff by setting forth a lawyer's "Responsibilities Regarding Law-Related Services." [14] (</bar-resources/legal-ethics/opinions/opinion344.cfm#ftn14>)

Despite the name, "law-related services" are not legal services. They are not legal services because they "are not prohibited as unauthorized practice of law when provided by a nonlawyer." Rule 5.7 (b). Such services are deemed to be "law-related" because they "might reasonably be performed in conjunction with and in substance are related to the provision of legal services." *Id.*

The comments to Rule 5.7 identify "legislative lobbying" as a "law-related service." Rule 5.7, Comment [9]. Indeed, the reference to "legislative lobbying" in the comments to Rule 5.7 played a central role in the UPL Committee's conclusion that U.S. legislative lobbying does not involve the practice of law. See UPL Opinion at 3. [15] (</bar-resources/legal-ethics/opinions/opinion344.cfm#ftn15>)

When a lawyer or law firm provides both legal and nonlegal services, there is a risk that the client will be confused about the protections to which the client is entitled as part of the services. "The recipient of the law-related services may expect, for example, that the protection of client confidences, prohibitions against representation of persons with conflicting interests, and obligations of a lawyer to maintain professional independence apply to the provision of law-related services" when such is not the case. Rule 5.7, Comment [1].

To protect such expectations, Rule 5.7(a)(1) requires lawyers to abide by all of the Rules of Professional Conduct when the "law-related services" are provided "by the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients." Rule 5.7(a)(2) requires application of all of the Rules of Professional Conduct if the services are provided "in other circumstances by an entity controlled by the lawyer individually or with others *if the lawyer fails to take reasonable measures to assure that [the recipient of the services] knows that the services are not legal services and that the protections of the client-lawyer relationship do not exist.*" (emphasis added).

"The burden is upon the lawyer to show that the lawyer has taken responsible measures under the circumstances to communicate the desired understanding." Rule 5.7, Comment [7]. "A sophisticated user of law-related services, such as a publicly held corporation, may require a lesser explanation than someone unaccustomed to making distinctions between legal services and law-related services, such as an individual...." *Id.* [16] (</bar-resources/legal-ethics/opinions/opinion344.cfm#ftn16>) When the lawyer has not severed the connection in the client's mind between the "legal" and "nonlegal" services, "the lawyer must take special care to heed the proscriptions of the Rules addressing conflict of interest...." *Id.*, Comment [10] (emphasis added).

One book describes Model Rule 5.7 (the text of which is identical to D.C. Rule 5.7) as a way of "opting out" of the Rules of Professional Conduct for lobbying matters. [17] (</bar-resources/legal-ethics/opinions/opinion344.cfm#ftn17>) It warns that, "[f]or the lawyer-lobbyist who practices in a traditional law firm setting and provides lobbying services to his clients in that setting, it seems clear that the Model Rules would apply to that lawyer's lobbying activities." [18] (</bar-resources/legal-ethics/opinions/opinion344.cfm#ftn18>) We agree that the burden falls on the lawyer-lobbyist to show that she has taken reasonable measures under the circumstances to communicate to the client that she is not acting as the client's lawyer. [19] (</bar-resources/legal-ethics/opinions/opinion344.cfm#ftn19>) "The lawyer must also take 'special care' to keep the provision of any legal services separate from the law-related services, in order to minimize the risk of confusing the client." [20] (</bar-resources/legal-ethics/opinions/opinion344.cfm#ftn20>)

Conclusion

Most of the conflict rules apply to lawyer-lobbyists engaged in lobbying. Lawyer-lobbyists in the District of Columbia who hold themselves out as lawyers may not advance opposing positions in the same lobbying matter even with consents from all of their lobbying clients. Moreover, the lawyer-lobbyist must also ensure that she is not placing herself in a position where she might have to pull her punches on behalf of one client so as to protect the interests of another. Such conflicts can be waived with informed consent from the affected clients, provided that the lawyer reasonably believes that he or she can provide competent and diligent representation. Absent special circumstances, all of these restrictions also apply to other lobbyists in the same law firm, even if those other lobbyists are not themselves lawyers.

Lawyer-lobbyists are not, however, generally subject to Rule 1.7(b)(1) in the conduct of lobbying activities. This rule is confined to “matter[s] involv[ing] a specific party or parties,” a phrase that excludes lobbying, rulemaking and other matters of general government policy. As a result, Rule 1.7(b)(1) does not prohibit a lawyer-lobbyist from advancing a position in a lobbying matter that may be opposed in that same lobbying matter by another client of the lawyer-lobbyist (or of the lawyer-lobbyist’s law firm) where the other client is unrepresented in the lobbying matter or is represented by a different lobbyist who is not associated with the lawyer-lobbyist’s firm.

Finally, Rule 5.7 provides guidance for lawyers and law firms who wish to establish a law-related lobbying practice that is not governed by the conflicts provisions of the Rules of Professional Conduct. To do so, however, the lobbying client must receive clear notice that the services are not legal services and that the usual protections accompanying a client-lawyer relationship do not apply.

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1. [Return to text] (/bar-resources/legal-ethics/opinions/opinion344.cfm#ftnref1) According to the UPL Committee,

[t]his Opinion uses the term “U.S. legislative lobbying” to refer to any activities to influence, through contacts with members of Congress and their staffs, the passage or defeat of any legislation by the U.S. Congress, as well as other congressional actions such as ratification of treaties and confirmation of nominees. Such activities may include, but are not limited to: oral, written, and electronic communications with members of Congress, congressional committees, and congressional staff with regard to the formulation, modification, or adoption of federal legislation; preparation and planning activities, research, and other background work in support of such contacts; and development of legislative strategy and tactics. *The term does not necessarily include all activities that have a relationship with congressional actions. For example, advising a client about how legislative testimony might affect pending or prospective criminal or civil litigation before a court may constitute the practice of law.*

UPL Opinion at 1-2 (emphasis added). The UPL Opinion also “does not address lobbying of the executive branches of the U.S. or D.C. governments, including federal and D.C. departments and administrative agencies.” *Id.* at 7 (noting that unauthorized practice of law questions respecting such representations are addressed in subsections (c)(2) and (c)(5) of Rule 49).

2. [Return to text] (/bar-resources/legal-ethics/opinions/opinion344.cfm#ftnref2) While the UPL Opinion does not address whether individuals “may use the District of Columbia as a base for lobbying legislative bodies other than the U.S. Congress,” it notes that “some of the principles addressed in this Opinion may apply in that context.” UPL Opinion at 8.

3. [Return to text] (/bar-resources/legal-ethics/opinions/opinion344.cfm#ftnref3) Holding out, for purposes of Rule 49, means:

to indicate in any manner to any other person that one is competent, authorized, or available to practice law from an office or location in the District of Columbia. Among the characterizations which give such an indication are “Esq.,” “lawyer,” “attorney at law,” “counselor at law,” “contract lawyer,” “trial or legal advocate,” legal representative,” “legal advocate,” and “judge.”

Rule 49(b)(4).

4. [Return to text] (/bar-resources/legal-ethics/opinions/opinion344.cfm#ftnref4) The applicability of the attorney-client privilege is a question of law outside the scope of our jurisdiction. Lawyer-lobbyists should be aware, however, that there is case law to the effect that the attorney-client privilege does not apply to communications between a client and a lawyer who is acting solely or primarily as a lobbyist. See, e.g., *In re Grand Jury Subpoenas Dated March 9, 2001*, 179 F.Supp. 2d 270, 285 & 289-91 (S.D.N.Y. 2001) (noting, however, that “the inquiry is fact-specific”). The lawyer’s ethical obligation to preserve client “confidences and secrets” is broader than the attorney-client privilege. Under Rule 1.6(b), lawyers must also protect unprivileged “secrets,” which the rules define as “other information gained in the professional relationship that the client has requested be held inviolate, or the disclosure of which would be embarrassing, or would be likely to be detrimental to the client.”

5. [Return to text] (/bar-resources/legal-ethics/opinions/opinion344.cfm#ftnref5) The D.C. Court of Appeals added this definition to the Rules in November 1996, after receiving and considering a number of

recommendations from the Bar. See *Proposed Amendments to the District of Columbia Rules of Professional Conduct* (as adopted by the Board of Governors March 8, 1994) [hereinafter "*Peters Report*"]. As discussed in more detail below, one purpose of the recommended changes was to revise and clarify the rules on conflicts of interest in the lobbying context. See *id.* at 3-4 & 17-18.

6. [Return to text] (/bar-resources/legal-ethics/opinions/opinion344.cfm#ftnref6) William V. Luneburg & Thomas M. Susman, *The Lobbying Manual: A Complete Guide to Federal Law Governing Lawyers & Lobbyists* §27-3.6.2.1, at 501 (3d Ed. 2005) (providing the following example of a "nonconsentable" conflict in the lobbying context: "Handgun Control, Inc. calls to retain you to lobby for an extension of the assault weapon ban; the NRA calls the next day to hire you to lobby against an extension.")

7. [Return to text] (/bar-resources/legal-ethics/opinions/opinion344.cfm#ftnref7) This final rule release replaces a similar rule which provided that a matter involving a specific party or specific parties "typically involves a specific proceeding affecting the legal rights of the parties or an isolatable transaction or related set of transactions between identifiable parties. *Rulemaking, legislation, the formulation of general policy, standards or objectives, or other action of general application is not such a matter.* 5C.F.R. §2637.201(c)(1) (2007) (emphasis added). See also *Laker Airways Ltd. vs. Pan American World Airways*, 103 F.R.D. 22, 34 (D.D.C. 1984) ("In short, a government attorney may participate in legislative or other policy-making activity without precluding his subsequent representation of private parties affected by such rules or policies"). There is authority "that certain rulemakings, although rare, may be so focused on the rights of *specifically identified* parties as to fall within the ambit of section 207(a) even though most rulemaking proceedings are of general applicability beyond the scope of [that section]." *Federal Post-Employment Conflict of Interest Restrictions*, 73 Fed. Reg. at 36,176 (citations omitted) (emphasis added). *But cf. id.* at 36,193 (to be codified at 5 C.F.R. §2641.201(h)(2), Example 5) (giving an example where even a rulemaking that has an immediate effect on only three or four companies nevertheless constitutes a rulemaking of general applicability). Private relief legislation may also involve specific parties. See Office of Government Ethics Advisory Opinions 83 x 7 and 06 x 9.

8. [Return to text] (/bar-resources/legal-ethics/opinions/opinion344.cfm#ftnref8) Comment [19] to Rule 1.7 provides as follows:

Lawyer's Duty to Make Inquiries to Determine Potential Conflicts

[19] The scope of and parties to a "matter" are typically apparent in on-the-record adversary proceedings or other proceedings in which a written record of the identity and the position of the parties exists. In Rule 1.7(b) (1), the phrase "matter involving a specific party or parties" refers to such situations. In other situations, however, it may not be clear to a lawyer whether the representation of one client is adverse to the interests of another client. For example, a lawyer may represent a client only with respect to one or a few of the client's areas of interest. Other lawyers, or non-lawyers (such as lobbyists), or employees of the client (such as government relations personnel) may be representing that client on many issues whose scope and content are unknown to the lawyer. Clients often have many representatives acting for them, including multiple law firms, nonlawyer lobbyists, and client employees. A lawyer retained for a limited purpose may not be aware of the full range of a client's other interests or positions on issues. Except in matters involving a specific party or parties, a lawyer is not required to inquire of a client concerning the full range of that client's interests in issues, unless it is clear to the lawyer that there is a potential for adversity between the interests of clients of the lawyer. Where lawyers are associated in a firm within the meaning of Rule 1.10(a), the rule stated in the preceding sentence must be applied to all lawyers and all clients in the firm. Unless a lawyer is aware that representing one client involves seeking a result to which another client is opposed, Rule 1.7 is not violated by a representation that eventuates in the lawyer's unwittingly taking a position for one client adverse to the interests of another client. The test to be applied here is one of reasonableness and may turn on whether the lawyer has an effective conflict checking system in place.

9. [Return to text] (/bar-resources/legal-ethics/opinions/opinion344.cfm#ftnref9) As expressed in the recent amendment of the federal regulations, "only those particular matters that involve a specific party or parties fall within the prohibition of section 207(a)(1). Such a matter typically involves a specific proceeding affecting the legal rights of the parties or an isolatable transaction or related set of transactions between identified parties, such as a specific contract, grant, license, product approval application, enforcement action, administrative adjudication, or court case." *Federal Post-Employment Conflict of Interest Restrictions*, 73 Fed. Reg. at 36,193 (to be codified at 5 C.F.R. §2641.201(h)(1)).

10. [Return to text] (</bar-resources/legal-ethics/opinions/opinion344.cfm#ftnref10>) Comment [7] to Rule 1.7 explains:

The underlying premise is that disclosure and informed consent are required before assuming a representation if there is any reason to doubt the lawyer's ability to provide wholehearted and zealous representation of a client or if a client might reasonably consider the representation of its interests to be adversely affected by the lawyer's assumption of the other representation in question. Although the lawyer must be satisfied that the representation can be wholeheartedly and zealously undertaken, if an objective observer would have any reasonable doubt on that issue, the client has a right to disclosure of all relevant considerations and the opportunity to be the judge of its own interests.

11. [Return to text] (</bar-resources/legal-ethics/opinions/opinion344.cfm#ftnref11>) While the notion of "punch-pulling" captures most of the circumstances regulated by Rules 1.7(b)(2) through (4), there may be others as well. One of these is a situation involving an "issue" or "positional conflict," such that the lawyer's effectiveness in a matter being handled for one client would be adversely affected by the result being sought on behalf of another client as, "for example, when a decision favoring one client will create a precedent likely to seriously weaken the position being taken on behalf of the other client." Rule 1.7, Comment [13]; D.C. Ethics Op. 265 (1996). Nothing in the pending inquiry suggests that the proposed lobbying representation seeking a tax credit implicates any positional conflict issues.

12. [Return to text] (</bar-resources/legal-ethics/opinions/opinion344.cfm#ftnref12>) See Rule 5.1 (Responsibilities of Partners, Managers, and Supervisory Lawyers); Rule 5.3 (Responsibilities Regarding Nonlawyer Assistants); Rule 5.4(b) (requiring – as part of the District of Columbia's unique rule allowing nonlawyer partners in law firms – that the nonlawyers abide by the Rules of Professional Conduct).

13. [Return to text] (</bar-resources/legal-ethics/opinions/opinion344.cfm#ftnref13>) For example, Rule 8.4(c) makes it professional misconduct to "engage in conduct involving dishonesty, fraud, deceit, or misrepresentation." Under that rule, "[a] lawyer is held to a high standard of honesty, no matter what role the lawyer is filling, acting as lawyer, testifying as a witness in a proceeding, handling fiduciary responsibilities, or conducting the private affairs of everyday life." *In re Jackson*, 650 A.2d 675, 677 (D.C. 1994).

14. [Return to text] (</bar-resources/legal-ethics/opinions/opinion344.cfm#ftnref14>) Rule 5.7 was added to the District of Columbia's Rules of Professional Conduct in 2007.

15. [Return to text] (</bar-resources/legal-ethics/opinions/opinion344.cfm#ftnref15>) We do not address whether and to what extent lobbying services other than "U.S. legislative lobbying" – as that phrase is used in the UPL Opinion – may qualify for treatment as a "law-related service" for purposes of Rule 5.7. Since the definition of "law-related service" requires a determination that the service is "not prohibited as the unauthorized practice of law when provided by a nonlawyer," an essential predicate issue is outside the scope of our jurisdiction. See *supra* notes 1 & 2.

16. [Return to text] (</bar-resources/legal-ethics/opinions/opinion344.cfm#ftnref16>) See *also* Rule 5.7, Comment [8] ("Under some circumstances the legal and law-related services may be so closely entwined that they cannot be distinguished from each other, and the requirement of disclosure and consultation imposed by paragraph (a)(2) of the rule cannot be met. In such a case a lawyer will be responsible for assuring that both the lawyer's conduct and, to the extent required by Rule 5.3, that of nonlawyer employees in the distinct entity that the lawyer controls complies in all respects with the Rules of Professional Conduct.").

17. [Return to text] (</bar-resources/legal-ethics/opinions/opinion344.cfm#ftnref17>) Luneburg & Susman, *supra* note 6, §27-2.3.2, at 490. The cited edition of the book pre-dates the adoption in 2007 of Rule 5.7 by the District of Columbia, a later event that supersedes some of the analysis in the current edition of the book. See *id.* §27-2.3.3, at 491.

18. [Return to text] (</bar-resources/legal-ethics/opinions/opinion344.cfm#ftnref18>) *Id.* at 490.

19. [Return to text] (</bar-resources/legal-ethics/opinions/opinion344.cfm#ftnref19>) *Id.* at 491.

20. [Return to text] (</bar-resources/legal-ethics/opinions/opinion344.cfm#ftnref20>) *Id.*

CLIENT-LAWYER RELATIONSHIP

Rule 1.6. Confidentiality of Information

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm or to prevent the client from committing a criminal act that the lawyer believes is likely to result in substantial injury to the financial interest or property of another; or

(2) to secure legal advice about the lawyer's compliance with these Rules; or

(3) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(4) to comply with other law or a court order; or

(5) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

CLIENT-LAWYER RELATIONSHIP

Rule 1.7. Conflicts of Interest

(a) Except as provided in paragraphs (b) and (c), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client;
or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

(c) Notwithstanding (a) and (b) above, a lawyer from the New Hampshire Public Defender Program may represent an individual for arraignment if that individual is not:

(1) a co-defendant of a defendant also represented by the New Hampshire Public Defender Program; or

(2) a witness in a case in which the New Hampshire Public Defender Program represents a client and it is a case in which the New Hampshire Public Defender Program determines that there is a significant risk that the representation of the witness will materially limit the lawyer's responsibilities to the existing client.

ADVOCATE

Rule 3.3. Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) In an *ex parte* proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

(d) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

ADVOCATE

Rule 3.5. Impartiality and Decorum of the Tribunal

A lawyer shall not:

- (a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;
- (b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;
- (c) communicate with a juror or prospective juror after discharge of the jury if:
 - (1) the communication is prohibited by law or court order;
 - (2) the juror has made known to the lawyer a desire not to communicate; or
 - (3) the communication involves misrepresentation, coercion, duress or harassment; or
- (d) engage in conduct intended to disrupt a tribunal.

ADVOCATE

Rule 3.9. Advocate in Nonadjudicative Proceedings

A lawyer representing a client before a legislative body or administrative agency in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Rules 3.3(a), (b) and (d), 3.4(a) through (c), and 3.5.

INFORMATION ABOUT LEGAL SERVICES

Rule 7.3. Direct Contact With Prospective Clients

(a) A lawyer shall not initiate, by in-person, live voice, recorded or other real-time means, contact with a prospective client for the purpose of obtaining professional employment, unless the person contacted:

- (1) is a lawyer;
- (2) has a family, close personal, or prior professional relationship with the lawyer;
- (3) is an employee, agent, or representative of a business, non-profit or governmental organization not known to be in need of legal services in a particular matter, and the lawyer seeks to provide services on behalf of the organization; or
- (4) is an individual who regularly requires legal services in a commercial context and is not known to be in need of legal services in a particular matter.

(b) A lawyer shall not communicate or knowingly permit any communication to a prospective client for the purpose of obtaining professional employment if:

- (1) the prospective client has made known to the lawyer a desire not to receive communications from the lawyer;
- (2) the communication involves coercion, duress or harassment; or
- (3) the lawyer knows or reasonably should know that the physical, mental, or emotional state of the prospective client is such that there is a substantial potential that the person cannot exercise reasonable judgment in employing a lawyer.

(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall include the word "Advertising" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in subsection (a).

(d) The following types of direct contact with prospective clients shall be exempt from subsection (a):

- (i) participation in a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person, live voice or other real-time contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.
- (ii) initiation of contact for legal services by a non-profit organization.
- (iii) contact of those the lawyer is permitted under applicable law to seek to join in litigation in the nature of a class action, if success in asserting rights or defenses of the litigation is dependent upon the joinder of others; and
- (iv) requests by a lawyer or the lawyer's firm for referrals from a lawyer referral service operated, sponsored or approved by a bar association, or cooperation with any other qualified legal assistance organization.