

February 27, 2012

Jesse Mainardi
The Sutton Law Firm
150 Post Street, Suite 405
San Francisco, CA 94108

Re: Your Request for Advice
Our File No. A-12-002

Dear Mr. Mainardi:

This letter responds to your request for advice regarding the lobbying provisions of the Political Reform Act (the "Act").¹

QUESTION

Is a placement agent who filed a conditional registration required to complete the lobbyist ethics training course after filing a notice of termination, even after engaging in no lobbying activity while registered?

CONCLUSION

No. Rather than file a notice of termination, the placement agent should have filed a notice of withdrawal, in which case no ethics training was required.

FACTS

Your firm represents Sankaty Advisors, LLC ("Sankaty"), in investment management firm that is registered as a lobbyist employer. Sankaty's Vice President of Investor Relations, Dorothy Crocker registered as a lobbyist anticipating that she would act on behalf of her firm in presenting investment options to California state retirement systems. Ms. Crocker filed a Form 604, a lobbyist certification statement, with the Secretary of State on April 1, 2011 in anticipation of qualifying as a placement agent. Ms. Crocker engaged in no lobbying and made no contacts with California state retirement systems as anticipated.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

In November, 2011, Ms. Crocker filed a form 607 to terminate her [conditional] registration. She has not attended the lobbyist ethics training course and is unable to do so before her conditional registration expires on April 1, 2011.

ANALYSIS

Every person who is subject to the lobbying provision in the Act must register with the Secretary of State. As of 2011, placement agents who intend to contact a California state retirement system are lobbyists under the Act and must register within 10 days of meeting the statutory definition. (Section 86101) Section 86103(d)(2) provides that an individual must complete the course described in Government Code Section 8956(b) within 12 months of registration. The lobbyist certification is considered “conditional” until the individual has attended the course.

If a lobbyist ceases all lobbying activity and does not intend to continue engaging in lobbying activity, the lobbyist can file a notice of termination on Form 607. (Section 86107(a).) When one registers as a lobbyist who did not thereafter engage in lobbying in California, generally one files a Form 606, Notice of Withdrawal, stating that he or she has not been and does not intend to be a lobbyist. (Regulation 18601.) Each form is filed with the Secretary of State.

Ms. Crocker seems to have registered in April, 2011 out of caution rather than necessity. Because Ms. Crocker was not acting as a lobbyist, her conditional registration should have been withdrawn, rather than terminated. She never qualified as a lobbyist and therefore, it was not necessary for her to take the lobbyist ethics training course.²

While we have no authority to waive the requirement that each lobbyist complete the ethics training course, we conclude, based on your facts, that Ms. Crocker was never a lobbyist and she therefore had no obligation to complete the course. No further action is necessary on her part.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Heather M. Rowan
Counsel, Legal Division

HMR:jgl

² Please note that Ms. Crocker’s registration was conditional, pending completion of the lobbyist ethics training course. As she did not complete the training, the conditional registration is revoked and she may not lobby in California without re-registering and completing the requirements.