

October 11, 2012

Mr. David Montgomery  
NetFile  
2707 Aurora Road  
Mariposa, CA 95338

Re: Your Request for Informal Assistance  
**Our File No. I-12-129**

Dear Mr. Montgomery:

This letter responds to your request for advice regarding the lobbying provisions of the Political Reform Act (the "Act").<sup>1</sup> Because you are asking a general question applicable to many filers, we are treating your request as one for informal assistance.<sup>2</sup>

### **FACTS**

You are requesting advice in connection with your company's services as an electronic filing vendor for California lobbyist filers under the Act.

Under current regulations a registered lobbying firm which has qualified for electronic filing will file an amended Form 601 Registration Statement along with an "attached" Form 605 Amendment in both paper and electronic formats when the firm is required to amend their statement of registration.

In the current .CAL e-filing specification (version 2.01, approved 11/5/2001), amended documents are received as complete replacements for the documents they supersede. When a Form 601 is amended using the .CAL specification, sufficient information is included within the .CAL document to produce page one of the "attached" paper Form 605, but in your experience there is not sufficient information to produce page two of the paper Form 605. The information

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<sup>1</sup> 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.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

found in the second page of the Form 605 is already included within the body of the accompanying Form 601, but is not specifically identified within that document. Also, only one Form 605 Amendment may be included with a Form 601 Registration Statement e-filing document.

These areas of discrepancy between the e-filing specification and the paper forms create two questions below.

According to our phone conversation, entities who handle lobbying filings currently have different practices with respect to whether they submit a paper version of their amended Form 601/605 that includes page two of the Form 605. Some firms do file a paper copy of Form 605 that includes page two, and others do not.

### **APPLICABLE LAW**

Section 86100, the lobbyist registration provision of the Act provides as follows:

“(a) Individual lobbyists shall prepare lobbyist certifications pursuant to Section 86103 for filing with the Secretary of State as part of the registration of the lobbying firm in which the lobbyist is a partner, owner, officer, or employee or as part of the registration of the lobbyist employer by which the lobbyist is employed.

(b) Lobbying firms shall register with the Secretary of State.

(c) Lobbyist employers as defined in subdivision (a) of Section 82039.5 shall register with the Secretary of State.

(d) Lobbyist employers as defined in subdivision (b) of Section 82039.5 and persons described in subdivision (b) of Section 86115 are not required to register with the Secretary of State but shall file statements pursuant to this article.

*(e) A registration statement shall be filed both by online or electronic means and physically, submitting the original statement and one copy, in paper format.”*

(Emphasis added.)

Subdivision (e) above was specifically added to Section 86100 by the Huber bill in 2010. (Amended by Stats 2010, Ch. 18.)

With respect to amendment of lobbyist registration statements, Section 86107 provides as follows:

“(a) If any change occurs in any of the information contained in a registration statement, an appropriate amendment shall be filed *both by online or electronic means and physically, submitting the original and one copy of the amendment, in paper format*, with the Secretary of State within 20 days after the change.

However, if the change includes the name of a person by whom a lobbying firm is retained, the registration statement of the lobbying firm shall be amended and filed to show that change prior to the lobbying firm’s attempting to influence any

legislative or administrative action on behalf of that person. . . .” (Emphasis added.)

Here too, Section 86107(a) above was amended by the Huber bill in 2010 to add the italicized language. (Amended by Stats 2010, Ch. 18.)

Form 601, the Lobbying Firm Registration Statement, lists in Part I the names of individual lobbyists working at a lobbying firm and lists in Part II the clients on whose behalf the firm is contracted to lobby. When new lobbyists join a firm or the firm gets new clients, the Form 601 Lobbying Firm Registration Statement must be amended. The Form 605 is the Amendment to the lobbyist registration form. It highlights the information on the registration statement that is being amended and is filed along with the updated lobbyist registration statement (Form 601).<sup>3</sup>

### QUESTIONS AND ANSWERS

1. *Should a filer submit a paper version of their amended Form 601/605 that includes page two of the Form 605 even though the same amendment will not (and cannot) have the same page two information included in the e-filed document.*

Yes. A filer must submit a paper version of their amended Form 601/605 that includes page 2 of Form 605.

Section 86107 concerning amendment of lobbyist registrations specifies that if “any change occurs in any of the information contained in a registration statement, an appropriate amendment shall be filed both by online or electronic means and physically, submitting the original and one copy of the amendment, in paper format, with the Secretary of State within 20 days after the change.”

In addition, we spoke with individuals at the Secretary of State’s Office who handle the lobbying disclosure forms. They require that those filing lobbying form amendments file a paper copy of Form 605 that includes page two. If a lobbying firm has a new client or a subcontract, the Form 605 highlights this information. It is easier for the Secretary of State’s Office staff to see the amended information on the Form 605. In instances where the Form 605 highlighting the amended information is not provided, individuals at the Secretary of State’s Office have to get the information off the amended Form 601. While they can pull the information off the amended Form 601, doing so is more difficult and time consuming as they have to compare it with the prior Form 601 to identify the new information.

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<sup>3</sup> In addition to being filed with changes to the Form 601 Lobbying Firm Registration Statement, the Form 605 Amendment is also filed with changes to the Form 603 Lobbyist Employer/Coalition Registration Statement and the Form 604 Lobbyist Certification Statement.

*2. If more than one change has been made to a firm's registration since their most recent filing, does the firm need to amend their registration separately for each change or can they note in the memo field that two changes are taking place? (For example, if two new individual lobbyists are hired on the same day, only one new lobbyist can be reported on the current Form 605 without using the "other" section of the Form 605.)*

As we discussed by phone, the current practice varies. Some entities that handle lobbyist filings file a separate Form 605 Amendment for each change. They would file two Form 605s to report two lobbyists being added to a firm. Other filers submit one Form 605 Amendment to report two new lobbyists starting with a firm. They use the workaround of the "other" comments section of the form to say that a second lobbyist also started.

Either method is acceptable. We discussed this issue with the Political Reform Division of the Secretary of State's Office and they agreed with our interpretation that either of these methods is permissible as information can be easily researched and verified by either method.

If a filer is noting more than one transaction occurring in the memo field of a Form 605 (adding a lobbyist; deleting a lobbyist; deleting a client), the Secretary of State's office notes that is somewhat less clear what the date of each change is. They assume the effective date of the action is the same for all actions being reported. In addition, in CalOnline the memo field for "other" actions is limited to 100 characters, so it may be necessary to file multiple forms, or figure out how to clearly communicate the action in an abbreviated fashion (such as identifying a client termination by using the client ID # and an abbreviation of the name) so multiple desired transactions can fit in the 100-character memo field.

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

Sincerely,

Zackery P. Morazzini  
General Counsel

By: Hyla P. Wagner  
Senior Counsel, Legal Division

HPW:jgl