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February 24, 1999

Ms. Daneen E. Reese
Chairperson
State Ethics Commission
309 Finance Building
P.O. Box 11470
Harrisburg, Pennsylvania 17108-1470

COPY

**Re: The Lawyer-Client Privilege and the
Proposed Regulations to Implement the
Lobbying Disclosure Act**

Dear Ms. Reese:

This letter is submitted as a formal comment to the proposed Lobbying Disclosure Act regulations published in the Pennsylvania Bulletin January 30th. I request the Committee charged with drafting the regulations to make several amendments for the purpose of eliminating any conflict between the new law and our obligations of confidentiality to clients with regard to communications protected by the attorney-client privilege.

I request the following changes to the proposed regulations:

(1) Add to the definition of "indirect communications" on page four: "The term does not include communications between attorneys and their clients".

(2) In Sec. 35.1(g)(3)(iii) and Sec.35.2(a)(3) delete the phrase "Except as provided by the Act or these regulations".

(3) To Sec.37.1, Qualifications for exemption, add the following:

(m) An attorney while engaged in communications with a client and a client while engaged in communication with an attorney.

(n) An attorney while engaged in litigation or proceedings before a state administrative agency in which the agency is represented by counsel.

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-2-

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These changes are requested to protect the attorney-client privilege for confidential communication and to eliminate unintended regulation. The attorney-client privilege for confidential communication is fundamental to the practice of law and has been universally recognized in American law as essential to the ability of a lawyer to properly serve his client.

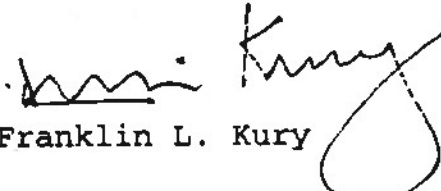
The present draft of the regulations could require violating the attorney-client privilege. For example, a lawyer's counseling of his client could very well have the result of encouraging the client to take action that is "lobbying." This counsel would fall within the definition of "indirect communication".

In Sec. 35.1(g) and Sec. 35.2(a), the phrase "Except as provided by the Act or these regulations," preceding the sentence "the specific contents of a particular communication, or the identity of those with whom such communications take place, need not be recorded.", implies that the legislature and Commission have the right to require disclosure of the contents of communications or the identity of those to whom communications are sent. There is no such authority in the legislature or in the Commission with regard to attorney-client communication. Moreover, there is nothing in the Act now authorizing such record keeping or disclosure.

(Although not involving the privilege question, the new subsection (n) to Sec. 37.1 would eliminate the unintended result of bringing within the definition of "lobbying" activity which is really litigation in nature.)

I do not believe that the legislature in enacting Act 93 intended to authorize any action that would result in violating the attorney-client privilege. If it had, I do not believe such an authorization would be upheld by any court. I, therefore, urge you to revise the regulations so as to remove any doubt as to the information to which the Commission is properly entitled under Act 93.

Very truly yours,


Franklin L. Kury

FLK/rem