

STATE OF COLORADO
Department of State

1700 Broadway
Suite 250
Denver, CO 80290



Wayne W. Williams
Secretary of State

Mike Hardin
Business and Licensing Division

May 16, 2018

Jennifer Walmer
c/o Bernie Buescher and Bill Hobbs
Ireland Stapleton Pryor & Pascoe, PC
717 17th Street, Suite 2800
Denver, CO 80202

RE: Disposition of Lobbyist Complaint Filed by Ilana S. Dubin-Spiegel against Jennifer Walmer

Dear Ms. Walmer:

This matter came before the Colorado Department of State after complainant Ilana S. Dubin-Spiegel filed a complaint alleging that you actively lobbied covered officials without properly registering as an individual professional lobbyist.

Specifically, the complaint alleged that you lobbied at the Capitol on at least five bills during the 2017 legislative session, including HB17-1134, HB17-1287, HB17-1294, HB17-1340, and SB17-61. Additionally, it is alleged both official House and Senate committee reports, and your signature on various legislative sign-in sheets which provide bill numbers, evidence statements of legislative positions made by you on behalf of Democrats for Education Reform (DFER).

On May 4, 2017, the Department of State sent you notice of Ms. Dubin-Spiegel's April 19, 2017 complaint. As authorized by 24-6-305(2)(c), C.R.S (2017), Department of State staff investigated the allegations in the complaint. Initially, you were represented by David Fine of Holland & Hart LLP. On June 2, 2017, Mr. Fine responded to the Department's May 4, 2017 notice. On November 28, 2017, the Department sent you (via Mr. Fine) a request for additional information. You subsequently retained representatives Bernie Buescher and Bill Hobbs who requested an extension to respond by January 12, 2018. On January 9, 2018, Mr. Buescher and Mr. Hobbs responded by written letter which included a Legislator Interactions/Communications log ("log").

Applicable law

Colorado's "Regulation of Lobbyists" law defines "lobbying" as, among other things, "communicating directly with a covered official for the purpose of aiding in or influencing . . . [t]he drafting, introduction, sponsorship, consideration, debate, amendment, passage, defeat,

approval or veto by any covered official on . . . [a]ny bill [.]”¹ Members of the General Assembly are covered officials under the act². The law also defines a “professional lobbyist” as “a person . . . or an employee of a client, who is compensated by a client or another professional lobbyist for lobbying.”³

Finally, the law requires a professional lobbyist to register and disclose certain information before lobbying.⁴

Summary of Investigation and Factual Findings

1. You were employed as the Colorado Director for DFER as well as for Education Reform Now Advocacy, Inc. (“ERNA”) during the 2017 legislative session. You received employment compensation solely from ERNA.
2. Moira Cullen was a registered professional lobbyist during the 2017 legislative session.
3. Moira Cullen filed disclosure reports indicating that she lobbied on behalf of ERNA as a client during the 2017 legislative session.
4. Your log for the 2017 legislative session indicates that you engaged in a minimum of 182 legislator-related communications.
5. Some of your log activities consisted of providing testimony at a public legislative hearing. See, e.g., items 74 (“Testify in support of HB1181”) and 75 (“Testify in support of SB61”).
6. Other activities involved meetings with legislators to specifically discuss legislation in the presence of ERNA’s lobbyist Moira Cullen. See, e.g., items 17 (“Discussed importance of keeping 191 whole”); 23 (“Rep. Pettersen requested feedback on 9th grade assessment litigation”); 48 (“Discussed PSAT bill”); and 124 (“Rep. requested meeting to review Transcripts bill amendment and committee hearing strategy”).
7. Various other interactions with legislators took place outside the presence of a registered lobbyist but did not appear to involve the discussion of legislation. See, e.g., items 50 (Legislator “[c]alled to ask advice on interpersonal situation . . . no legislation discussed”) and 110 (“Call from legislator to thank us for meeting”).
8. Another set of activities included sending emails to legislators concerning legislation. See, e.g., items 72; 73; and possibly 88.

¹ Section 24-6-301 (3.5) (a) (I) (A), C.R.S.

² Section 24-6-301(1.7)(a), C.R.S.

³ Section 24-6-301 (6), C.R.S.

⁴ Sections 24-6-302 and 24-6-303, C.R.S.

9. You also attended meetings with legislators to discuss legislation without the presence of a registered professional lobbyist. See, e.g., items 34 (“Speaker requested meeting to discuss . . . 191 legislative review”) and 36 (“Rep. requested meeting to get our feedback on her legislation”).

Analysis and Disposition

Section 24-6-301(3.5)(d)(III)(B), C.R.S., does not categorically exclude providing information at the request of public officials or employees from the definition of lobbying. The operative fact is that the individual must provide testimony or information at a committee or other public hearing.⁵

The Department of State finds no violation of the lobbyist laws with respect to your providing testimony at a public legislative hearing. This activity is excluded from lobbying within the meaning of section 24-6-201(3.5)(d)(III)(B), C.R.S., above. The Department of State also finds no violation of the lobbyist laws with respect to your meetings with legislators at which legislation was discussed when ERNA’s registered professional lobbyist, Moira Cullen, was also present.

As indicated above, your log also shows other legislator interactions (emails and meetings) that may constitute lobbying in violation of Colorado lobbyist registration and disclosure requirements. However, without specific knowledge of the content of each interaction, it is unclear whether all of the activity fell within the scope of the lobbying definition. Furthermore, to the extent, that any of these interactions did in fact constitute lobbying, this office finds that they were sufficiently minimal in quantity given the total number of logged interactions.⁶

This office recommends that you register as a professional lobbyist if you intend to contact or meet with legislators concerning pending or proposed legislation outside the presence of your organization’s registered lobbyist. Doing so will ensure compliance with Colorado lobbyist laws.

⁵ That section solely excludes from lobbying:

. . . persons who are not otherwise registered as lobbyists and who limit their activities to appearances to give testimony or provide information to committees of the general assembly or at public hearings of state agencies or who give testimony or provide information at the request of public officials or employees and who clearly identify themselves and the interest for whom they are testifying or providing information.

This provision was added in 2004. The legislative declaration in the immediately preceding section 24-6-301(3.5)(d)(III)(A), C.R.S., makes it clear that the purpose of the amendment was to “achieve a more uniform application of the lobbying laws to *witness testimony and to clarify the ability of the public to provide testimony to the general assembly and to state agencies*” (emphasis added).

⁶ See August 11, 2003 Advisory Opinion, which is available on the Secretary of State’s website at: <https://www.sos.state.co.us/pubs/lobby/opinionsComplaints.html>

Sincerely,



D.J. Davis
Deputy Director of Business and Licensing

Cc: Ilana S. Dubin-Spiegel