

the Ethical Times

When Good Intentions Aren't Enough

By Dan Iwrey

Many City employees want to spend their time outside the office helping their community directly. If you want to volunteer at a not-for-profit organization, here's what you need to keep in mind:

- You may **volunteer** for any not-for-profit organization if you have **no formal role** at the not-for-profit – in other words, you are just a regular volunteer, serving the public directly.
- You may also serve in a **formal volunteer role** (like an unpaid board member, attorney, or consultant) with a not-for-profit that does not do business with the City.
- A formal volunteer at a not-for-profit that does business with the City **must take no part** in the not-for-profit's City business.
- If the not-for-profit does business **with your City agency**, you will need permission from your agency head to take on a formal role there.

Let's explore the reasons behind these rules with a hypothetical scenario, presented in a series of emails. Put on your investigator hat and pay special attention to where these messages are going and who's sending them.

 To: Marcy Harwood <mharwood@clinics.nyc.gov>
 Fr: Brian Caputo <bcaputo@spectrum.net>
 Subject: New Care Facility

Hi Marcy,

We may have found a perfect source of City funding for our new clinic: The NYC Development Corp. just announced a new grant, the Queens Community Health-Center Expansion Program, which offers financing for new health center sites. Perfect, right?! Could you take the lead on this? So you know - this will probably involve a lot of back and forth with NYDC. I understand you're busy, but you have the most experience establishing clinics and your experience in City gov. will certainly come in handy.

Brian
 Board Chair, Red Ribbon Foundation

IN THIS ISSUE

- 1 **Featured Article: Volunteering**
- 3 **Recent Enforcement Cases**
- 6 **Public Service Puzzler Winner**

 To: Brian Caputo <bcaputo@spectrum.net>
 Fr: Marcy Harwood <mharwood@clinics.nyc.gov>
 Re: New Care Facility

Hi Brian,

In the past, I have not been participated at Red Ribbon in matters involving City funding since the money usually comes from my agency, but I think this should be fine! I'll start putting a proposal together next week. Happy to help!

Marcy

 To: Alex Perez <alex.perez@nycdevelopment.org>
 Fr: Marcy Harwood <mharwood@clinics.nyc.gov>
 Re: Red Ribbon Foundation application
 Attachment: Red Ribbon Foundation Proposal

Dear Mr. Perez,

First- Thank you so much for your continued patience in our back and forth over the last few months. I also deal with funding proposals in my City job, and have spent many a work day fielding questions.

Please see the attached proposal for the Queens Community Health Center Expansion Program. We believe our organization, The Red Ribbon Foundation, would be a perfect candidate for these funds. Red Ribbon is



FAST FACTS

- You may volunteer for any not-for-profit organization if you have no formal role at the not-for-profit – in other words, you are just a regular volunteer, serving the public directly.
- You may also serve in a formal volunteer role (like an unpaid board member, attorney, or consultant) with a not-for-profit that does not do business with the City.
- A formal volunteer at a not-for-profit that does business with the City must take no part in the not-for-profit's City business.
- If the not-for-profit does business with your City agency, you will need permission from your agency head to take on a formal role there.
- These rules are not only about preventing conflicts, but about preserving the public's trust.

a 501(c)(3) organization committed to neighborhood-based HIV prevention and treatment. If selected, the funding and assistance would be used to construct a much needed care facility in Queens.

Please let me know if you have any further questions.

Marcy Harwood
Red Ribbon Foundation, Board Member

Were you able to spot the Chapter 68 violations? Marcy first violated the Conflicts of Interest law by extensively using her City email and City time, both City resources, to conduct business for her outside volunteer work. If Marcy were volunteering in an informal capacity, such as delivering meals to the elderly or tutoring local kids, her extensive use of resources would be our main concern. But Marcy, like many public servants, chooses to volunteer in a formal capacity. Without written approval from her agency head, Marcy would not be permitted to hold a formal position with Red Robbin because it does business with her City agency. Additionally, she failed to recuse herself from Red Ribbon's City business dealings and went on to represent them in a City-related matter.

Now, you might be asking yourself at this point, "why all the fuss? Marcy's not even getting paid for this work!" True, but remember: the rules aren't only designed to keep Marcy's conduct as a public servant free from conflicts of interest, they're also designed to ensure the public's trust that the playing field is a fair one. While Marcy probably acted with good intentions, those actions could easily lead to some questions about how the City does its business.

Say, for example, there's another not-for-profit – let's call them the Children's Health Association of Medical Professionals, or "CHAMP" for short – applying for the same desperately needed funds:

To: Alex Perez <alex.perez@nycdevelopment.org>
CC: Barbra Lee <barbra.lee@nycdevelopment.org>
From: Ben Marks <benjamin.s.marks@champ.org.>
Subject: CHAMP application
Attachment: 2018proposal_CHAMP

Dear Mr. Perez,

I am the Board Chair of the Children's Health Association of Medical Professionals (CHAMP). I'm writing regarding the Queens Community Health Center Expansion Program. Our Forest Hills clinic has been serving the community for over 12 years. Due to upcoming changes in the building code our facilities are in desperate need of renovations. Without these upgrades, we may be forced to close the clinic. Please see our completed proposal attached with this message.

Thank you,
Ben Marks
Board Chair,
Children's Health Association of Medical Professionals

It looks like Alex Perez and his team at NYCDC have a tough decision to make. After thorough deliberations, they make their move:

To: Marcy Harwood <mharwood@clinics.nyc.gov>
Fr: Alex Perez <alex.perez@nycdevelopment.org>
Subject: Congratulations!

Dear Ms. Harwood,

Thank you very much for your submission. It is our pleasure to inform you that the Red Ribbon Foundation has been chosen as an eligible recipient. We are extremely excited about this partnership and would like to set up a meeting as soon as possible. Please let me know when you and your team can come by to discuss the details.

Congratulations! We hope to hear from you soon,
Alex Perez
Managing Director, Funding Agreement Division
New York City Development Corporation

Great news for Red Ribbon! But meanwhile...

To: Everyone (CHAMP Group)
Fr: Ben Mark <benjamin.s.marks@pierson.com>
Subject: CHAMP – Important Update

Dear All,

Yesterday I received an email from NYDCD “regretfully informing” me that CHAMP was not selected for the Health Center Expansion program. While this is a major disappointment, I first and foremost wanted to thank you all for the amazing commitment and passion you’ve given to this organization. I cannot overstate the impact each of you has had on our community.

Soon after receiving this news, I learned that the organization that was selected had significant inside connections to City government. Clearly, this selection process was compromised and in no way based on the merit of the applications. After a long and very difficult discussion, the Board and I have decided to dissolve CHAMP for the time being. Given the impropriety in the funding process, it no longer feels proper to waste your valuable time and energy. Please feel free to reach out to me directly if you have any questions.

Ben Marks
Board Chair,
Children’s Health Association of Medical Professionals

Did Marcy use her City position to push her not-for-profit to the finish line? It’s hard to say for sure, but it sure appears that way to the disappointed author of that last email.

Thousands of not-for-profits compete for a limited amount of City resources, and it’s vital that interested parties have confidence that these resources are distributed fairly. So while you’re making the world a better place, always keep your role as a public servant in mind.



If you’ve got questions about volunteering for a not-for-profit, call the Board at (212) 442-1400 for free, confidential legal advice.

Dan Iwrey is an Education & Engagement Specialist for the NYC Conflicts of Interest Board.



nyc.gov/ethics

Recent Enforcement Cases

Misuse of City Resources On fourteen occasions, a Deputy Commissioner of the Department of Correction (DOC) used a take-home vehicle, assigned for official use within New York City, to drive to and from his second home in Connecticut. In a joint settlement with the Board and DOC, he forfeited 5 days of annual leave (valued at \$3,756), paid a fine of \$2,250 to the Board, and reimbursed DOC for the mileage incurred (\$1,381.97), for a total penalty worth \$7,387.97.

Misuse of City Resources a now-former DOC Assistant Chief of Division used his DOC take-home vehicle to make eleven personal trips outside of New York City. He paid a fine of \$4,000 to the Board.

Misuse of City Resources A DOC Warden used her DOC take-home vehicle nine times for personal purposes, including trips to and from her doctor’s office and local airports. As she had already reimbursed DOC \$87.80 for the mileage incurred and forfeited 7 days of compensatory time (valued at \$4,779.74), she paid a fine to the Board of \$500, for a total penalty worth \$5,279.74.

Misuse of City Position A now-former Department of Education (DOE) Principal hired her sister to do hourly “per session” payroll work for her DOE school. The Principal supervised her sister in that position for three months, during which time the Principal allowed her sister to work remotely, an arrangement which entailed the Principal faxing her sister the paperwork needed to perform her duties and entering and approving her sister’s timesheets. The Principal paid a fine of \$5,500 to the Board.

Superior-Subordinate Financial Relationship & Misuse of City Position A DOE Assistant Principal and a teacher at the school where the Assistant Principal worked violated the conflicts of interest law by moving in together. The Assistant Principal continued to supervise his live-in girlfriend for eleven months, during which time

Recent Enforcement Cases

they married. Neither disclosed their relationship to DOE until it was discovered by others. The Assistant Principal and teacher paid fines of \$3,750 and \$1,752, respectively.

Misuse of City Position Over the course of eight years, a DOE Principal accepted a series of birthday and Christmas gifts, worth a total of approximately \$600, from her subordinate, a DOE teacher who the Principal promoted to Assistant Principal during this time period. In a joint settlement with the Board and DOE, the Principal agreed to pay a \$1,500 fine. In assessing the appropriate fine, the Board considered that the Principal also gave some gifts to her subordinate in exchange for the gifts she received.

Misuse of City Position An Environmental Police Sergeant for the New York City Department of Environmental Protection (DEP) texted several of his DEP subordinates with a link to his son's GoFundMe page. The son was seeking donations to cover the cost of his attendance at a professional development conference. One of the Sergeant's subordinates donated \$50 and another subordinate donated \$25. In a joint settlement with the Board and DEP, the Sergeant agreed to return the donated money to his subordinates, forfeit four days of annual leave (valued at \$1,134), and pay a \$150 fine.

Misuse of City Resources While working at the New York City Housing Authority (NYCHA), a Maintenance Worker used a NYCHA credit card to buy gas for his personal vehicle on five to ten occasions. When NYCHA commenced disciplinary charges against him for this conduct, he resigned and quickly obtained another Maintenance Worker position with the New York City Department of Citywide Administrative Services. The Maintenance Worker paid a \$2,500 fine to the Board.

Misuse of City Resources A Park Supervisor for the New York City Department of Parks and Recreation (DPR) stored his mobile home on a DPR service road in Forest Park for three months. In a

joint settlement with the Board and DPR, the Park Supervisor agreed to pay a \$1,000 fine.

Misuse of City Time and Resources On several occasions, a DOE teacher used DOE time to demonstrate and sell a geometry bingo game that he intended to sell for personal profit. The teacher paid a \$1,000 fine. In setting this fine, the Board considered the teacher's representation that he earned no profit from the game.

Misuse of City Resources A now-former DOE High School Guidance Counselor misused DOE resources to pursue work for her private college counseling practice. Specifically, she:

- used her DOE computer and DOE flash drive to store 10 documents related to her private practice; and
- took general information regarding the college admissions process and a college scholarship program from DOE emails and posted the information on the Facebook page of her private college counseling practice.

She paid an \$800 fine to the Board.

Post-Employment After leaving his position with the Mayor's Office of Technology and Innovation, a former Project Manager founded a not-for-profit organization that offers professional training. Despite having received advice from the Board warning him not to do so, the former Pro-



Recent Enforcement Cases

ject Manager communicated eight times with Mayor's Office employees within a year after leaving City service, attempting to drum up business. These prohibited communications with Mayor's Office employees included emails and telephone calls in which he provided information regarding the programs offered by his not-for-profit, proposed specific training programs for Mayor's Office staff, and attempted to set up meetings with the Mayor's Office regarding his training programs. The Project Manager paid an \$8,000 fine.

Post-Employment After leaving City employment, a former DOE Confidential Investigator began a private business consulting for employees subject to discipline after investigations done by her former DOE department, the Office of Special Investigations (OSI).

Roughly three months after leaving City service, she was hired by an attorney representing a DOE Assistant Principal who had been demoted after an OSI investigation. The former Confidential Investigator communicated with DOE on the client's behalf on three occasions within one year of leaving her DOE employment, testifying before an internal DOE committee in person and via a written report.

The Board determined that the appropriate penalty was a \$6,000 fine, taking into account that her testimony at the DOE committee hearing generated confusion among the committee members regarding her role in the proceeding. The Board forgave \$4,000 of the \$6,000 fine based on the former Confidential Investigator's documented financial hardship.

Gifts & Gratuities A former New York City Administration for Children's Services (ACS) Community Associate was responsible for enrolling daycare centers in the ACS system and became acquainted with the Proprietor of several ACS-funded daycare centers. She enrolled at least two of the Proprietor's daycares into the System.

She also, at the Proprietor's request, adjusted the allocation of children allowed in some of the Proprietor's daycare programs. The Proprietor then gave the Community Associate \$200 cash and a \$400 check at two subsequent social events.

Taking into account the unpaid suspension, valued at \$2,860, that the former Community Associate served, as well as her subsequent resignation (both imposed for disciplinary infractions related to this misconduct), the Board determined an additional \$5,000 fine to be the appropriate penalty. However, the Board forgave this fine based on the Community Associate's showing of financial hardship.

Misuse of Position; Superior-Subordinate Financial Relationships. A New York City Department of Transportation (DOT) Highway Transportation Specialist undertook outside work with his wife as agents of a multi-level marketing company. To further this outside work, the Highway Transportation Specialist recruited two of his DOT subordinates to become members of his wife's marketing team. On one occasion, he also sold a product directly to a DOT subordinate. In addition, in order to boost his sales numbers, the Highway Transportation Specialist had a DOT subordinate purchase a product worth \$40 from the marketing company's website and reimbursed the subordinate for that purchase. In a joint settlement with the Board and DOT, the Highway Transportation Specialist agreed to serve a 20-workday suspension, valued at approximately \$3,511.72. The Board imposed no further penalty.

Misuse of Confidential Information On 86 occasions, a New York City Human Resources Administration (HRA) Associate Job Opportunity Specialist accessed the confidential public assistance records of his then girlfriend (who lived in a building that he owned), their close relatives, and members of their households. In a joint set-

Recent Enforcement Cases

tlement with the Board and HRA, the Associate Job Opportunity Specialist agreed to resign. The Board imposed no further penalty.

Misuse of City Resources A New York City Department of Homeless Services (DHS) Clerical Associate requisitioned a DHS vehicle and driver for the stated purpose of transporting computers between DHS offices. Instead, he used the car and driver to take him to his home in the Bronx for a family event. In addition to admitting to this violation, the Clerical Associate admitted to other unrelated violations of the DHS Code of Conduct, for which he accepted a fifty-calendar-day suspension, valued at \$7,243, and a one-year probationary period. The Board imposed no further penalty.

Misuse of City Resources In separate cases, two DEP Inspectors misused DEP vehicles for non-City purposes. In the first case, an Air Pollution Inspector misused a DEP vehicle on at least five occasions for personal travel. On one of these occasions he received a speeding ticket for driving 94 miles per hour in a 50 mile-per-hour zone. In the second case, an Associate Air Pollution Inspector was assigned a “take home vehicle” for the purposes of performing his official duties and commuting. Over the course of 14 months, he treated the DEP vehicle as if it were his own personal vehicle, using it for personal errands & travel, including during his days off. Both Inspectors resigned in order to resolve disciplinary actions related to their misconduct. The Board accepted their resignations as sufficient penalties for their violations of Chapter 68.

Misuse of City Time and Resources A now-former Kings County District Attorney (KCDA) Community Liaison served as the KCDA liaison to the Orthodox Jewish community in Brooklyn. For a period of approximately 16 months, she also served as the liaison to that community for the District Attorney’s re-election campaign. In pursuit of her work for the Campaign, she used her

KCDA email account and her KCDA computer, often during her KCDA work hours, to coordinate numerous Campaign events and communications. She paid a \$4,000 fine to the Board.

Misuse of City Time and Resources On one occasion, a now-former KCDA Deputy District Attorney and Chief of the KCDA Rackets Division used his KCDA email account and his KCDA computer during his KCDA work hours to help prepare the District Attorney for a Campaign debate. He paid a \$1,000 fine to the Board.

Misuse of City Time A now-former Confidential Assistant District Attorney in charge of the KCDA Crime Prevention Division misused City time when she exchanged several Campaign-related emails with the District Attorney during her KCDA work hours regarding the Campaign mailing list, the Campaign website, and Campaign fundraisers. She did not use her KCDA email account for these communications; however City time, like all other City resources, may never be used for campaign-related activities. She paid a \$600 fine to the Board.

A [searchable index](#) of all the COIB Enforcement Dispositions and Advisory Opinions is available courtesy of New York Law School.

Congratulations!

To the winner of our recent Public Service Puzzler:

Agnes Jeon, Revenue Analyst at ACS

Write a post-employment haiku for the current Puzzler! We’ll take entries through July 5.

Schedule a Chapter 68 Class

Get in touch with the COIB’s Education & Engagement Unit to arrange a class in Chapter 68 for you and your staff. Contact Gavin Kendall at Kendall@coib.nyc.gov.

Phone: (212) 442-1400

Fax: (212) 437-0705