

CITY OF NEW YORK CONFLICTS OF INTEREST BOARD

Notice of Adoption of Final Rule Governing Retention of Financial Disclosure Reports

NOTICE IS HEREBY GIVEN that, pursuant to the authority vested in the Conflicts of Interest Board by Section 12-110(e) of the Administrative Code of the City of New York and in accordance with the requirements of Section 1043 of the New York City Charter, the Conflicts of Interest Board has adopted a new final rule, Section 1-10 of Title 53 of the Rules of the City of New York, governing the retention of financial disclosure reports. Pursuant to a notice published on May 23, 1994, in The City Record, a public hearing on the proposed rule was held on June 30, 1994, at 2 Lafayette Street. The Board did not receive any comments on the proposed rule and, without change, adopted it as final. The text of the new final rule is underlined below. The rule shall become effective 30 days after publication of this notice in The City Record.

Dated: July 8, 1994

SECTION 1-10. RETENTION OF FINANCIAL DISCLOSURE REPORTS.

(a) Definitions. As used in this Rule, the following terms shall have the respective meanings set forth below:

(1) "Administrative Code" shall mean the Administrative Code of the City of New York.

(2) "Board" shall mean the New York City Conflicts of Interest Board, established pursuant to Section 2602 of the New York City Charter.

(3) "Financial Disclosure Report" shall mean any financial disclosure report filed or on file with the Board pursuant to Section 12-110 of the Administrative Code, including reports previously filed with the Office of the City Clerk and transferred to the Board's custody.

(4) "Prior Financial Disclosure Report" shall mean any Financial Disclosure Report which, as of the effective date of this Rule, has been retained by the Board for a period in excess of six years from December 31 of the calendar year to which such Report relates.

(b) Retention of Financial Disclosure Reports.

(1) Whenever a Financial Disclosure Report is filed with the

Board, it shall be retained by the Board for a period commencing on the date such Report was filed with the Board and expiring on the sixth anniversary of December 31 of the calendar year to which such Report relates. The period during which the Board is required to retain a Financial Disclosure Report, pursuant to this paragraph (1), is hereinafter referred to as the "Required Retention Period" for such Report.

(2) (a) Except as provided in subparagraph (b) below, upon expiration of the Required Retention Period for a Financial Disclosure Report, pursuant to paragraph (1) above, the Board shall either (i) destroy such Report, or (ii) if requested by the individual who filed such Report, return such Report to such individual. Any request that the Board return such Report must be made in writing to the Board not later than 10 days prior to the expiration of such period.

(b) Notwithstanding the provisions of subparagraph (a), if a law enforcement agency requests that the Board retain a Financial Disclosure Report for an additional period of time beyond the expiration of its Required Retention Period, for purposes of an ongoing investigation, the Board shall retain such Report for such additional period, provided the request is made in writing and is submitted to the Board not later than 10 days prior to the expiration of such Required Retention Period. Upon expiration of such additional period of time, the Board shall either (i) destroy such Report, or (ii) if requested by the individual who filed such Report, return such Report to such individual. Any such request must be made in accordance with the provision of subparagraph (a) above.

(3) In accordance with the provisions of subdivision (e) of Administrative Code § 12-110, as amended by Local Law No. 93 of 1992, the retention period established in paragraph (1) is intended to supersede, and shall be observed by the Board in lieu of, the retention periods set forth in such subdivision(e).

(4) Notwithstanding any other provision of this section, the Board shall be entitled, upon the effective date of the Rule, to destroy immediately all Prior Financial Disclosure Reports then in its possession.

STATEMENT OF BASIS AND PURPOSE OF PROPOSED RULE: In 1975, the City of New York (the "City") adopted a financial disclosure law, requiring that certain public servants file detailed reports concerning their incomes, investments, outside positions, and other assets and liabilities. The law has been amended several times and is currently codified at Section 12-110 of the Administrative Code.

Prior to 1990, the financial disclosure law was administered by the City Clerk. Since 1990, it has been administered by the

Conflicts of Interest Board (the "Board").

The Board currently collects approximately 12,000 financial disclosure reports each year, from the following categories of individuals required to file:

(a) holders of Citywide elective offices (Mayor, Comptroller, City Council President, Borough Presidents, and Members of the City Council);

(b) holders of political party office, as defined in the law;

(c) candidates for Citywide elective office or political party office;

(d) agency heads, deputy agency heads, assistant agency heads, members of City boards or commissions (other than members serving without compensation), and City employees who are members of the City's management pay plan or whose salary on April 30 of the year in which a report is to be filed is \$62,300 or more; and

(e) City employees whose duties directly involve the negotiation, authorization, or approval of contracts, leases, franchises, revocable consents, concessions, and applications for zoning changes, variances, and special permits.

See Sections 12-110(a)(1) through (3) of the Administrative Code.

The Board has a total of over 140,000 reports on file, including reports collected by the City Clerk during the period 1978 through 1988.

Financial disclosure reports are utilized by the Board to detect actual or potential conflicts between a public servant's official duties and his or her private interests or affiliations. In addition, reports are utilized by the City's Department of Investigation to facilitate inquiries into actual or potential cases of fraud, waste, and abuse, or other wrongful conduct on the part of City officials or employees.

Until December 7, 1992, the financial disclosure law required that the Board retain all reports filed with it by a public servant until the expiration of two years after that public servant has separated from City service (or, in the case of reports filed by an unsuccessful candidate for office, until the expiration of two years from the date of the election at which the candidate was defeated). After the two-year period has elapsed, the Board is obligated to destroy the reports or, in the alternative, return them to the individual who filed the reports.

The two-year retention period, tied to separation from City service, has posed both administrative and legal difficulties for

the Board.

In any given year, large numbers of City employees transfer to different agencies or leave City service entirely. The City's records are sometimes outdated or inaccurate, and it is often difficult to obtain precise information on the status of a City employee. As a result of these uncertainties, the Board, for all practical purposes, has been forced to retain many reports for an indefinite period of time. This, in turn, has required ever increasing amounts of storage space, filing cabinets, supplies, and staff time to insure that all files are properly arranged and maintained. Indeed, because of the number of reports already on hand, the Board has been forced to store a portion of its financial disclosure files off-site, making access and security arrangements far more difficult.

In addition, the Board receives approximately 900 requests each year for copies of financial disclosure reports. These requests are made by the media, law enforcement agencies, and members of the public.

Because of the uncertainties surrounding the exact date of separation for many former City employees, and the resulting retention of many reports for indefinite periods of time (see above), the Board runs the risk of inadvertently disclosing the contents of a report to a third party, after the date on which the report should have been destroyed. This risk was highlighted in an Article 78 proceeding brought against the Board in the Fall of 1992, in which the Board was informed, long after the fact but just prior to the release of a report, that the individual who filed the report had retired from City service more than two years previously.

Effective December 7, 1992, the financial disclosure law was amended to allow the Board, in consultation with the Department of Records and Information Services ("DORIS") and the Department of Investigation ("DOI"), to establish by rule a different period or periods for the retention of financial disclosure reports, taking into account the need for efficient records management and the need to retain such reports for a reasonable period for investigatory and other purposes. See Local Law No. 93 of 1992, amending Section 12-110(e) of the Administrative Code.

The rule set forth above establishes a uniform retention period for all financial disclosure reports. Each report is to be retained for a fixed period commencing on the date it is filed, and expiring on the sixth anniversary of December 31 of the calendar year to which it relates. Since most reports are due on May 1, and cover the preceding calendar year, this rule will insure that the vast majority of reports which are filed with the Board will be retained for at least five full years.

This rule was developed in consultation with DORIS, DOI, and the Office of the Corporation Counsel, and seeks to carefully balance the following considerations:

(1) the statute of limitations for misconduct in public office (see Criminal Procedure Law, Section 30.10(3)(b));

(2) the need to retain financial disclosure reports for a reasonable period of time, in order to facilitate an inquiry into allegations of conflict of interest or other wrongful conduct;

(3) the desire to conform any rule to existing City record retention policies, to the extent possible; and

(4) the practical benefits of a fixed retention period, tied to a date certain, allowing the Board to manage its space requirements more efficiently and avoid the risk of inadvertently disclosing reports that should have been destroyed or returned.