

# the Ethical Times

## How Cases Work Enforcement Procedures

By Isaiah Tanenbaum

If you've been reading *The Ethical Times* for a while, you've probably continued past these informative, brilliantly-written articles to take a look at the "Recent Enforcement Cases" section. Maybe you want to check that out right now – we'll wait until you're back.

Hello again! Missed you. Perhaps you've wondered how cases like these happen. If so, you're not alone! We get a lot of questions about Enforcement – questions like "why haven't you gone after this or that kind of misdeed?" or "why did that one guy not get fired?" and, especially, "are you ever gonna look into that thing I told you about?"

While we can't answer these questions in the specific because of the Board's strict confidentiality rules (sorry!), we can tell you how Enforcement works in general. So if you've ever wondered how the Board pursues potential violations of the law, read on!

### Complaint

Most Enforcement cases begin with a complaint that a public servant has violated some part of the body of law over which COIB has jurisdiction – that is, [Chapter 68 of the New York City Charter and other related laws](#). Complaints must be in writing and can be sent by mail or via our handy [webform](#). Complaints are confidential by law, and thus we will never confirm or deny to anyone the existence or status of a particular complaint. In this way, the Board avoids clouding a

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public servant's reputation before allegations have been proven.

(Another way the Board initiates Enforcement cases is when an agency notifies us that it is pursuing a disciplinary case against one of its employees for conduct that violates Chapter 68. We'll get to that a little bit later.)

### Investigation

Let's say that the Board receives a complaint that, if true, would constitute a violation of Chapter 68. In that case, we refer that complaint to the Department of Investigation, to do some, well, investigating. Think of it like the two halves of a classic episode of *Law & Order*: we're the Jack McCoy to DOI's Lenny Briscoe. So DOI does their thing: collecting evidence, interviewing witnesses, dropping clever one-liners over cups of deli coffee (which they purchased themselves, of course!), and so on; then they prepare a



confidential report, which they send to the Board. The Board reviews the report and supporting evidence to decide whether to charge the alleged violator.

Charging someone with violating the law is not done lightly. The Board must determine that, based on the available evidence, it is *more likely than not* that a violation of Chapter 68 was committed. The charge, the decision to charge, and the deliberations that lead up to that decision are all confidential.

### **Charges, Settlements, and Trials**

The person charged by the Board (the “Respondent”) has the opportunity to make their case to the Board, through an attorney or union representative if they wish. They can present evidence, arguments, and any mitigating factors for consideration. As with the complaint and investigation, this is all confidential.

If the Respondent successfully persuades the Board that no violation took place, the Board will dismiss the case. Otherwise, the parties will attempt to negotiate a settlement, which typically includes a monetary fine that can range from a few hundred dollars up to the statutory maximum of \$25,000 per violation. The fine amount depends on the severity of the violation (big violations lead to bigger fines), the rank of the public servant (the higher up you are, the higher the standard to which you are held), how previous similar violations were penalized (so that penalties stay consistent and fair), whether the Respondent has already faced agency discipline for the related conduct (getting suspended or fired is a pretty big financial penalty by itself), and any other mitigating or exacerbating factors. Fines are sometimes reduced or forgiven if the Respondent demonstrates significant financial hardship that would prevent them from paying the whole fine. COIB settlements require a public disposition in which the Respondent acknowledges the violations they committed, as well as the fine they paid to resolve the matter.

When a case comes to the Board through another City agency, the Board will often enter into a three-way settlement with that agency and the public servant that addresses both the violations of the agency’s code of conduct and Chapter 68 at once. That way, the violator doesn’t have to go through two different proceedings to resolve their misconduct.

If the negotiations don’t result in a settlement, the case goes before an Administrative Law Judge (ALJ) at the Office of Administrative Trials and Hearings (OATH) for trial. After the trial, the ALJ will issue a Report and Recommendation that includes findings of fact and a suggested penalty. The Board reviews the Report and Recommendation and the full trial record and decides independently whether to accept, in whole or in part, the ALJ’s findings of fact and recommended penalty, and issues an Order with its determination.

In order to help other public servants avoid making the same mistakes, all Enforcement Dispositions and Board Orders finding violations are public by law, and the Board issues a press release for each one (sign up [here](#) to receive those). They also appear in *The Ethical Times* and are archived [on the COIB website](#) and New York Law School’s searchable [CityAdmin database](#).

### **Conclusion**

Enforcement is an important part of any legal system, but our hope is that public servants reach out to us *before* they take actions that might implicate the conflicts of interest law, so that we may advise them how to avoid Enforcement altogether. The Board’s Advice attorneys can answer your questions, Monday to Friday from 9 to 5, at 212-442-1400 or via the [advice webform](#). All advice is confidential.



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## Recent Enforcement Cases

**Misuse of City Position.** An Operations Supervisor at the NYC Department of Information Technology and Telecommunications (DoITT) had oversight over DoITT's \$81.59 million contract with a vendor to provide cabling services to the City. As part of that oversight, the Operations Supervisor regularly worked with the vendor's Vice President of Operations. After learning that the vendor was "staffing up" to fulfill the cabling contract, the Operations Supervisor recommended his brother to the Vice President of Operations as a good candidate for a position with the vendor. His brother was interviewed by the vendor but not hired. The Operations Supervisor paid a \$4,000 fine to the Board.

**Misuse of City Time.** An Assistant Counsel at the NYC Department of Environmental Protection (DEP) filed four complaints about idling vehicles as part of the DEP Citizens Air Complaint Program, under which he was eligible to receive payments from DEP if the idling complaints were substantiated. During times that he was supposed to be working for DEP, the Assistant Counsel testified at the New York City Office of Administrative Trials and Hearings (OATH) about those complaints. In a joint settlement with the Board and DEP, the Assistant Counsel agreed to pay a \$951.25 fine to DEP and forfeit two days of annual leave, valued at approximately \$798.62, to address this violation and other conduct that does not implicate the City's conflicts of interest law. The Board accepted the agency-imposed penalty as sufficient and imposed no additional penalty.

**Misuse of City Resources.** An Assistant Superintendent at the NYC Housing Authority (NYCHA) used his NYCHA email account to exchange 27 emails and used a NYCHA scanner to scan two documents, all concerning a home renovation project being performed by

a construction company owned and operated by his brother. In a joint settlement with the Board and NYCHA, the Assistant Superintendent agreed to serve a five-workday suspension, valued at approximately \$1,478; forfeit five days of annual leave, valued at approximately \$1,478; and serve a one-year limited probationary period. The Board accepted the agency-imposed penalty as sufficient and imposed no additional penalty.

**Prohibited Position; Misuse of City Resources & City Time.** A Supervisor of Electrical Installation and Maintenance at the NYC Department of Transportation (DOT) also worked at PSEG Long Island, an energy company that does business with several City agencies. Over the course of approximately two-and-one-half years, the Supervisor used his DOT email account and a DOT scanner to scan and send 14 documents related to his PSEG employment, 11 of which he sent during his DOT work hours. DOT brought disciplinary charges against the Supervisor for these violations and other conduct that does not implicate the City's conflicts of interest law. To resolve those charges, the Supervisor agreed to resign from DOT effective April 1, 2021. The Board determined that the agency-imposed penalty of resignation was sufficient to address the now-former Supervisor's violations and imposed no additional penalty.

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



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