

New York City Conflicts of Interest Board

ANNUAL
REPORT
1998

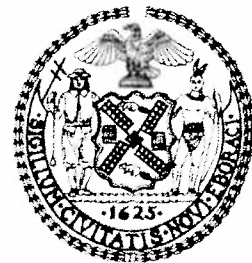
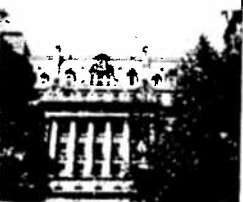


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LETTER TO THE MAYOR

December 31, 1998

Honorable Rudolph W. Giuliani
Mayor of the City of New York
City Hall
New York, New York 10007

Dear Mayor Giuliani:

On behalf of the Conflicts of Interest Board, I am pleased to submit this report of the Board's work for 1998. While the Board's activities during this past year are set out more fully in the body of the report, the following highlights deserve special mention.

Requests for Legal Advice and Rulemaking

During 1998, the Board received 539 written requests for advice from public servants as to the propriety of their proposed outside activities or interests under Chapter 68, a 27% increase over 1997, and issued 456 written responses to requests for advice, a staggering 43% increase over 1997. We anticipate that these numbers will continue to grow as the Board's education and enforcement efforts make the Board ever more widely known. Board staff also fielded between five and fifteen oral requests for advice each day, over 1,500 for the year.

At year end, the Board had pending before it 74 written requests for advice, in contrast to 26 requests pending at year end 1997. Although the Board's backlog remains manageable, any further increase will require an additional lawyer in the Legal Advice Unit.

In 1998, after five years of work, the Board issued its (b)(2) rule, Board Rules § 1-13, which enables the Board to impose fines for violations of Charter § 2604(b)(2) where the conduct violates the provisions of the rule. The Board also amended its rules on the definition of "ownership interest" (Board Rules § 1-11) and "valuable gifts" (Board Rules § 1-01) and also amended its Blind Trust Rule (Board Rules § 1-05).

Enforcement

During 1998, the Board published enforcement results in ten cases concerning such Charter violations as habitually using City letterhead, supplies, equipment, and personnel to conduct an outside law practice; accepting valuable gifts of meals, theater tickets, and the free use of a ski condo from companies that had business dealings with the public servant's agency and whose work he had directly supervised; consulting for pay for a private firm on the same City project on which the former public servant had worked personally and substantially as a City employee; conducting a part-time private printing business from a City office; issuing a grand jury summons to a police officer in order to interfere with



that officer's scheduled testimony against the public servant's husband in traffic court, using a City telephone for a private home inspection business, with private business cards listing the public servant's City telephone number, subleasing an apartment from a subordinate and using City equipment in the private practice of law, soliciting money from a church that was interested in acquiring land in the area covered by the public servant's agency, and moonlighting without authorization for a company that distributed equipment to the City employee's agency

The Board also prosecuted to successful conclusion in the New York State Court of Appeals the case of *COIB v. Holtzman*. The Court upheld the Board's order fining former NYC Comptroller Elizabeth Holtzman \$7,500 for, among other things, failing to recuse herself from participating in the decision to award bond business to the affiliate of a bank to which she owed a campaign loan.

In total, the Board imposed almost \$100,000 in fines during 1998 for Chapter 68 violations and imposed fines in more cases in 1998 than in all previous years combined, despite the fact that only 12% of the Board's 76 dispositions in 1998 resulted in fines. The Board views its enforcement mandate primarily as educational and preventive, not punitive, in nature.

1998 was the first full year with the Board's new Enforcement Unit in place. The Board is extremely pleased with the results.

Financial Disclosure

The Board's compliance rate for financial disclosure continues to exceed 99%.

The requirement, imposed by your Executive Order No. 97-1, that managers departing City service meet their financial disclosure requirements before receiving their final lump sum payments, has reduced the staff time required to track down former City servants who have failed to file their financial disclosure reports or who have failed to pay their late filing fine.

The Board has completed litigation against 21 non-filing candidates who ran for office in the Fall of 1997 and will soon begin litigation against the 1995 and 1996 active non-filers and non-payers.

During 1998 the Board collected \$24,650 in late filing fines. Since the Board assumed responsibility for financial disclosure in 1990, the Board has collected \$293,623 in financial disclosure fines, as of December 31, 1998.

As a result of DCAS's shutdown of its Wang operations, the Board has brought its financial disclosure database in-house. The Board has also switched to a new state of the art computer system.

As the Board has previously reported, the City's financial disclosure law far exceeds the state mandate, requiring many persons to file who have little or no likelihood of conflicts of interest, with the resultant waste of time, money, and resources by filers, their agencies, and the Board. The Board has therefore

proposed to eliminate from the list of required filers those types of public servants for whom, in the experience of the Board, no substantial reason exists for filing financial disclosure reports.

The Board continues to work on the development of its electronic filing system for financial disclosure. The software program itself is essentially complete, but the project has been in hiatus since August 1998, pending a decision by the Office of Operations on the Board's request for additional capital technology funds to complete the project. The new version combines into a single form both the Department of Investigation form and the Board's form for those City employees required to file both.

Training and Education

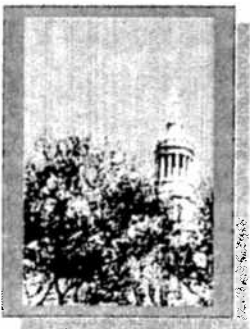
In 1998 the Board conducted 63 training sessions on Chapter 68. This decrease from 1997 resulted from the unresponsiveness of many City agencies to the Board's training initiatives. The Board thus seeks the support of your administration in encouraging Mayoral agencies to conduct Chapter 68 training. In the interim, however, the Board's training staff will be launching a comprehensive educational effort in three large City agencies: the Department of Citywide Administrative Services, the Fire Department, and the Board of Education.

In 1998 the Conflicts of Interest Board produced an ethics game show, focusing on employees of the Board of Education and financed by the Board of Education, and will assign the equivalent of one full-time trainer to work on BOE ethics training and education. The Conflicts Board also completed an ethics leaflet aimed at community school board members, for distribution to candidates and incumbents.

In 1998 the Board introduced its new web site.

With respect to publications, at year end the Board was completing a revision of its 1992 Plain Language Guide and continues to publish its quarterly newsletter, *Ethical Times*. During 1998, Board attorneys and other staff wrote the Board's monthly column in the *Chief-Leader* on an Ethics Myth of the Month. The Training Unit began a series of new leaflets on job-specific issues, starting with a leaflet on "Ethics Issues in Doing Business with the City." The Board will soon be able to produce all of its publications in-house at minimal cost.

In May, the Board co-hosted, with the Department of Investigation and Fordham Law School, a two-day international seminar for representatives of some 15 countries on "Government Ethics and Law Enforcement," out of which has grown an international ethics book, to be published next year by Praeger and to which Board staff have contributed chapters, as have staff of the United Nations and other representatives of the international community. The book will be dedicated to the City of New York. Board staff also wrote chapters for a new American Bar Association book on government ethics that will be published during 1999.



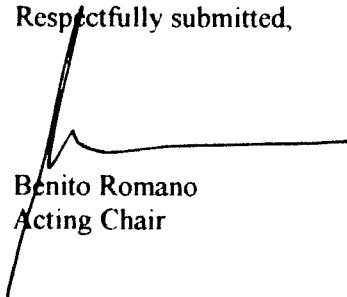
Conclusion

Thanks to the exceptional quality of the Board's staff, the Board's productivity has skyrocketed during the past five years. Indeed, the Board is attracting the very best talent available. But it is also losing talent because its salaries are not competitive with other City, state, and federal agencies for people of this caliber. With the assistance of your Honor, however, the Board hopes to rectify many of these salary disparities during 1999.

In addition to the salary disparities, significant problems exist in Chapter 68 itself that need to be addressed, in particular the Board's lack of investigatory authority and subpoena power and the absence of mandated ethics training. The Board also hopes that a more sensible and rational budget process may be adopted that will ensure that the City retains the first rate ethics agency it now has.

In conclusion, may I express to my fellow Board members my gratitude for their dedication and support. On behalf of the Board, may I also express our appreciation to you, to your counsel, Dennison Young, your Corporation Counsel, Michael Hess, and your Commissioner of Investigation, Edward J. Kuriansky, for their ongoing assistance and cooperation.

Respectfully submitted,



Benito Romano
Acting Chair

INTRODUCTION

Created by Chapter 68 of the revised New York City Charter, effective January 1990, and vested with broad responsibilities, the Conflicts of Interest Board celebrated in 1998 its ninth year of operation. Among its charter-mandated duties, the Board is required to educate City officials and employees about Chapter 68's ethical standards, interpret Chapter 68 through the issuance of formal advisory opinions and promulgation of rules; respond to requests from current and former public servants for advice and guidance; prosecute violators of Chapter 68 in administrative proceedings; and administer and enforce the City's financial disclosure law.

This report thus reviews the Board's activities in each of the following areas during 1998: (1) training and education; (2) responses to inquiries from City employees for guidance; (3) administrative rules; (4) enforcement proceedings; (5) financial disclosure; and (6) budget and personnel.

MEMBERS AND STAFF OF THE CONFLICTS OF INTEREST BOARD

Appointed by the Mayor and confirmed by the City Council, the Board's five members serve six-year staggered terms. Under the Charter, the members must be selected on the basis of their "independence, integrity, civic commitment and high ethical standards." They may not hold public office or political party office while serving on the Board.

During 1998 two of the Board's longstanding members retired: Board Chair Sheldon Oliensis and Shirley Adelson Siegel, both of whom were first appointed to the Board in September 1990. Their counsel and guidance will be missed.

Benito Romano, a partner in the law firm of Willkie, Farr & Gallagher, appointed to the Board in August 1994, serves as Acting Chair, pending the filling of the Board's two vacancies and the appointment of a new Chair.



Bruce A. Green, a professor at Fordham University School of Law, was appointed to the Board in November 1995.

Jane W. Parver, a partner at Kaye, Scholer, Fierman, Hays & Handler, was appointed to the Board in August 1994.

The Board's 22-member staff is divided into six units: Training and Education, Legal Advice, Enforcement, Financial Disclosure, Administration, and Management Information Systems. The staff, listed in Table 1 at the end of this report, is headed by the Executive Director/Counsel, Mark Davies.

1. TRAINING AND EDUCATION

Training Sessions

In 1998 the Board conducted 63 training sessions on Chapter 68, a smaller number than in 1997. This decrease resulted from the Board's having scheduled in 1997 seminars at all those City agencies that responded to the Board's 1996 and 1997 scheduling efforts. In 1998 the Board thus sought to contact and schedule training sessions at those agencies that were unresponsive to the Board's previous training initiatives or that received training for an insufficient number of their employees. The Board is seeking the support of the administration in encouraging Mayoral agencies to conduct Chapter 68 training. The Board will also be proposing an amendment to Chapter 68 mandating such training in every City agency and further requiring the appointment of an ethics liaison in each agency. In the interim, however, the Board's training staff will be launching a comprehensive educational effort in three large City agencies: the Department of Citywide Administrative Services, the Fire Department, and the Board of Education.

Board of Education

In 1998 the Conflicts of Interest Board produced an ethics game show, adapted from the Board's training video co-produced with Crosswalks Television in 1995. The new video

focuses on employees of the Board of Education. With a script written by the Conflicts Board and produced at WNYE, the Board of Education's radio and television station, the production was financed by the Board of Education.

By year end, the Conflicts Board training staff had employed this new video as part of an ongoing series of education courses that will be taught for the benefit of all Board of Education officials and employees, including central Board of Education members, headquarters staff, school staff, and community school board members. The Conflicts Board also completed an ethics leaflet aimed at community school board members. This leaflet will be distributed to every incumbent and candidate for that office. To ensure that these efforts continue and grow, and with the hiring of an additional trainer/writer, the Conflicts Board will assign the equivalent of one full-time trainer to work on BOE ethics training and education.

Educational Materials and Special Initiatives

In 1998 the Board introduced its new web site, which puts the Board on the Internet map and allows virtually anyone in the world with a computer and a modem to learn about the Board's work, the City's ethics law, and, in the future, to contact the agency directly.

The Board is also continuing to pursue its computer initiative for a CD ROM interactive training program, to be produced probably as a joint venture with a computerized legal instruction firm, such as CALI (Computer Assisted Legal Instruction), or with an area law school.

With respect to publications, at year end the Board was completing a revision of its 1992 Plain Language Guide and continues to publish its quarterly newsletter, *Ethical Times*. The Board is also negotiating with the Metropolitan Museum of Art on a joint venture – a new Conflicts Board poster – for which the Met would donate use of its poster production



facilities and the reproduction rights to an as-yet-to-be designated work of art.

During 1998, Board attorneys and other staff continued to publish the Board's monthly column in the *Chief-Leader* on an Ethics Myth of the Month. This column, which seeks to address, in plain language, common misconceptions about the City's ethics law, draws a wide audience, particularly among civil service employees.

Having completed its initial series of leaflets on specific Chapter 68 topics, the Board has begun a similar series of leaflets on job-specific issues. For example, in March the Board published a leaflet on "Ethics Issues in Doing Business with the City" and in November completed the community school board leaflet, in time for the 1999 community school board elections.

As a result of \$75,000 added to the Board's fiscal year 1999 budget, the Board was able to purchase reproduction and binding equipment permitting the Board to produce all of its publications in-house at minimal cost, including a color, saddle-stapled newsletter, leaflets in sufficient quantity to distribute whenever they are needed, the Plain Language Guide, booklets containing Chapter 68, the financial disclosure law, and the Board's rules.

The Board also arranged with New York Law School for its Center for the Study of New York City Law to publish for the Board, at no cost to the City, a monograph on Chapter 68, written by the Board's staff attorneys. The Law School has also agreed to publish, at no cost to the City, the Board's advisory opinions and the legislative history of Chapter 68.

Citywide Seminar

At year-end the Board was planning its next Citywide seminar, to be held at New York Law School in March 1999.

International Contacts

At the request of the United States Information Agency and various international organizations, Board staff continued to meet during 1998 with legislators, government officials, and journalists from around the world on government ethics issues. These meetings included a journalist from Latvia, the deputy inspector general from the Israeli prime minister's office, an official of the Italian Ministry of Public Works, a supreme court justice and other high level officials from Kazakhstan, and Lithuania's Minister of Justice and Permanent Representative to the United Nations. The meeting with the Latvian journalist resulted in an article about the Board and New York City's commitment to ethics on the front page of Latvia's largest daily – and a thank you telex to the City of New York from the U.S. Embassy in Riga.

In May, the Board co-hosted, with the Department of Investigation and Fordham Law School, a two-day international seminar for representatives of some 15 countries on "Government Ethics and Law Enforcement." Out of that seminar has grown an international ethics book, to be published next year by Greenwood, to which Mark Davies, the Board's Executive Director, and Joan Salzman, its Director of Enforcement, have contributed chapters, as have staff of the United Nations and other representatives of the international community. The book will be dedicated to the City of New York and should provide a critically needed resource to other members of the government ethics community, particularly in developing nations and newly emerging democracies.

At the request of the American Bar Association, the Board's Executive Director and Director of Enforcement also wrote chapters for a new ABA book on government ethics that will be published during 1999.

The Board is thus carrying on a long and honorable tradition of the City of New York to provide guidance and assistance to other governments throughout the world.



2. REQUESTS FROM CITY EMPLOYEES FOR GUIDANCE

During 1998, the Board received 539 written requests for advice from public servants as to the propriety of their proposed outside activities or interests under Chapter 68. This represents a 27% increase over the 425 written requests received during 1997. Those numbers will continue to increase as the Board's education and enforcement efforts make the Board ever more widely known. Board staff also fielded between five and fifteen oral requests for advice each day, over 1,500 for the year.

During 1998, the Board issued 264 staff letters; 150 waiver letters and (b)(2) letters; and 42 Board letters, orders, or advisory opinions. These 456 responses reflect a staggering 43% increase over the 320 letters, orders, and opinions issued in 1997. These figures are summarized in Table 2.

At year end, the Board had pending before it 74 written requests for advice, in contrast to 26 requests pending at year end 1997. Although the Board's backlog remains manageable, any further increase will require an additional lawyer in the Legal Advice Unit. The Board simply has more business, so its caseload is increasing.

In 1998 the Board continued to distribute its formal advisory opinions to public servants and the public, to publish them in the City Record, and to include them on Lexis and Westlaw. As noted above, New York Law School has agreed to publish a full set of the Board's advisory opinions to date, and by the end of 1999 they should also appear on the Board's website in a searchable form.

3. ADMINISTRATIVE RULES

In 1998 the Board issued one new rule and amended three others.

Most significantly, after five years of work, the Board issued its (b)(2) rule, Board Rules § 1-13, which enables the Board to impose fines for violations of Charter § 2604(b)(2) where the conduct violates the provisions of the rule – namely, use of City time, letterhead, personnel, equipment, resources, or supplies for a non-City purpose. The rule also makes it a violation of Chapter 68 for a City employee to intentionally induce another City employee to violate Chapter 68, for example, by encouraging a City employee to hire his or her own relative for a City position. Finally, the rule permits agencies, with the approval of the Board, to allow their employees to conduct personal activities on City time using City resources (but not City letterhead) where, in the opinion of the agency, the activity furthers the purposes and interests of the City, such as bar association activities. The rule is thus intended to encourage City employees to engage in volunteer activities that further City purposes.

As required by the Charter, the Board adjusted the definition of “ownership interest,” Board Rules § 1-11, to reflect inflation and amended the Board’s Valuable Gift Rule and Blind Trust Rule, Board Rules §§ 1-01 and 1-05, respectively, to conform them to the Domestic Partnership Law.

4. ENFORCEMENT

During 1998, the Board published the following enforcement results in cases concerning Charter violations:

In *COIB v. Holtzman*, the NYS Court of Appeals upheld the Board’s order fining former NYC Comptroller Elizabeth Holtzman \$7,500 for, among other things, failing to recuse herself from participating in the decision to award bond business to the affiliate of a bank to which she owed a campaign loan. In a significant ruling that will guide other

ethics agencies nationally, the Court concluded that: "A City official is chargeable with knowledge of those business dealings that create a conflict of interest about which the official 'should have known.'" [*In re Holtzman*, 91 N.Y.2d 488 (1998)] The Board benefited in that case from the assistance of superb pro bono counsel.

The Board fined Kerry Katsorhis, former Sheriff of the City of New York, \$84,000 for numerous ethics violations. This is the largest fine ever imposed by the Board. Katsorhis habitually used City letterhead, supplies, equipment, and personnel to conduct an outside law practice. He had correspondence to private clients typed by City personnel on City letterhead during City time and mailed or faxed using City postage meters and fax machines. Katsorhis also endorsed a political candidate using City letterhead and attempted to have the Sheriff's office repair his son's personal laptop computer at City expense. Katsorhis also attempted to have a City attorney represent one of Katsorhis' private clients at a court appearance. This case will be reviewed by the NYS Supreme Court Appellate Division. [*COIB v. Kerry J. Katsorhis*]

In a case against a former Battalion Chief for Technical Services with the New York City Fire Department ("NYFD"), the Board imposed a \$6,000 fine for the acceptance of valuable gifts of meals, theater tickets, and the free use of a ski condo from companies that had business dealings with the NYFD and whose work the Chief had directly supervised. [*COIB v. John Morello*]

The Board fined a former Resident Engineer of the Department of Citywide Administrative Services \$3,000 for consulting for pay for a private firm on the same City project on which the engineer had worked personally and substantially as a City employee. The engineer had been in charge of the project -- the renovation of the Manhattan Criminal Court building -- and then crossed over to the private sector on the same project. The Board also fined him \$100 for failing to file his financial disclosure report on time. This was the first reported enforcement case on the lifetime ban against appearing

before the City on the same project involving the same parties.
[*COIB v. Vincent Fodera*]

The Board fined a City manager \$1,250 for conducting a part-time private printing business from his City office. Despite his unblemished 25-year record with the City, the employee was also forced to retire and forfeit 24 days of accrued annual leave. [*COIB v. Edmund Weinstein*]

The Board imposed a \$1,000 fine on a former Assistant District Attorney who issued a grand jury summons to a police officer in order to interfere with that officer's scheduled testimony against the ADA's husband in traffic court on the same day. The ADA had previously been dismissed by the DA's office. [*COIB v. Nancy Campbell Ross*]

The Board fined a Department of Buildings employee \$1,000 for using a City telephone for his private home inspection business. The employee, a City building inspector, had had business cards printed that showed his City telephone number. As a result of this case, he has ceased the practice of using the phones and has destroyed all the offending business cards. [*COIB v. Rudolf Hahn*]

The Board also fined a Deputy Commissioner of the City Human Rights Commission \$1,500 for subleasing an apartment from a subordinate attorney and for using City equipment in the private practice of law. [*COIB v. Randolph Wills*]

The Board fined a former community board member \$200 for soliciting money from a church that was interested in acquiring land in the community board's area. Local community boards are set up to discuss and solve problems affecting their local areas. Their normal procedures do not involve the payment of money to community boards or their members for the acquisition of land. The fine would have been higher had the community board member not been under a severe financial hardship. [*COIB v. Samuel Harvey*]

A City firefighter was fined \$100 for unauthorized

moonlighting with a company that distributed equipment to the Fire Department. The following mitigating factors reduced the fine: (a) the negligible amount of the income the firefighter received from his private employment; (b) his immediate resignation from his moonlighting job upon learning that the activity was prohibited; and (c) his difficult financial circumstances. [*COIB v. Michael Cioffi*]

As Table 3 indicates, the Board imposed fines in more cases in 1998 than in all previous years combined. In that regard, one cannot overemphasize, however, that the Board is extremely careful in choosing the cases it pursues from the dozens of possible enforcement cases presented to the Board each year. The Board bases its selection of the enforcement cases it pursues primarily on three criteria. First, it is certain that a violation occurred. The Board does not pursue a marginal case, and it is not uncommon for the Board to drop a case after investigation or after the Board receives a respondent's answer to the probable cause notice. Indeed, of the 76 dispositions in 1998, only 12% resulted in fines. Second, the violation was significant. Third, the case has educational value. As the Board has previously noted, the primary purpose of Chapter 68, including enforcement actions, lies not in punishing public servants but in preventing future conflicts of interest violations from occurring. The Board therefore views its enforcement mandate as both educational and preventive.

In 1998 the Board received 63 new complaints, compared to 64 in 1997, 50 in 1996, 29 in 1995, 31 in 1994, 29 in 1993, 22 in 1992, 20 in 1991, and 8 in 1990. During 1998, the Board, as noted, disposed of 76 Chapter 68 cases, a 41% increase over 1997.

In addition, in 1998, the Board commenced 20 financial disclosure cases at the Office of Administrative Trials and Hearings (OATH) against 1997 candidates for City office who had failed to file financial disclosure reports. As a result of this litigation, 9 cases were heard at OATH, and all the candidates who were required to file financial disclosure reports and/or pay

late fines did so, with one exception. In that case, the Board recently issued an order imposing a \$1,000 fine against Richard Taylor for failing to pay his late filing fine. The Board plans to commence new litigation in 1999 against delinquent City employees who have not filed required financial disclosure reports or paid their fines.

1998 was the first full year with the Board's new Enforcement Unit in place. The Board is extremely pleased with the results.

5. FINANCIAL DISCLOSURE

The Board continues to have an excellent compliance record in financial disclosure. As detailed in Table 4, the overall compliance rate with the financial disclosure law exceeds 99%. This superb record must be attributed in large part to the excellent work of the Financial Disclosure Unit.

The requirement, imposed by Executive Order No. 97-1 at the request of the Board, that managers departing City service meet their financial disclosure requirements before receiving their final lump sum payments has reduced the staff time required to track down former City servants who have failed to file their financial disclosure reports or who have failed to pay their late filing fine. With respect to active City employees, as Table 4 shows, 100% of them have filed for calendar years 1992 through 1994. Less than 1% have failed to file for 1995, 1996, and 1997. The Board has completed litigation against 21 non-filing candidates who ran for office in the Fall of 1997 and will soon begin litigation against the 1995 and 1996 active non-filers and non-payers.

During 1998 the Board collected \$24,650 in late filing fines. Since the Board assumed responsibility for financial disclosure in 1990, the Board has collected \$293,623 in financial disclosure fines, as of December 31, 1998.

Tracking System

In the Spring of 1998, DCAS finally closed down its Wang operations, forcing the Board to bring its financial disclosure database in-house. This crisis proved beneficial because the Board now has complete control over all of its financial disclosure data. In addition, the Board's new Director of Management Information Systems, who joined the Board's staff in September, switched the Board over to a new state of the art computer system. During 1999 the Board will combine into a single database the four separate databases for financial disclosure, legal advice, enforcement, and training. This integration will not only eliminate the need to type names, addresses, and the like multiple times but will also, for example, permit an attorney in the Enforcement Unit to check whether a possible respondent has requested legal advice, received ethics training, or filed a financial disclosure report.

Redefining Required Filers

As the Board has previously reported, the City's financial disclosure law far exceeds the state mandate, requiring many persons to file who have little or no likelihood of conflicts of interest. Requiring filing by public servants who are in positions unlikely to involve conflicts of interest wastes time of the filers, of their agencies, and of the Conflicts Board - and robs the Board of money and resources it needs to conduct substantive reviews of targeted reports filed by officials who do face significant potential conflicts of interest. Working with the Law Department, the Board has therefore proposed to eliminate from the list of required filers those types of public servants for whom, in the experience of the Board, no substantial reason exists for filing financial disclosure reports, namely members of the Management Pay Plan in levels M1-M3 not otherwise required to file. The Board has also proposed other, more technical changes for the financial disclosure law, such as requiring financial disclosure by write-in candidates who win a primary election and by candidates who fill a vacancy in a designation or nomination for City office. Currently such candidates are not required to file. The Board hopes to present

these proposed changes to the Council in mid-1999

Electronic Filing System

The Board continues to work on the development of its electronic filing system for financial disclosure. The software program itself is essentially complete, but the project has been in hiatus since August 1998, pending a decision by the Office of Operations on the Board's request for additional capital technology funds to complete the project. The new version combines into a single form both the Department of Investigation form and the Board's form for those City employees who must file both. Assuming that the Board receives the required funding, all filers should be filing electronically by the year 2001, except in those few agencies that lack a computer system capable of handling the electronic filing software.

6. BUDGET AND STAFF

Thanks to the exceptional quality of the Board's staff, the Board's productivity has skyrocketed during the past five years. Indeed, the Board is attracting the very best talent available. But it is also losing talent because its salaries are not competitive with other City, state, and federal agencies for people of this caliber. With the assistance of OMB and the Mayor's Office, however, the Board hopes to rectify many of these salary disparities during 1999.

Using personal service accruals, the Board also hopes during 1999 to replace its dilapidated and outmoded telephone system with a state of the art, low maintenance system that will not only provide voice mail but will permit callers to access recorded messages on various Chapter 68 and financial disclosure topics and obtain immediate faxed copies of Board forms and publications.

CONCLUSION

Outlined above are some of the highlights of the Board's activities during 1998. As noted, in 1999 the Board must address the disparities between its salaries and those of other government agencies. In addition, there are significant problems in Chapter 68 itself that need to be addressed, in particular the Board's lack of investigatory authority and subpoena power and the absence of mandated ethics training. The Board also hopes that a more sensible and rational budget process may be adopted that will ensure that the City retains the first rate ethics agency it now has.

This coming year, 1999, is the 10th anniversary of the Conflicts of Interest Board and the 40th anniversary of the Board of Ethics. The Board is among the oldest, perhaps the oldest, ethics board in the country. To enact a major ethics initiative, ensuring that ethics in City government not only survives but prospers, would provide not only a fitting tribute but a lasting legacy for this Administration and Council.

**TABLE 1
MEMBERS AND STAFF
OF THE
CONFLICTS OF INTEREST BOARD
AS OF DECEMBER 31, 1998**

Members

Benito Romano, Acting Chair

Bruce A. Green Jane W. Parver

Staff

Executive

Mark Davies, Executive Director/Counsel

Administrative

Ute O'Malley, Director of Administration
Myrna Mateo, Purchasing/Personnel Coordinator

Legal Advice

Jo-Ann Frey, Deputy Director
Jennifer K. Siegel, Assistant Counsel
Bonnie Beth Greenball, Assistant Counsel
Patricia E. Green, Legal Secretary

Enforcement

Joan R. Salzman, Director of Enforcement
Peter M. Nadler, Deputy Director of Enforcement
Isabeth Ann Gluck, Special Assistant Counsel
Varuni Bhagwant, Legal Secretary

Training and Education

Laura Denman, Director of Training and Education
Jay Burstein, Education and Publications Coordinator
Kevin Z. Moore, Writer
Maria Rosas, Secretary

Financial Disclosure

Jerry Rachnowitz, Director of Financial Disclosure
Joanne Giura-Else, Dep. Director of Financial Disclosure
Gina Miller, Senior Investigator
Veronica Martinez Garcia, Legal Secretary

Management Information Systems

Anthony Bonelli, MIS Director



TABLE 2
REQUESTS FOR LEGAL ADVICE
AS OF DECEMBER 31, 1998

Year	Requests For Advice	Issued Staff Letters	Issued Waivers/ (b)(2) Letters	Issued Board Letters, Orders, Opinions	Issued Total
1997	425	187	112	21	320
1998	539	264	150	42	456

TABLE 3
ENFORCEMENT CASES (CHAPTER 68)
AS OF DECEMBER 31, 1998

	1990	1991	1992	1993	1994	1995	1996	1997	1998
New Complaints Received	8	20	22	29	31	29	50	64	63
Dispositions	2	6	25	38	4*	33	32	54	76
Dispositions Imposing Fines	0	0	1	1	2	1	1	2	9

* The Board lacked an enforcement attorney during much of 1994.

**TABLE 4
FINANCIAL DISCLOSURE REPORTS
AS OF DECEMBER 31, 1998**

Calendar Year ("C.Y.")	Number of Reports Required For C.Y.	Reports Filed for C.Y.	Compliance Rate For C.Y.	Number of Fines Waived For C.Y.	Number of Fines Paid For C.Y.	Amount of Fines Paid For C.Y.	Current Non-Filers For C.Y.		Current Non-Payers For C.Y.	
							Act.	Inact.*	Act.	Inact.*
1992	11,958	11,941	99.9%	498	359	\$38,125	0	17	0	18
1993	11,874	11,853	99.8%	485	321	\$32,980	0	21	0	66
1994	11,898	11,703	98.4%	358	370	\$37,800	0	195	0	64
1995	11,465	11,324	98.8%	314	298	\$29,715	2	139	0	31
1996	11,846	11,711	98.9%	359	361	\$36,175	8	127	6	59
1997	11,670	11,551	99.0%	227	213	\$21,300	55	64	17	13
TOTAL	70,711	70,083	99.1%	2,241	1,922	\$293,623**	65	563	23	251

* "Act" indicates current non-filers or non-payers who are current City employees. ("Non-payers" are late filers who have failed to pay their late filing fine) "Inact" indicates current non-filers or non-payers who are no longer City employees
 Also includes fines collected for calendar years 1989 through 1991, the reports for which have been discarded pursuant to the Board's retention policy

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ADVISORY OPINIONS OF THE BOARD

SUMMARIES AND INDEXES



OPINION SUMMARY

OPINION NO: 98-1

DATE: 2/2/98

CHARTER SECTION(S) INTERPRETED: 2601(5)
2604(b)(3), (b)(4)

SUBJECT(S): City Position, Use of
Family Relationships
Recusal

OTHER OPINION(S) CITED: 94-20

SUMMARY: A recently appointed public servant and the agency she serves have asked whether the public servant may, as part of her official duties as the head of a division of the agency, work on matters involving the firm which employs her spouse. In addition, the Board was asked whether the public servant's spouse may work on matters for the firm involving the public servant's division. The Board determined that the public servant may not work on any matters involving the firm. Further, the public servant may not work on the development of the non-technical portions of Requests for Proposals in response to which the firm might submit a bid. The public servant may not be involved in the selection of a winning bid when the firm has submitted a bid in response to a Request for Proposals. In addition, the public servant's spouse should not work on any aspect of any contracts awarded to the firm by the agency which involve any work with the division.

OPINION SUMMARY

OPINION NO: 98-2

DATE: 3/2/98

CHARTER SECTION(S) INTERPRETED: 2601(8), (16)
2604(a)(1)(b), (a)(3), (a)(4)
2604(b)(2), (b)(3), (b)(6)

SUBJECT(S): Business Dealings With the
City
Ownership Interests

OTHER OPINION(S) CITED: n/a

SUMMARY: Under the unique facts of this case, three public servants may retain their ownership interests in a corporation which seeks to engage in business dealings with their own City agency. They may also license to the agency a device invented by the public servants whose patent is held by the corporation. In addition, the corporation may negotiate with and seek compensation from the City for the alleged misappropriation of the patent rights to a device invented by the public servants, provided that they act in accordance with the conditions discussed in the opinion and order. The Board, in making its decision, took into account that the agency, as represented by the public servants, encouraged the three public servants to develop the device and, further, actively expressed interest in using the device for City purposes.

OPINION SUMMARY

OPINION NO: 98-3

DATE: 3/2/98

CHARTER SECTION(S) INTERPRETED: 2601(16)
2604(a)(1)(b), (a)(3), (a)(4)
2604(b)(3), (b)(4)

SUBJECT(S): Prohibited Ownership Interest
Spouse's Ownership Interest
Imputed to Public Servant

OTHER OPINION(S) CITED: n/a

SUMMARY: A public servant may retain an ownership interest, imputed to her through her spouse, in a firm which does business with the City and seeks to do business with the public servant's agency. Any time the firm seeks to engage in business dealings with the agency in the future, the public servant must seek further guidance from the Board. The Board also noted that reporting an imputed ownership interest on a financial disclosure report does not satisfy the reporting requirement of Charter Section 2604(a)(3).

OPINION SUMMARY

OPINION NO: 98-4

DATE: 4/13/98

CHARTER SECTION(S) INTERPRETED: 2604(c)(5)

SUBJECT(S): Moonlighting
Police Officers

OTHER OPINION(S) CITED: n/a

SUMMARY: Under the unique facts of this case, NYPD police officers may participate in the NYPD Paid Detail Program, which will permit police officers in the program to work as part-time security guards for private firms and, in so doing, wear their uniforms.

OPINION SUMMARY

OPINION NO: 98-5

DATE: 4/22/98

CHARTER SECTION(S) INTERPRETED: 2601(11), (16), (18), (19), (20)
2604(a)(1)(a), (a)(1)(b)
2604(b)(2), (b)(3), (b)(4)
2604(e)

SUBJECT(S): Moonlighting
Temporary Employment

OTHER OPINION(S) CITED: n/a

SUMMARY: Public servants may register with, and work for, temporary agencies, provided that the agencies do not engage in business dealings with the City. However, whenever a public servant works during any twelve-month period for more than 30 days for any individual firm that is a client of the temporary agency, whether the 30 days are consecutive, the public servant is deemed to have a "position" with that client firm. Thus, before working more than 30 days within a twelve month period for the firm, the public servant must determine whether the firm is engaged in business dealings with the City and, if so, must either refrain from further work for the firm or obtain a waiver from the Board.

OPINION SUMMARY

OPINION NO: 98-6

DATE: 5/28/98

CHARTER SECTION(S) INTERPRETED: 2604(b)(2)

SUBJECT(S): Agency Heads
Appearance of Impropriety
Endorsements

OTHER OPINION(S) CITED: 95-2

SUMMARY: A high level public servant may not endorse a for-profit documentary film either in his private or official capacity.

OPINION SUMMARY

OPINION NO: 98-7

DATE: 5/28/98

CHARTER SECTION(S) INTERPRETED: 2601(12), (18), (19), (20)
2604(a)(1)(a), (a)(1)(b)
2604(b)(2), (b)(3), (b)(4)
2604(e)

SUBJECT(S): Consulting
Moonlighting
Sole Proprietorship

OTHER OPINION(S) CITED: n/a

SUMMARY: Pursuant to Charter Section 2601(18), a public servant who, as a sole proprietor, is a consultant to his customer firms has a position with those firms. Thus, the public servant must obtain a waiver from the Board pursuant to Section 2604(e) of Chapter 68 before consulting with any customer firms engaged in business dealings with the City.

OPINION SUMMARY

OPINION NO: 98-8

DATE: 8/19/98

CHARTER SECTION(S) INTERPRETED: 2601 (18)
2604(a)(1)
2604(b)(2), (b)(3), (b)(4)
2604(c)(6)
2604(e)

SUBJECT(S): Advisory Board
Not-For-Profit Organizations
Waivers/Orders

OTHER OPINION(S) CITED: n/a

SUMMARY: These cases involve public servants who volunteer for not-for-profit organizations which engage in business dealings with the public servants' agencies.

The first case concerns a public servant who wishes to serve on an advisory board of a not-for-profit organization. Pursuant to Charter Section 2604(c)(6), this public servant must obtain the approval of her agency head prior to accepting a position on the advisory board. If the public servant wishes to be involved with the not-for-profit's business dealings with her City agency, the public servant must also obtain a waiver from the Conflicts of Interest Board pursuant to Charter Section 2604(e).

The second case concerns public servants who wish to

volunteer their time to programs organized by various not-for-profit organizations. These public servants do not have any policy-making or administrative authority at these not-for-profit organizations. They also do not have any fiduciary duties to the not-for-profit organizations. Therefore, these public servants do not have positions with these not-for-profit organizations, and they do not need to obtain either approval from their agency head or a waiver from the Board to do their volunteer work, provided that they comply with Charter Sections 2604(b)(2), (b) (3), and (b)(4).

Agencies may have stricter rules concerning volunteer activities than those discussed in this opinion.

OPINION SUMMARY

OPINION NO: 98-9

DATE: 9/14/98

CHARTER SECTION(S) INTERPRETED: 2604(b)(6)
2604(e)

SUBJECT(S): Appearance Before City
Agency
Community Boards
Waiver

OTHER OPINION(S) CITED: 91-3, 96-4

SUMMARY: This opinion provides guidance for those public servants who are members of community boards.

Under the waiver provisions of Charter Section 2604(e) and the particular circumstances of this case, a member of the community board member's private firm may appear before the community board, provided that the community board member recuse himself from any discussions concerning the firm's business before the community board, certify to the Board that his proposed conduct is not in conflict with the purposes and interests of the City, set forth a full set of the relevant facts and circumstances, and recuse himself from working on the matter for the firm.

Under the waiver provisions of Charter Section 2604(e) and the particular circumstances of this case, a community board member may appear before other City agencies and a Borough President's Office in a matter before his community board, provided that the community board member recuse himself from any discussions concerning the firm's business

before the community board, certify to the Board that his proposed conduct is not in conflict with the purposes and interests of the City, and set forth a full set of the relevant facts and circumstances.

OPINION SUMMARY

OPINION NO: 98-10

DATE: 12/7/98

CHARTER SECTION(S) INTERPRETED: 2604(b)(2), (b)(3), (b)(6),
(b)(7)

SUBJECT(S): Community School Boards
Uncompensated Appearances
Volunteer Activities

OTHER OPINION(S) CITED: 91-7

SUMMARY: A public servant may make uncompensated appearances before the City in the form of providing pro bono legal services for a community school board, provided that she recuse herself as a City official from anything concerning the community school board and that she similarly recuse herself as a volunteer for the community school board, from anything concerning her City Agency. Decisions of this type are made by the Board on a case-by-case basis.

OPINION SUMMARY

OPINION NO: 98-11

DATE: 12/7/98

CHARTER SECTION(S) INTERPRETED: 2604(d)(2), (d)(3)

SUBJECT(S): Post-Employment Restrictions
Separation from City Service

OTHER OPINION(S) CITED: State Ethics Commission
Advisory Opinion No.
91-12

SUMMARY: For purposes of the one-year post-employment appearance ban contained in Charter Sections 2604(d)(2) and (d)(3), the date of termination from City service is the date on which a public servant effectively resigns and stops working for the City. It is the public servant's removal from the payroll that triggers the imposition of the one-year appearance ban contained in Charter Sections 2604(d)(2) and (d)(3). Receiving lagged paychecks or payment for unused leave does not alter or extend the date of termination from City service. However, public servants who are "on leave" from their positions – even an unpaid leave -- are still public servants, subject to all of the restrictions contained in Chapter 68.

OPINION SUMMARY

OPINION NO.: 98-12

DATE: 12/31/98

CHARTER SECTION(S) INTERPRETED: 2604(b)(2), (b)(3),
(b)(14)

SUBJECT(S): Superior-Subordinate
Relationship
Sale of Products

OTHER OPINION(S) CITED: n/a

SUMMARY: It would be a violation of Chapter 68 for a public servant to sell products to his or her subordinates within their agency or to request subordinates to engage in a charitable activity or make a charitable contribution, unless the charitable activity or fundraiser is City sponsored. The Board has determined, however, that a subordinate may sell products to a superior, or solicit donations for charitable purposes from a superior, if the amount involved is de minimis. The Board considers de minimis to be \$25.00 or less.

Further, the Board has also determined that agencies may determine whether and to what extent employees who are peers may sell products to each other or solicit donations from each other for charitable purposes.

OPINION SUMMARY

OPINION NO: 98-13

DATE: 12/7/98

CHARTER SECTION(S) INTERPRETED: 2604(b)(2), (b)(3), (b)(4)

SUBJECT(S): Renting Property to Recipients
of Section 8 Funds

OTHER OPINION(S) CITED: 92-5, 95-29

SUMMARY: Public servants at the Department of Housing Preservation and Development ("HPD") and other City agencies may rent to recipients of Section 8 housing funds, subject to certain restrictions. HPD employees in the Rent Subsidies Unit may not rent to Section 8 recipients, unless HPD determines that these employees are properly insulated from the particular recipient's case and maintains documentation identifying these employees. Public servants in other City agencies who either work in a unit involving Section 8 or who have decision-making responsibility involving the receipt of Section 8 funds are barred from renting to a tenant who receives such funds, unless that City agency determines that the rental is acceptable, establishes procedures to insulate the employee from the particular recipient's case, and maintains documentation identifying these employees. The rental building must contain no more than eight units.

OPINION SUMMARY

OPINION NO: 98-14

DATE: 12/31/98

CHARTER SECTION(S) INTERPRETED: 2604(b)(2)

SUBJECT(S): Elected Officials
Fundraising
Not-for-Profit Organizations

OTHER OPINION(S) CITED: 93-15

SUMMARY: Elected officials and high-level public servants may not write to local merchants or individuals asking them to contribute to a not-for-profit ("NFP") organization. The recipients of these solicitations may view them as targeted and may feel pressure to provide financial support. However, elected officials and high-level public servants may send correspondence to the NFP attesting to the good works of the particular organization, or offering other comment about the NFP and its mission. The NFP may thereafter reprint or publish the public servant's letters or comments in the NFP's fundraising solicitations, newsletters, or other publications.

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THE ANNUAL REPORT IS
PRODUCED IN-HOUSE BY
THE CONFLICTS OF INTEREST
BOARD.

COVER DESIGN BY KEVIN MOORE



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