

Annual Report 2002

New York City Conflicts of Interest Board



CITY OF NEW YORK
CONFLICTS OF INTEREST BOARD

ANNUAL REPORT
2002

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INTRODUCTION

In 2002 the Conflicts of Interest Board (“COIB”) celebrated its twelfth anniversary and the forty-third anniversary of its predecessor agency, the Board of Ethics. Created by Chapter 68 of the revised New York City Charter, effective January 1990, and vested with broad responsibilities, the Board includes among its Charter-mandated duties educating City officials and employees about Chapter 68's ethical standards; interpreting Chapter 68 through the issuance of formal advisory opinions, promulgation of rules, and responding to requests from current and former public servants for advice and guidance; prosecuting violators of Chapter 68 in administrative proceedings; and administering and enforcing the City's financial disclosure law.

This report thus reviews the Board's activities in each of the following areas during 1999: (1) members and staff of the Board; (2) training and education; (3) responses to inquiries from City employees for guidance; (4) administrative rules; (5) enforcement proceedings; (6) financial disclosure; and (7) budget and staff. It shows what the Board was able to accomplish with a staff of only 23^{3/5} and what it can continue to accomplish with its current staff of only 21 if it is not forced to downsize further due to mandated budget cuts. The probable impact of additional budget cuts is discussed in a separate section beginning at p. 15.

1. 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." While serving on the Board, they may not hold other public office or any political party office.

Steven B. Rosenfeld, a partner in the law firm of Paul, Weiss, Rifkind, Wharton & Garrison, was appointed to the Board in May 2002 and as Chair in June 2002. Benito Romano, a partner in the law firm of Willkie, Farr & Gallagher, appointed to the Board in August 1994 and reappointed in May 2002, served as Acting Chair from February 1998 until the appointment of Mr. Rosenfeld. Bruce A. Green, a professor at Fordham University School of Law, was appointed to the Board in November 1995 and reappointed in

May 2002. Jane W. Parver, a partner at Kaye, Scholer, Fierman, Hays & Handler, was appointed to the Board in August 1994 and was also reappointed in May 2002. Angela Mariana Freyre, a partner at Coudert Brothers LLP, was appointed to the Board in October 2002, making a full board for the first time since the retirement of the Board's long-time Chair, Sheldon Oliensis, in February 1998.

The Board's 23^{3/5}-member staff, which budget cuts reduced to 23 by year-end and to 21 by January 17, 2003, is divided into six units: Training and Education, Legal Advice, Enforcement, Financial Disclosure, Administration, and Management Information Services. The staff, listed in Table 1, is headed by the Executive Director, Mark Davies.

2. TRAINING AND EDUCATION

Training Sessions

In 2002, the Board conducted 273 training classes, including 109 for the Department of Education. These figures, surpassing last year's total of 190, are summarized in Table 2. More than 12,000 public servants attended these classes. The Board continues its extensive outreach to agencies and schools, seeking to provide training for their staffs. As detailed in Table 3, Board staff held at least one class in each of 46 agencies, compared with 24 agencies in 2001. These classes included briefings for agency heads and senior staff at 29 agencies, arranged at the request of the Mayor.

In 2002, for the first time, both the Mayor and the Council invited the Board to give Chapter 68 briefings in City Hall. In January 2002, COIB staff presented a class to the Mayor, Deputy Mayors, and the Mayor's senior staff. In November, COIB staff conducted a Continuing Legal Education class for Council members and legal staff in the Council chamber. The training staff also conducted briefings at the offices of the Public Advocate, Comptroller, Borough Presidents, and the Law Department. This strong show of support by the highest officials in the City for Chapter 68 training bodes well for ethics in City government.

The Board's classes are interactive and engaging, explaining the basis and requirements of the law in plain language and letting public servants know how they can get answers regarding their specific situations. The sessions can include games, exercises, and ample opportunities for questions

and are often tailored to the specific agency or employees. For example, COIB staff conducted 18 Continuing Legal Education classes last year for agency attorneys and seven classes for the Department of Citywide Administrative Service's Procurement Training Institute. The feedback the Board receives from class participants is virtually all positive, and usually quite enthusiastic.

The Board's website has been developed to be an additional training venue for public servants or anyone interested in learning more about the law and the Board. The site now has an interactive quiz, where participants learn more about the law by helping "Oscar McFly, average City guy," steer clear of Chapter 68 violations and bad ethical judgment. At year-end, COIB training staff were also designing an on-line training course based on the Board's Plain Language Guide for public servants. This application, which will be presented in 15 interactive sections, each section a module with information, questions, and hypotheticals reviewing one aspect of Chapter 68, will offer a complete training course that will soon be posted on the Board's website and will also be made available for distribution by CD-ROM and e-mail.

The Board also acknowledges the Department of Investigation's ("DOI's") contribution to this outreach effort. In Fall 2002, as part of its program to educate the entire City workforce, DOI scheduled more than 100 briefings for close to 15,000 employees at 35 agencies to review the City's anti-corruption program, whistleblower protection, and the conflicts of interest law. The Board's senior staff worked with DOI to prepare the conflicts of interest portion of the DOI presentations, and COIB training staff participated in several of these sessions. In addition, for the first time ever, the annual "no gifts" letter to all City employees was signed not only by the Mayor and the Commissioner of Investigation but also by the Chair of the Conflicts of Interest Board and included, on the reverse side, the Board's one-page ethics guide.

Train the Trainer

In 2002, the Board continued to make excellent progress with its "Train the Trainer" program for the development and distribution of an ethics curriculum for agency training staffs to present to their employees. The Departments of Transportation ("DOT"), Environmental Protection, and Parks and Recreation conducted a total of 13 classes on Chapter 68 in 2002;

and in July and August DOT distributed a copy of the Board's political activities flyer with employees' paychecks. COIB trainers will continue to provide technical support for the agencies' training staffs, monitor their efforts for quality assurance purposes, and seek to add more agencies to the "Train the Trainer" roster.

Department of Education

The Board's outreach effort at the Department of Education continues apace. For the 2001-2002 school year, COIB training staff held a total of 125 classes at 94 Department of Education locations, including six classes at the Department of Education's Summer Institute for new principals. COIB training staff continued to conduct briefings for principals at district and borough-wide meetings in conjunction with the Department's Ethics Officer, and then follow up with classes at the individual schools.

Website and Publications

In 2002, the Board continued to upgrade its website on the City's home page and the Board's portion of CityShare, the City's Intranet. Recent advances include the posting of a link to the Board's 197 advisory opinions, which the Center for New York City Law at New York Law School has posted, in full-text searchable form, on its website, as well as the on-line training tools discussed above. In 2002, the Board's website had more than 100,000 visitors. The Board has also circulated its one-page "Ethics Guide for Public Servants" to many agency personnel divisions, for distribution to new employees along with their copies of Chapter 68.

Every Board publication, including the texts of Chapter 68, the Board's rules, and the Financial Disclosure Law, all of the Board's booklets and leaflets, and the most recent editions of the annual report and *Ethical Times* newsletter, can now be downloaded from the website and CityShare. This means that every City employee using CityShare or the Internet has access to this information.

With virtually all Board publications now available on its website, the Board decided in late 2002 – responding to City Hall's demand for budget-tightening by all City agencies – to rely entirely on "paperless publication" of all new major releases, including the Annual Report, *Ethical Times* quarterly newsletter, advisory opinions, and enforcement dispositions.

According to an article in *Newsday*, the Board is the first City agency to dispense with hard copy distribution of such materials. The Board now sends e-mail messages to all 500+ names on the agency mailing list alerting them to new publications and including hyperlinks directly to the new publication on the website; the Board also sends advisory opinions and enforcement advice by way of e-mail, saving time, postage, and paper at both ends.

Other Outreach Efforts

The Board's "Seventh Annual Seminar on Ethics in New York City Government" at New York Law School last March was a great success, attracting more than 200 attendees, representing fifty agencies. The Board was pleased that Mayor Michael R. Bloomberg, Council Speaker A. Gifford Miller, and Councilmember Helen Sears, Chair of the Council's Committee on Standards and Ethics, delivered keynote remarks.

All of the Board's attorneys have continued in 2002, with the Training and Education staff, to present a two-hour Continuing Legal Education ("CLE") class to City attorneys and also participated with the Training staff in presentations to the executive level staff of many City agencies, an effort encouraged by the new administration. COIB attorneys continued to write materials on Chapter 68 for publication, both in-house and for outside publications. In addition, Mark Davies serves as chair of the Ethics and Professional Responsibility Committee of the New York State Bar Association's Municipal Law Section. Joan Salzman, Deputy Executive Director and Chief of Enforcement, serves as the chair of the New York City Bar Association Committee on Government Ethics, for which Deputy Chief of Enforcement Astrid Gloade is secretary.

International Visitors and Associations

In 2002, the Board continued to welcome visitors from around the world, often at the request of the U.S. Department of State or the United States Office of Government Ethics. This year the Board welcomed visitors from Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Israel, Honduras, Korea, Mexico, Nicaragua, Panama, Paraguay, Peru, Russia, Taiwan, and Tanzania.

Board staff also shared their expertise with government ethics colleagues at the annual conference of the Council on Governmental Ethics Laws, where Mark Davies moderated a panel on “National and International Anti-Corruption and Transparency” with panelists from the U.N., The Carter Center, the U.S. Office of Government Ethics, and the Canadian Office of the Ethics Counselor; and Deputy Counsel Jessica Hogan led a discussion on local government ethics. Mr. Davies also spoke at the annual meeting of the New York State Association of Towns; at the annual meeting of the American Society for Public Administration; and at the annual meeting of the County Attorneys Association of the State of New York.

Acknowledgment

The Board’s training successes in 2002 are attributable to the hard work of the Board’s dedicated Training and Education Unit staff: Director Les Taub, Publications and Website Coordinator Kevin Moore, Trainer/Writer Alex Kipp, and Community Associate Martine Multidor, as well as former Senior Trainer Laura Denman, the Board’s first training director, who retired from City service in October. Ms. Denman personally conducted more than 500 training sessions throughout the City and was instrumental in creating many of the programs and publications on which New York City public servants rely every day.

3. REQUESTS FROM CITY EMPLOYEES FOR GUIDANCE

The Board has previously reported on the significant increase in the quality and quantity of the work of the Board over the past several years and about the enormous increase in the Board’s productivity.

Since 2000, the Board has cautioned that its staff was approaching the limit on increased productivity, especially in the Legal Advice Unit, and that the Board needed more attorneys to accommodate rising workloads. In 2002, that fear was realized – at the worst possible budget time. In 2001, the Board predicted that its outreach efforts would cause a growth in requests for advice, but the large increases in 2002 in both written and oral requests far exceeded the Board’s expectations. The Board believes the significant increase is not simply attributable to the change-over of City administrations, bringing many newcomers into the City workforce, but also to the increasingly effective outreach and training efforts discussed above, to high-profile enforcement dispositions, and to the renewed emphasis the new

Administration and the Council, in particular the Committee on Standards and Ethics, chaired by Councilmember Helen Sears, has placed on Chapter 68. That is the good news. The bad news is that this increased volume has contributed to significant delays in the provision of advice. And there comes a point when delayed advice is no more useful to City employees, who must make real life decisions, than no advice at all.

As demonstrated in Table 4, telephone requests for advice in 2002 **increased 46%** over 2001. Answering these requests remains absolutely critical to the mission of the agency, because these calls are the first line of defense against ethics violations. But they require significant attorney time – and only attorneys from the Board staff, skilled in Chapter 68, can field these calls.

At the same time, written requests for advice increased dramatically in 2002, **by 28%** over 2001. Despite these enormous increases and the increasingly sophisticated nature of the requests for advice, the Board and its staff were able to issue more written responses in 2002 than in 2001. Nevertheless, the backlog ballooned: the number of pending requests for advice on December 31, 2002, was 184, the highest in the history of the Board. Worst of all, the average age of pending requests for advice increased from less than three weeks on January 1 to **three and a half months** on December 31. In other words, all public servants – elected officials and part-time clerks alike – must wait almost six times as long for answers to their ethics questions as a year ago. That means lost job opportunities, lost opportunities to serve constituents, and more violations as people decide they have waited long enough for an answer or just do not bother to ask at all.

In short, the Advice Unit is now in crisis.

The Board has explored many options to meet this crisis, including transferring an attorney from the Enforcement Unit. But that would only spread the crisis. As demonstrated in Section 5, the workload of the Enforcement Unit also increased dramatically in 2002: complaints received were up 78% over 2001. The Enforcement Unit also needs more staff, not less.

Can interns help? Yes, they can; and they do. The Board currently has three law school interns and two college interns. The Board is also

seeking a *pro bono* extern from one of the City's large law firms. At that point, interns and externs will account for almost a third of the COIB staff – as many as the staff can handle.

The Board also continues to distribute, as they are issued, 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. Due in part to the huge demand on the staff for telephonic and written advice, there was only one such opinion in 2002 – the one issued on August 29, 2002, relating to Mayor Michael Bloomberg – but that one commanded more than the usual amount of time and effort of the Board and staff. Several more are slated for publication early in 2003.

To summarize, then, as stated in Table 6, in 2002 the Board received 691 written requests from current and former public servants for advice on the propriety of their proposed activities or interests under Chapter 68, compared to 539 in 2001, a 28% increase. In addition, Board attorneys fielded 2,410 telephone requests for guidance in 2002, compared to 1,650 in 2001, a 46% increase.

During 2002, as set forth in Table 7, the Board issued 332 staff letters; 147 waiver letters; 25 Board letters and orders; and one public advisory opinion. These 505 responses compare to the 501 responses issued in 2001, an output made more difficult by such other demands as the high volume of telephone requests for advice, as noted above. To maintain the high quality of its written advice, the Board in 2002 continued to build its computerized index of ethics topics, which files in retrievable form useful resource material, from staff e-mail exchanges to advisory opinions.

Responsible for these excellent results under pressure was the superb Legal Advice Unit, headed by General Counsel Wayne Hawley, with Deputy Counsel Jessica Hogan, Special Counsel Bonnie Beth Greenball, and Patricia Green, Assistant to the Unit.

Working with the Training and Education Unit, the Legal Advice Unit also developed a large e-distribution list, so that new advisory opinions and other important Board documents may be e-mailed to a large network of people, including the legal staff of most City agencies. As noted above, working in cooperation with New York Law School's Center for New York

City Law, the Board has in 2002 added its advisory opinions to the Web, in full-text searchable form, where they are now available free of charge to all.

4. ADMINISTRATIVE RULES

In 2002, the Board held a hearing on, and in early 2003 will have completed the process of, amending its rule on the dollar value in the definition of an “ownership interest.” This amendment, to account for inflation, is required every four years. The 2002 amendment will increase the value from \$32,000 to \$35,000.

5. ENFORCEMENT

In 2002, as noted in Table 8, the Board concluded and published six dispositions of enforcement cases concerning Chapter 68 violations in which fines were imposed, as follows:

(a) The Board fined former Police Commissioner Kerik \$2,500 for using three New York City police officers to perform private research for him. He used information the officers found in a book about his life that was published in November of 2001. The Board noted that Mr. Kerik cooperated fully and expeditiously with the investigation and resolution of this matter. The three officers used limited City time and resources in their research, and two of the officers had made five trips to Ohio for the project, each spending 14 days of their off-duty and weekend time. *In re Kerik*, COIB Case No. 2001-569 (2002).

(b) The Board concluded a settlement with Veronica Smith, a former Administration for Children’s Services (“ACS”) caseworker who admitted violating the conflicts of interest law by soliciting a \$4,000 loan from a foster mother and accepting the foster mother’s loan of \$2,500 while continuing to evaluate her fitness as a foster mother. The Board fined Ms. Smith \$3,000 and required her to repay the foster mother in full within two years. However, if Ms. Smith makes full repayment of the loan in the time allotted, the Board’s fine will be forgiven. If she fails to repay the loan, the Board will execute judgment in the full amount of the \$3,000 fine, and Ms. Smith will still have to repay the loan. In setting the terms of the fine, the Board took into account Ms. Smith’s circumstances, which include serious personal and family health problems. *COIB v. Smith*, COIB Case No. 2000-192 (2002).

(c) In *COIB v. Birdie Blake-Reid*, COIB Case No. 2002-188 (2002), the Board and the former New York City Board of Education (“BOE”) concluded a settlement with Birdie Blake-Reid, the Executive Director of the Office of Parent and Community Partnerships at BOE. Ms. Blake-Reid, who agreed to pay an \$8,000 fine, misused her City position habitually by directing subordinates to work on projects for her church and for a private children’s organization, on City time using City copiers and computers over a four-year period. One temporary worker sometimes fell behind in his BOE work when Ms. Blake-Reid directed him to make her private work a priority. BOE funded overtime payments to him when he stayed to finish his BOE work. Ms. Blake-Reid acknowledged that she violated City Charter provisions and Board Rules that prohibit public servants from misusing their official positions to divert City workers from their assigned City work and misapplying City resources for their private projects.

(d) In *COIB v. David Cottes*, COIB Case No. 2001-593 (2002), the Board and the New York City Department of Consumer Affairs (“DCA”) concluded a settlement with David Cottes, Director of Collections at DCA, who paid a \$500 fine. As Director of Collections at DCA, Mr. Cottes supervises a staff responsible for collecting fines that DCA imposes on restaurants and other businesses. Mr. Cottes acknowledged that he created menus for two DCA-regulated restaurants in 2001. After agreeing to supply the menus, he learned that these restaurants operate sidewalk cafés licensed by DCA. Mr. Cottes did not accept payment for all the menus when he realized there was a conflict of interest. After Mr. Cottes agreed to make the menus, the restaurant owner asked him to intercede on the owner’s behalf with the former DCA Commissioner to help the restaurant regarding a DCA order suspending one of its sidewalk café licenses. Mr. Cottes stated that he did not intercede with the former DCA Commissioner on behalf of the restaurant owner and did not give any preferential treatment to the owner.

The Board took the occasion of the *Cottes* disposition to remind all City workers who are contemplating private employment that they must find out, *before* accepting private work, whether their potential private employers are engaged in, or intend to engage in, business dealings with the City. If so, they probably face a conflict of interest and should contact the Conflicts of Interest Board for advice. This case shows how pursuing private projects on an employee’s “own time” can easily lead to a violation of the conflicts of interest law. It also shows how requests by a City worker’s private clients to

intervene in a pending matter with a City agency can put the City employee in a bind and create opportunities for serious conflicts of interest.

(e) In *COIB v. Janet Silverman*, COIB Case No. 2000-456 (2002), the Board concluded a settlement with Janet Silverman, a former New York City Department For The Aging (“DFTA”) field auditor who admitted violating the conflicts of interest law by misusing official City letterhead to gain a private or personal advantage. Without authorization, Ms. Silverman sent a notice to a DFTA contractor, on official, City letterhead, as if from the City, threatening the vendor with litigation if she were injured on the contractor’s property. Ms. Silverman paid a fine of \$500.

(f) The Board fined City employee James Loughran, a plumbing inspector with the New York City Housing Authority, \$800 for filing seventeen “plumber’s affidavits” with the Department of Buildings in connection with his private plumbing business. City employees, like Mr. Loughran, who are also licensed plumbers and operate private part-time plumbing businesses, are not permitted to file plumber’s affidavits under the City Charter as interpreted in a Board opinion. In this matter, Mr. Loughran had agreed in writing at the time he began working for the City, that he would not file such plumber’s affidavits. Such filings are not permitted because they involve applications to do major repairs or installations and are deemed to be “representing private interests before a City agency,” the Department of Buildings. Applications to perform minor repair work, the so-called plumbing alteration and repair slips, are permitted to be filed with the Department of Buildings by City employees. *In re James Loughran*, COIB Case No. 2000-407 (2002).

* * *

As can be seen from these case summaries, there were several high-profile and important settlements in 2002 involving, for example, a former Police Commissioner. The Enforcement Unit also continued to utilize the “three-way settlement” procedure, resolving cases with other City agencies, such as *Smith* (with the Administration for Children’s Services, *Cottes* (with the Department of Consumer Affairs), and *Blake-Reid* (with the Department of Education). The Unit continued to bring matters at the Office of Administrative Trials and Hearings (“OATH”) for trial or settlement.

As Table 9 shows, the fines imposed in 2002, including those fines made payable in part to other agencies in three-way settlements, amounted to \$15,300. Total fines for substantive violations of Chapter 68 from 1990 through 2002 have amounted to \$212,925.

Annexed to this report is the Board's "Chapter 68 Enforcement Case Summary," which provides a useful digest of the Board's enforcement results for 2002 and years past. This document is available on CityShare and on the Board's website for use by all City workers and members of the public as an easy reference guide to cases the Board has prosecuted.

In 2002, the Enforcement Unit of the Board continued rigorously to select only the most important and provable cases for enforcement, and benefited immensely from DOI's investigation of these often-complex cases. Table 9 is a chart showing the detail of the individual fines imposed by date.

These public dispositions are only the tip of the iceberg for the Enforcement Unit. Like the Advice Unit, the workload of the Enforcement Unit increased exponentially in 2002. Indeed, during 2002 the number of complaints received **increased 78%** over 2001. Again, the Board attributes this increase to the heightened public awareness of the Board's work, as a result of the Board's published enforcement cases, the advice and training the Board offers at all levels of City service, and the Bloomberg Administration's and the Council's renewed emphasis on Chapter 68. Nevertheless, every complaint must be considered and often investigated; it cannot just be ignored.

Despite the increased productivity of the Enforcement Unit, this enormous increase in complaints is severely straining the enforcement staff. Nevertheless, in 2002 the Board disposed of 179 complaints, a 16% increase over 2001, despite lacking an enforcement attorney for three months after the Board's former Deputy Chief of Enforcement relocated to Tokyo.

During 2002, the Board referred 84 matters to DOI for investigation and received 74 reports from DOI. The Enforcement Unit also assisted DOI in launching its major education initiative intended to reach all City workers and increase public awareness of whistleblower laws and the conflicts of interest law. COIB staff furnished DOI with training materials to include in its classes and have plans to collaborate further on this project.

While the deterrent effect of the fines is important, some of the Board's most important work includes public censure letters and numerous private warning letters carrying no fine. Strong enforcement sends a message to City workers and to the public that self-dealing will not be tolerated in New York City government. Furthermore, the fines alone cannot fully reflect the time and cost savings to the City when DOI's investigations and the Board's enforcement put a stop to the waste of City resources by City employees who abuse City time and resources for their own gain, nor do the fines show the related savings from disciplinary proceedings based on DOI's findings and Board enforcement actions that result in termination, demotion, suspension, and forfeiture of leave time. Some of the Board's cooperative work has also contributed to successful criminal prosecutions by the District Attorney.

The Board wishes to thank its entire Enforcement Unit for its continued excellence under fire, including Joan Salzman, Deputy Executive Director and Chief of Enforcement; Peter Nadler, former Deputy Chief of Enforcement; Astrid Gloade, now Deputy Chief of Enforcement; Beth Gluck, Associate Counsel; and Varuni Bhagwant, Assistant to the Unit. The Board also extends sincere thanks to DOI Commissioner Rose Gill Hearn and Special Commissioner for the New York City School District Richard J. Condon, and their entire staffs, for the invaluable work of DOI and the Special Commissioner in Board matters. The Board is also delighted to welcome Marie Louise Victor to its Enforcement Unit, replacing Peter Nadler, and hopes that with her help it will be able to attack the rising caseload.

6. FINANCIAL DISCLOSURE

In addition to its responsibilities for interpreting and enforcing Chapter 68 of the City Charter, the Board is also charged with administering and enforcing the financial disclosure requirements of Section 12-110 of the New York City Administrative Code. In 2002, the Board's Financial Disclosure Unit continued its excellent compliance record in financial disclosure. As detailed in Table 10, the overall rate of compliance with the financial disclosure law exceeds 98%. This superb record must be attributed in large part to the excellent work of the Financial Disclosure Unit: Acting Director of Financial Disclosure Joanne Giura-Else; Holli Hellman, Senior Financial Disclosure Analyst; Veronica Martinez-Garcia, Assistant to the Unit; and Michelle Burgos, Clerical Aide.

At year-end, the Financial Disclosure and Enforcement Units were preparing to commence litigation early in 2003 to collect late fines and/or reports from those public servants who failed to pay their late fines or file their reports for 2000, due May 1 of 2001. On December 31, the Board had five cases of failure to file for 2000, three of which involved violations for multiple years.

The Financial Disclosure Unit was also engaged at year-end in collecting financial disclosure reports and/or fines from delinquent City employees who had not filed required financial disclosure reports or paid their fines for 2001, due May 1, 2002. The Board recognizes with great appreciation the successful efforts of DOI's Background Unit in securing compliance with the COIB reporting requirements. Those efforts sharply reduced the need for the Enforcement Unit to bring financial disclosure cases to OATH, thus saving countless hours.

In 2002, the Board collected \$19,525 in late filing fines. Since the Board assumed responsibility for financial disclosure in 1990, the Board has collected \$412,673 in financial disclosure fines.

As a result of a reorganization of the Financial Disclosure Unit, in 2002 that Unit was able to undertake reviews of the financial disclosure reports of all elected officials, Deputy Mayors, and agency heads, as well as all filers at a selected City agency, about 200 reports in all. Those reviews revealed five filers, or about 2.5%, with apparent conflicts of interest, which the Board is pursuing. Both New York State law and New York City law mandate that the Board review annually all 12,000 financial reports for such conflicts. In fact, the Law Department has advised the Board: "The Charter specifically provides that the Board 'shall cause each statement filed with it to be examined.' §2603(d)(2). Accordingly, a system of random audit or examination would not be consistent with Charter requirements."¹ But as the Board has stated in the past, absent an electronic financial disclosure filing system, the Board will never be able to meet that mandate.

The Board's financial disclosure outreach and training efforts in 2002 included upgrading the financial disclosure portion of the website to include

¹ Memorandum from Paul T. Rephen & David Karnovsky to Merrell E. Clark, Jr., Chair of Board of Ethics, dated April 5, 1989, at 3 (emphasis added by Law Department).

a new section devoted specifically to financial disclosure, and informal training sessions for new financial disclosure liaisons. The Financial Disclosure Unit intends to conduct on site formal training sessions in 2003 for all agency liaisons and to create an interactive certification training program on the Board's website for agency liaisons.

As a direct result of the Board's efforts, required financial disclosure reports from employees of the Department of Education will be filed with the COIB, rather than with the Department, beginning in 2003. This change finally brings the Department of Education filers under the Board's umbrella, as mandated by the Administrative Code and the NYS General Municipal Law. At year-end, COIB staff was working closely with David Schacher, Ethics Officer at the Department of Education, for the smooth transition on Department of Education filings.

7. THE IMPACT OF BUDGET CUTS

The Board expresses enormous gratitude to its Director of Administration, Ute O'Malley, and her Deputy, Myrna Mateo, for their tireless efforts. The relentless demands for budget cuts have required not only non-personnel belt-tightening for an already very lean agency, but also, inevitably, personnel departures. That has imposed an ever-increasing burden on the tiny Administration Unit, yet they have soldiered on. The Board's new MIS Director, Christopher Lall, has quietly eaten away at endless tasks that piled up in the absence of computer support at the agency and deserves particular thanks.

All of the members of the Board are deeply concerned, however, about the impact of continued budget cuts on the morale of the Board's staff and the Board's ability to discharge its several statutory mandates. As shown above, the Board desperately needs more staff, not less. Yet by year-end, the budget cuts had cost the Board 11% of its staff, including almost 25% of its training staff. That cut means 100 fewer ethics classes and more ethics violations, resulting in more negative press coverage of City officials, more investigations, and more fines.

The Board appreciates the \$50,000 that the Council added to the Board's Fiscal Year 2003 budget for salary increases. Without that money, the Board could not have replaced its only MIS staff member and would have lost over a third of its legal staff. Even with those raises, however, the

Board still cannot compete with other City agencies on salaries. For example, when the Board backfilled the enforcement vacancy with an attorney from another City agency, the Board was required to match her salary, paying her \$7,000 more than a more senior staff lawyer. Needless to say, such disparities cause morale problems within the agency and may well cost the Board yet another attorney. And the Board almost lost a Legal Advice attorney, who, even with the raise, was making \$10,000 less than she would be making at other City agencies.

These problems were compounded by the mid-year budget cuts, which required the Board to give up its publications equipment, thereby eliminating all COIB publications, except on the website. When the dust settled at year-end, the Board had a projected deficit of over \$40,000.

In an attempt to hold back the flood in Legal Advice, the Board had intended to transform an administrator line into a Legal Advice attorney line, but that line also fell victim to the budget ax. On December 2, for the first time in its history, the Board's staff temporarily suspended taking calls for legal advice one day a week. As noted above, these calls provide the first line of defense against ethics violations, and, therefore, this significant cut in legal advice services will inevitably increase violations of Chapter 68.

The Board believes that, in response to the demands for budget cuts in 2002, it has already eliminated *all possible* non-personnel expenses. Most significant of these, as indicated above, was discontinuing all hard-copy publications. The Board's opinions, educational materials, and basic information are now available only in electronic form. Any further cuts must come out of personal services – which means less education, less training, less outreach, fewer enforcement actions, and even longer delays in providing advice (ultimately amounting, as explained above, to no useful advice at all).

Perhaps in the current budget climate there is no solution to this crisis. Nevertheless, the effectiveness of this agency, charged by the people of the City of New York with overseeing the very integrity of City government, will be critically undermined if the present course continues. The Board believes that there must come a point in the budget-cutting process where a distinction is made between agencies with 21 employees and those with 21,000. Some agencies have already cut to the bone and have no more fat to trim: they simply cannot function with smaller staffs. The COIB is one of

them.

Few talk of new initiatives now, but the Board has launched several of them. As a result of September 11th, the Board's financial disclosure amendments, introduced in August 2001 as Intro 952 at the request of the Mayor, languished in the Council before being reintroduced as Intro 64 in 2002. Hearings are to be held in early 2003 on this important legislation, which would correct many of the inequities in the City's financial disclosure law. Specifically, the bill would 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 and public servants who file solely because of their salary, even though they have no contracting, senior managerial, or policymaking responsibilities; the bill would replace the salary threshold with "policymaker," the term used in the state law, thereby bringing the City's financial disclosure law closer to the state mandate and eliminating the need repeatedly to raise the salary threshold. It would also lighten the administrative burden on the Board's already hard-pressed staff.

The Board has also requested that the Council pass a Resolution in support of an amendment to the New York State General Municipal Law authorizing the Board to reduce the scope of the City's financial disclosure form, which, in the Board's view, is too invasive for most filers.

At year-end, the Board still lacks post-audit authority, necessary to help ensure the Board's independence, and a rationalized budget process, similar to that of the Campaign Finance Board. That budget process would require that the Mayor submit the Board's proposed budget directly to the Council as part of the Mayor's Executive Budget, without revision but with such recommendations as the Mayor deems proper. Investigative authority and mandatory ethics training have also languished, as has capital funding to complete the electronic financial disclosure project, without which the COIB can never hope to meet its Charter and state mandate to review all financial disclosure statements for conflicts of interest. As City government is scaled back and the temptation arises to cut costs by cutting corners, these initiatives, modest though they may be in dollars, become all the more critical.

Historically, hard times and crisis have produced significant increases

in conflicts of interest. The contracting scandals in the Civil War and the abuses in federal government procurement during World War II provide only two examples. Indeed, there is a very practical aspect to the work the Board does. It not only guides City officials but also reassures an increasingly jittery citizenry that their public servants in fact serve the public and not themselves, as the recent allegations in the State Legislature involving the Correctional Services Corporation illustrate. Reports of abuse, corruption, and conflicts of interest that appear in the media are surely important, but public confidence in the integrity of government is built not on such reports, but on what does *not* appear in the media: an effective system of education, outreach, training, and *timely* advice to public servants which prevents violations and avoids scandalous media attention.

Effective enforcement of the City's Conflicts of Interest Law also protects the public purse. And federal and state funds are certainly more likely to come the City's way if it is clear that the City is adequately funding and supporting the agencies charged with guarding against misuse of City resources. The fact is that New York City's ethics system works; and it works very, very well – so long as it is not allowed to wither for want of resources.

TABLES

TABLE 1
MEMBERS AND STAFF
OF THE
CONFLICTS OF INTEREST BOARD

Members

Steven B. Rosenfeld, Chair

Angela Mariana Freyre	Bruce A. Green
Jane W. Parver	Benito Romano

Staff

Executive

Mark Davies, Executive Director

Legal Advice

Wayne G. Hawley, General Counsel
Jessica Hogan, Deputy Counsel
Bonnie Beth Greenball, Special Counsel
Patricia E. Green, Legal Secretary
Cathy Soyka, Unit Assistant

Enforcement

Joan R. Salzman, Deputy Executive Director/Chief of Enforcement
Astrid B. Gloade, Deputy Chief of Enforcement
Isabeth Ann Gluck, Associate Counsel
Marie Louise Victor, Associate Counsel
Varuni Bhagwant, Legal Secretary

Training and Education

Les Taub, Director of Training and Education
Kevin Z. Moore, Publications/Web Site Coordinator
Alex Kipp, Trainer/Writer
Martine Multidor, Community Associate

Financial Disclosure

Joanne Giura-Else, Acting Director of Financial Disclosure
Holli R. Hellman, Senior Financial Disclosure Analyst
Veronica Martinez Garcia, Administrative Assistant
Michelle Burgos, Financial Disclosure Assistant

Administrative

Ute O'Malley, Director of Administration
Myrna Mateo, Deputy Director of Administration

Management Information Services

Christopher M. Lall, Director of MIS

Legal Interns

Jessica Bourbon	Joana Otaiza	Alissa Ryder
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College Intern

Murielle Gellen

TABLE 2
TRAINING AND EDUCATION CLASSES ON CHAPTER 68

<u>Year</u>	<u>Board of Ed Classes</u>	<u>Other Agency Classes</u>	<u>Total Classes</u>
1995	0	24	24
1996	0	30	30
1997	0	90	90
1998	10	53	63
1999	23	69	92
2000	221	156	377
2001	116	74	190
2002	109	164	273*

* This total does not include 13 classes conducted by agency training/legal staff under COIB's "Train the Trainer" program nor 100 briefings set up and conducted by DOI.

TABLE 3
COIB TRAINING CLASSES BY AGENCY

Agencies that held ten or more classes are bolded
Agencies that held three to nine classes are italicized
Agencies that held one or two classes are not separately listed

1998	1999	2000	2001	2002
Finance Homeless Svces. <i>Bd. of Education</i> <i>DCAS</i> <i>HRA</i> <i>NYPD</i>	Bd. of Education DCAS Finance <i>Correction</i> <i>DOT</i> <i>Sanitation</i> <i>School Const. Auth.</i>	Bd. of Education Buildings DEP DOT Finance Parks Sanitation <i>Correction</i> <i>DCAS</i> <i>DDC</i> <i>DOI</i> <i>EDC</i> <i>Health</i> <i>HPD</i> <i>HRA</i> <i>NYPD</i> <i>TLC</i>	Bd. of Education DCAS Finance HPD <i>DEP</i> <i>DDC</i> <i>FIRE</i> <i>DOITT</i> <i>Sanitation</i> <i>Transportation</i>	Buildings Correction DCAS Education Finance Sanitation SCA <i>ACS</i> <i>City Planning</i> <i>DDC</i> <i>DEP</i> <i>DOT</i> <i>Health</i> <i>HPD</i> <i>NYCERS</i> <i>Parks</i> <i>Transportation</i>
Agencies Holding One or Two Classes: 4	Agencies Holding One or Two Classes: 15	Agencies Holding One or Two Classes: 22	Agencies Holding One or Two Classes: 14	Agencies Holding One or Two Classes: 29
Total Classes: 63	Total Classes: 92	Total Classes: 377	Total Classes: 190	Total Classes: 273*

* This total does not include 13 classes conducted by agency training/legal staff under COIB's "Train the Trainer" program nor 100 briefings set up and conducted by DOI.

TABLE 4
LEGAL ADVICE WORKLOAD: 1993 TO 2002

	1993	2001 (% increase over 1993)	2002 (% increase over 2001)
Staff	5 attorneys	3 attorneys	3 attorneys
Telephone advice (calls)	N/A	1650	2410 (+46%)
Written requests for advice	321	539 (+68%)	691 (+28%)
Issued opinions, letters, waivers, orders	266	501 (+88%)	505 (+1%)
Opinions, etc. per attorney	53	167 (+215%)	168 (+1%)
Pending written requests (12/31/93; 12/31/01; 12/31/02)	151	40 (-74%)	184 (+460%)
Median age of pending written requests (12/31/93; 12/31/01; 12/31/02)	8½ months	18 days (-94%)	3½ months (+590%)

TABLE 5
ENFORCEMENT WORKLOAD: 1993 TO 2002

	1993	2001 (% change from 1993)	2002 (% change from 2001)
Staff	½ attorney	4 attorneys	4 attorneys
Complaints received	29	124 (+328%)	221 (+78%)
Dispositions	38	154 (+305%)	179 (+16%)
Dispositions imposing fines	1	10 (+900%)	6 (-40%)
Amount of fines imposed	\$500	\$20,450	\$15,300*
Referrals to DOI	19	49 (+158%)	84 (+71%)
Reports from DOI	?	43	74 (+72%)

* The amounts of the fines assessed and collected vary from year to year, depending on when lengthy litigation involving complex or multiple violations is concluded. For example, in 2000, the Board collected \$105,000 in fines.

TABLE 6
REQUESTS FOR ADVICE ON CHAPTER 68

<u>Year</u>	<u>Requests Received</u>
1996	359
1997	364
1998	496
1999	461
2000	535
2001	539
2002	691

TABLE 7
RESPONSES TO REQUESTS FOR ADVICE ON CHAPTER 68

<u>Year</u>	<u>Staff Letters</u>	<u>Waivers/ (b)(2) Letters</u>	<u>Board Letters, Orders, Opinions</u>	<u>Total</u>
1996	212	49	25	286
1997	189	116	24	329
1998	264	111	45	420
1999	283	152	28	463
2000	241	179	52	472
2001	307	148	46	501
2002	332	147	26	505

TABLE 8
ENFORCEMENT CASES (CHAPTER 68)

	<u>1990</u>	<u>1991</u>	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>
New Complaints Received	8	20	22	29	31	29	50	64	63	81	148	124	221
Dispositions	2	6	25	38	4*	33	32	54	76	83	117	152	179
Dispositions Imposing Fines	0	0	1	1	2	1	1	2	9	4	10	9	6
Public Censure Letters	0	0	0	0	0	0	1	0	0	0	2	2	0

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

**TABLE 9
ENFORCEMENT FINES**

DATE	CASE NAME OR NUMBER	AMOUNT
7/30/02	Blake-Reid	\$8,000
7/2/02	Cottes	500
6/26/02	Silverman	500
4/1/02	Smith	3,000
2/28/02	Kerik	2,500
2/26/02	Loughran	800
12/18/01	King	1,000
11/16/01	Hill-Grier	700
9/28/01	Denizac	4,000
8/16/01	Moran	2,500
7/17/01	Capetanakis	4,000
7/26/01	Rieue	2,000
6/13/01	Steinhandler	1,500
5/24/01	Camarata	1,000
4/19/01	Peterson	1,500
3/5/01	Finkel	2,250
10/25/00	Hoover	8,500
10/16/00	Turner	6,500
8/15/00	Paniccia	1,500
8/7/00	Chapin	500
7/24/00	Lizzio	250
6/6/00	Rosenberg	1,000
5/3/00	Sullivan	625
4/27/00	Vella-Marrone	5,000
4/4/00	Carlin	800
1/7/00	Rene	2,500
11/23/99	Davila	500
11/22/99	McGann	3,000
7/1/99	Sass	20,000
2/3/99	Ludewig	7,500
10/15/98	Morello ¹	6,000
9/17/98	Katsorhis	84,000
7/15/98	Weinstein ²	5,000
6/29/98	Fodera	3,100
6/24/98	Wills	1,500
6/24/98	Hahn	1,000
6/24/98	Harvey ³	200
5/14/98	Cioffi	100
4/30/98	Holtzman	7,500
1/8/98	Ross	1,000
6/17/97	Quennell	100
3/11/96	Matos ⁴	1,000
7/6/95	Baer	5,000
1/28/94	Bryson	500
1/14/94	McAuliffe	2,500
4/9/93	Ubinas	500

TOTAL: \$212,925

¹ As a result of departmental charges arising out of the same matter, Mr. Morello resigned from the New York City Fire Department and forfeited his entire accrued leave balances, worth \$93,105. Therefore, this investigation alone actually represented nearly \$100,000 in penalties recovered by the City.

² Includes a \$1,250 fine and forfeited annual leave worth \$3,750.

³ This fine was forgiven due to extreme financial hardship.

⁴ This fine was reduced to \$250 on proof of financial hardship one year following the settlement of the matter, pursuant to the terms of the settlement.

TABLE 10
FINANCIAL DISCLOSURE REPORTS

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 Act. Inact.*	Current Non-Payers for C.Y Act. Inact.*
1996	11,684	11,558	98.9%	365	370	\$37,150	0 126	0 145
1997	11,468	11,389	99.3%	257	250	\$25,600	0 79	0 16
1998	12,027	11,899	98.9%	246	317	\$32,150	1 127	0 29
1999	12,387	12,243	98.8%	245	308	\$30,800	0 144	0 47
2000	12,826	12,547	97.8%	482	332	\$33,200	5 274	0 62
2001	12,085	11,916	98.5%	443	158	\$15,725	16 153	8 32
TOTALS:	72,477	71,552	98.7%	2,038	1,735	\$412,673**	22 903	8 331

* "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.

** Includes fines collected for calendar years 1989 through 1995, the reports for which have been discarded pursuant to the Board's retention policy.

ADVISORY OPINIONS
OF
THE BOARD

SUMMARIES AND INDEXES

OPINION SUMMARY

OPINION NO: 2002-1

DATE: 8/29/02

CHARTER SECTION(S) INTERPRETED:

8(c)
373
2601(5), (8), (12), (16)
2603(c)(3)
2604(a)(1)(a), (a)(3), (a)(4),
(a)(5)(a)
2604(b)(2), (b)(3), (b)(4)
2606(d)

SUBJECT(S): Ownership Interests

OTHER OPINION(S) CITED: 92-6
92-9
94-10
94-13
94-18
94-25
94-26

SUMMARY: In response to a request from Mayor Michael R. Bloomberg for advice concerning his outside financial interests, the Board determined the following: 1) Mr. Bloomberg's ownership in Bloomberg L.P. will not violate Chapter 68, provided that, as he has agreed, (a) the gift of Bloomberg L.P. terminals to the City under the terms described remains in effect, (b)

Mr. Bloomberg recuses himself from all City cable television matters, including all cable matters coming before the Franchise and Concession Review Committee; (c) he recuses himself from all City matters involving Merrill Lynch; and (d) he seeks the Board's advice if, in the future, any Bloomberg entity has any matter before any City agency. 2) Mr. Bloomberg is advised that his actions as Mayor with respect to customers of Bloomberg L.P. will not violate Chapter 68, provided that, as he has done here, he discloses the one hundred leading customers of Bloomberg L.P. and that he seeks the Board's guidance if, in the future, any one customer comprises 10% or more of Bloomberg L.P.'s sales. 3) Mr. Bloomberg is further advised to be sensitive to the need to ascertain the extent of any City business dealings involving entities engaged in, or negotiating to become engaged in, Bloomberg L.P. matters that may significantly affect the value of his ownership interest (e.g., major purchases, sales, or borrowings) and to consult the Board for further guidance before becoming involved in such Bloomberg L.P. matters. 4) If Mr. Bloomberg disposes of all his current holdings in publicly traded stock and the hedge fund, as he has agreed, and, for the remainder of his service as Mayor, invests only in large, professionally-managed mutual funds and exchange traded funds, he will not violate Chapter 68. 5) Finally, if Mr. Bloomberg maintains his holdings of government bonds – that is, if he buys but does not sell New York City and New York State bonds – during his service as Mayor, and if he also does not participate in decisions to call any particular issue of City bonds, he will not violate Chapter 68.

**CUMULATIVE INDEX TO ADVISORY OPINIONS
BY CHARTER CHAPTER 68 SECTION
1990-2002**

<u>CHARTER §</u>	<u>OPINION #</u>				
2601(2)	90-2	91-3	91-12	93-11	01-02
2601(3)	90-7 96-1	90-8	91-14	93-11	93-19
2601(4)	91-8 92-38 01-03	92-13 93-12	92-17 93-18	92-32 94-5	92-36 00-02
2601(5)	90-4 92-4 00-02	90-5 92-7 01-03	90-6 92-14 02-01	91-3 93-21	91-15 98-1
2601(6)	91-3	94-18			
2601(8)	90-1 93-7 02-01	90-2 94-27	90-3 95-11	92-5 98-2	92-7 00-04
2601(11)	90-1 93-1 94-6 99-6	91-2 93-3 94-10	92-11 93-5 94-13	92-16 93-17 95-26	92-31 94-1 98-5
2601(12)	90-2 93-3 94-1 95-26	92-7 93-7 94-6 98-7	92-22 93-17 94-8 99-6	92-31 93-22 94-18 01-03	92-34 93-29 95-18 02-01
2601(15)	91-8 92-38	92-5 93-12	92-17 94-5	92-32	92-36
2601(16)	90-1 92-9 94-10 95-21 02-01	91-2 93-7 94-13 97-3	92-5 93-17 94-18 98-2	92-6 93-22 95-10 98-3	92-7 94-3 95-18 98-5
2601(17)	93-8	93-12	95-23	00-02	

CHARTER §**OPINION #**

2601(18)	91-14	92-5	92-6	92-7	92-9
	92-30	93-5	93-7	93-16	93-17
	93-22	93-29	94-6	98-5	98-7
	98-8	99-6	01-03		
2601(19)	90-7	91-2	91-3	91-12	93-7
	93-10 (Revised)		93-29	94-6	98-5
	98-7				
2601(20)	91-12	93-7	94-6	98-5	98-7
	01-03				
2603(c)	90-2	92-19			
2603(c)(3)	92-6	92-9	02-01		
2604(a)	91-2	92-7	92-22		
2604(a)(1)	90-1	91-14	98-8		
2604(a)(1)(a)	91-2	91-3	92-5	92-31	93-2
	93-3	93-7	93-10 (Revised)		93-17
	93-19	93-22	93-29	93-32	94-6
	95-8	95-12	95-18	95-26	96-4
	98-5	98-7	01-03	02-01	
2604(a)(1)(b)	90-2	91-7	92-6	92-9	92-11
	92-30	92-34	92-35	93-4	
	93-10 (Revised)		93-16	93-20	93-27
	94-1	94-3	94-8	94-10	94-11
	94-13	94-16	94-18	94-20	94-25
	94-26	94-27	95-3	95-8	95-10
	95-11	95-15	95-16	95-17	95-21
	95-25	95-26	96-2	97-3	98-2
	98-3	98-5	98-7	99-2	99-6
	00-01	01-03			
	2604(a)(3)	92-5	92-6	92-9	92-11
93-7		93-22	93-27	94-1	94-3
94-8		94-11	94-13	94-20	95-21
95-26		97-3	98-2	98-3	02-01

CHARTER §**OPINION #**

2604(a)(4)	92-5	92-6	92-9	92-11	92-35
	93-7	93-22	93-27	94-1	94-3
	94-8	94-11	94-13	94-20	95-21
	95-26	97-3	98-2	98-3	02-01
2604(a)(5)(a)	02-01				
2604(a)(5)(b)	91-14				
2604(b)(1)(a)	92-22	94-28 (Revised)			
2604(b)(1)(b)	91-3	93-2	93-3	95-18	96-4
	99-1				
2604(b)(2)	90-2	90-4	90-5	90-7	91-1
	91-3	91-4	91-5	91-6	91-7
	91-10	91-11	91-16	91-18	92-7
	92-8	92-20	92-25	92-28	92-30
	92-34	92-36	93-1	93-5	93-9
	93-12	93-15	93-16	93-17	93-19
	93-21	93-24	93-25	93-26	93-28
	93-31	93-32	94-1	94-8	94-11
	94-13	94-14	94-16	94-24	94-25
	94-26	94-29	95-2	95-3	95-7
	95-9	95-11	95-12	95-16	95-17
	95-19	95-20	95-22	95-24	95-25
	95-26	95-27	95-28	95-29	96-2
	96-5	98-2	98-5	98-6	98-7
	98-8	98-10	98-12	98-13	98-14
	99-2	99-4	99-5	99-6	00-03
	01-02	01-03	02-01		
2604(b)(3)	90-4	90-5	90-6	90-9	91-1
	91-4	91-5	91-6	91-7	91-11
	91-15	91-16	91-18	92-3	92-4
	92-6	92-7	92-10	92-12	92-14
	92-23	92-25	92-28	92-30	92-31
	92-33	92-36	93-1	93-4	93-9
	93-10 (Revised)		93-12	93-14	93-16
	93-19	93-21	93-23	93-24	93-25
	93-26	93-28	93-31	93-32	94-1
	94-2	94-6	94-8	94-9	94-11
	94-12	94-13	94-16	94-17	94-20
	94-24	94-25	94-26	94-27	
	94-28 (Revised)		94-29	95-3	95-5

CHARTER §**OPINION #**

	95-9	95-11	95-12	95-14	95-16
	95-17	95-19	95-20	95-21	95-22
	95-24	95-25	95-26	95-27	95-28
	95-29	96-2	97-2	97-3	98-1
	98-2	98-3	98-5	98-7	98-8
	98-10	98-12	98-13	99-2	99-4
	99-5	99-6	00-03	00-04	01-01
	01-02	01-03	02-01		
2604(b)(4)	91-11	92-30	92-34	92-36	
	93-10 (Revised)		93-16	93-24	93-25
	93-26	93-28	93-31	93-32	94-1
	94-2	94-6	94-8	94-11	94-13
	94-16	94-20	94-25	94-26	94-29
	95-3	95-9	95-12	95-16	95-17
	95-19	95-20	95-21	95-26	95-29
	96-2	97-3	98-1	98-3	98-5
	98-7	98-8	98-10	98-13	99-2
	99-4	99-5	99-6	01-02	01-03
	02-01				
2604(b)(5)	90-3	92-19	92-33	93-10 (Revised)	
	94-4	94-9	94-23	95-28	96-3
	99-4	00-01	00-04		
2604(b)(6)	91-7	92-7	92-26 (Revised)		92-28
	92-36	93-10 (Revised)		93-32	94-24
	95-6	95-8	95-9	95-15	96-4
	96-5	98-2	98-9	98-10	00-01
	01-03				
2604(b)(7)	90-7	91-7	92-18	92-28	
	93-10 (Revised)		93-23	95-8	98-10
	01-03				
2604(b)(8)	91-7				
2604(b)(9)	93-24	95-13	95-24	01-01	01-02
2604(b)(11)	93-24	95-13	01-01	01-02	
2604(b)(12)	91-12	92-25	93-6	93-24	95-13
	01-01	01-02			
2604(b)(13)	92-34	93-25	95-28	99-4	99-5

CHARTER §**OPINION #**

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2604(b)(14)	92-28	98-12	01-03		
2604(b)(15)	91-12	91-17	93-20		
2604(c)	93-10 (Revised)				
2604(c)(1)	90-6	91-10			
2604(c)(5)	98-4				
2604(c)(6)	92-22 94-18 98-8	92-24 94-25 99-1	93-9 94-26 00-01	93-26 95-7 01-03	94-13 95-12
2604(c)(6)(a)	92-25				
2604(c)(7)	91-18				
2604(d)	90-8	92-37	93-13		
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Misuse of Office

In April of 1996, in the case of the former City Comptroller, Elizabeth Holtzman, after a full trial on the merits, the Board fined Ms. Holtzman \$7,500 (of a maximum \$10,000) for violating section 2604(b)(3) of the City Charter (prohibiting use of public office for private gain). The Board also found that she had violated section 2604(b)(2) (prohibiting conduct that conflicts with the proper discharge of official duties) with respect to her participation in the selection of a Fleet Bank affiliate as a co-manager of a City bond issue when she had a \$450,000 loan from Fleet Bank to her United States Senate campaign, a loan she had personally guaranteed. Significantly, in a landmark ruling, the Court of Appeals, New York State's highest court, upheld the Board's reading of the high standard of care applicable to public officials and rejected the asserted lack of actual knowledge of business dealings as a defense to ethics charges: "A City official is chargeable with knowledge of those business dealings that create a conflict of interest about which the official 'should have known.'" The Court also found that Ms. Holtzman had used her official position for personal gain by encouraging a "quiet period" that had the effect of preventing Fleet Bank from discussing repayment of her Senate campaign loan. The Court held: "Thus, she exhibited, if not actual awareness that she was obtaining a personal advantage from the application of the quiet period to Fleet Bank, at least a studied indifference to the open and obvious signs that she had been insulated from Fleet's collection efforts." Finally, the Court held that the Federal Election Campaign Act does not pre-empt local ethics laws. This was the Board's first full-blown trial, and it took eleven days. There were 2,000 pages of testimony, 150 trial exhibits, and more than 15 witnesses. *COIB v. Elizabeth Holtzman*, COIB Case No. 93-121 (1996), *aff'd*, 240 A.D.2d 254, 659 N.Y.S.2d 732 (1st Dep't 1997), *aff'd*, 91 N.Y.2d 488, 673 N.Y.S.2d 23, 695 N.E.2d 1104 (1998).

In another case, 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. The Office of Administrative Trials and Hearings Administrative Law Judge ("ALJ") found that it was

appropriate for the former Sheriff to forfeit 80% of the \$103,000 salary the City had paid him for the year he was Sheriff because his “improper activities cost the City money, in personnel time (his own and his secretaries’) and in supplies.” The ALJ found: “The full extent of respondent’s abuse of his office, and the consequent financial cost to the City cannot be determined because of respondent’s failure to cooperate with the investigation. However, the record of court appearances, phone calls, meetings, correspondence and court submissions shows a considerable amount of respondent’s time was devoted to his private employment activities during what are normal City working hours.” The fine was collected in full in December 2000. 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. In 2000, the New York State Supreme Court Appellate Division, First Department, twice dismissed as untimely perfected a petition to review the Board’s decision, and the New York Court of Appeals dismissed as untimely a motion seeking leave to appeal the Appellate Division’s orders. Accordingly, all appeals have been exhausted and the Board decision stands. The record in this case exceeded 6,000 pages. *COIB v. Kerry J. Katsorhis*, COIB Case No. 94-351 (1998), *appeal dismissed*, M-1723/M-1904 (1st Dep’t April 13, 2000), *appeal dismissed*, 95 N.Y.2d 918, 719 N.Y.S.2d 645 (Nov. 21, 2000).

The Board concluded a settlement with Veronica Smith, a former ACS caseworker who admitted violating the conflicts of interest law by soliciting a \$4,000 loan from a foster mother and accepting the foster mother’s loan of \$2,500 while continuing to evaluate her fitness as a foster mother. Ms. Smith also testified in the termination of parental rights case involving the foster mother without notifying the presiding judge of her outside financial relationship with the foster mother. The Board fined Ms. Smith \$3,000 and required her to repay the foster mother in full within two years. However, if Ms. Smith makes full repayment of the loan in the time allotted, the Board’s fine will be forgiven. If she fails to repay the loan, the Board will execute judgment in the full amount of the \$3,000 fine, and Ms. Smith will still have to repay the loan. In setting the terms of the fine, the

Board took into account Ms. Smith's circumstances, which include serious personal and family health problems. *COIB v. Smith*, COIB Case No. 2000-192 (2002).

The Board fined former Police Commissioner Kerik \$2,500 for using three New York City police officers to perform private research for him. He used information the officers found in a book about his life that was published in November of 2001. The Board noted that Mr. Kerik cooperated fully and expeditiously with the investigation and resolution of this matter. Mr. Kerik acknowledged that he had violated the Charter prohibition against using office for private advantage or financial gain and the terms of the Board's waiver letter, even though one officer, a sergeant, was a close friend of his. The Board by its waiver letter had allowed Mr. Kerik to write the autobiography under contract, but only on the condition that he not use City time or his official City position to obtain a private or personal advantage for himself or the publisher, and that he use no City equipment or personnel or other City resources in connection with the book. The three officers used limited City time and resources in their research, and two of the officers had made five trips to Ohio for the project, each spending 14 days of their off-duty and weekend time. *In re Kerik*, COIB Case No. 2001-569 (2002).

In *COIB v. Birdie Blake-Reid*, COIB Case No. 2002-188 (2002), the Board and the New York City Board of Education ("BOE") concluded a settlement with Birdie Blake-Reid, Executive Director of the Office of Parent and Community Partnerships at BOE. Ms. Blake-Reid, who agreed to pay an \$8,000 fine, misused her City position habitually by directing subordinates to work on projects for her church and for a private children's organization, on City time using City copiers and computers. She also had BOE workers do personal errands for her. Ms. Blake-Reid admitted that over a four-year period, she had four of her BOE subordinates perform non-City work at her direction, including making numerous copies, typing, preparing financial charts and spreadsheets and a contact list, stuffing envelopes, e-mailing, working on brochures, typing a college application for one of Ms. Blake-Reid's children, and running personal errands for Ms. Blake-Reid. The subordinates performed this non-City work for her on City time and using City equipment. These subordinates believed that their jobs with the City could be jeopardized if they refused to work on Ms. Blake-Reid's non-BOE matters. One temporary worker sometimes fell behind in his BOE work when Ms. Blake-Reid directed him to make her private work a priority. BOE funded overtime payments to him when he stayed to finish his BOE

work. Ms. Blake-Reid acknowledged that she violated City Charter provisions and Board Rules that prohibit public servants from misusing their official positions to divert City workers from their assigned City work and misapplying City resources for their private projects.

In *COIB v. Cathy Mumford*, COIB Case No. 2002-463 (2003), the Board and the Department of Education concluded a settlement with Cathy Mumford, a Department of Education teacher who was involved in the hiring and payment of her husband's company to write a school song for the school where she worked and conduct workshops. Ms. Mumford certified the receipt of the song six months before the song was received. She signed a purchase order indicating receipt of the song for the purpose of remitting the purchase order for payment. The Department of Education fined Ms. Mumford \$5,000 for the improper payment of \$3,500 to Soul'd Out, and Ms. Mumford agreed to pay a fine of \$2,500 for violating the conflicts of interest law, amounting to a fine totaling \$7,500. Ms. Mumford was also transferred to another school and removed from purchasing responsibilities.

In *COIB v. David Cottes*, COIB Case No. 2001-593, the Board and the New York City Department of Consumer Affairs ("DCA") concluded a settlement with David Cottes, Director of Collections at DCA, who paid a \$500 fine. As Director of Collections at DCA, Mr. Cottes supervises a staff responsible for collecting fines that DCA imposes on restaurants and other businesses. Mr. Cottes acknowledged that he created menus for two restaurants in 2001. After agreeing to supply the menus, he learned that these restaurants operate sidewalk cafés licensed by DCA. He prepared the menus on his home computer. In June 2001, he received \$1,500 from the first restaurant for the menus. He completed work on menus for the second restaurant but did not accept payment for the second set of menus. One of these restaurants had been delinquent in paying fines owed to DCA for regulatory violations relating to its sidewalk café. Those fines were outstanding during the time Mr. Cottes created the menus for the restaurants. After Mr. Cottes agreed to make the menus, the restaurant owner asked him to intercede on the owner's behalf with the former DCA Commissioner to help the restaurant regarding a DCA order suspending one of its sidewalk café licenses. Mr. Cottes reviewed the status of the matter and determined that the penalties were fair based on the history of violations. Mr. Cottes stated that he did not intercede with the former DCA Commissioner on behalf of the restaurant owner and did not give any preferential treatment to the owner. He added that he would provide the same service for any vendor

who asked about the status of a matter pending before DCA. The Board took the occasion of this disposition to remind all City workers who are contemplating private employment that they must find out, *before* accepting private work, whether their potential private employers are engaged in, or intend to engage in, business dealings with the City. If so, they probably face a conflict of interest and should contact the Conflicts of Interest Board for advice. This case shows that private projects can place a City worker in violation of the conflicts of interest law. A request by a City worker's private employer to intervene in a pending matter with City agency management puts the City employee in a bind and creates opportunities for serious conflicts of interest. Mr. Cottes acknowledged that he had violated City Charter provisions that prohibit moonlighting with a firm a City employee knows is engaged in business dealings with his own agency; that prohibit use or attempted use of official position to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for the City worker or his family or associates; and that prohibit private employment that conflicts with the proper discharge of official duties.

In *COIB v. Janet Silverman*, COIB Case No. 2000-456 (2002), the Board concluded a settlement with Janet Silverman, a former New York City Department For The Aging ("DFTA") field auditor who admitted violating the conflicts of interest law by misusing official City letterhead to gain a private or personal advantage. Without authorization, Ms. Silverman sent a notice to a DFTA contractor, on official, City letterhead, as if from the City, threatening the vendor with litigation if she were injured on the contractor's property. Ms. Silverman paid a fine of \$500.

In *COIB v. Lawrence King*, COIB Case No. 98-508 (2001), the Board fined a Deputy Chief Engineer for Roadway Bridges at the Department of Transportation ("DOT") \$1,000 for asking several DOT contractors to place advertisements in a fundraising journal the proceeds of which would help financially support the hockey club on which his sons play. Eight of the DOT contractors that Mr. King solicited purchased ad space for a total contribution of about \$975. As a DOT employee, Mr. King worked on matters relating to these contractors and supervised DOT employees who worked with these contractors. Mr. King stated: "I made an error in judgment by seeking and obtaining donations from contractors whose profits I could affect in my City job. I represent that there was no *quid pro quo* for the donations."

In *COIB v. Jason Turner*, COIB Case No. 99-200 (2000), the Board fined Human Resources Administration (“HRA”) Commissioner Jason Turner \$6,500 for hiring his business associate, Mark Hoover, as First Deputy Commissioner of HRA, without seeking or obtaining a waiver from the Board, using his Executive Assistant to perform tasks for Turner’s private consulting company, as well as for using his City title on a fax cover sheet (on one occasion inadvertently), using City time, phone, computer, and fax machine for his private consulting work, and renting an apartment for over a year from his subordinate, First Deputy Commissioner Hoover. These acts violated rules intended to eliminate coercion and favoritism in government and to prevent misuse of government workers and equipment for personal gain.

The Board also fined HRA First Deputy Commissioner Mark Hoover \$8,500 for leasing his own apartments to five of his HRA subordinates and to HRA Commissioner Jason Turner, for using an HRA subordinate to perform private, non-City work for him, and for using his official position to arrange for the state of Wisconsin to loan an employee to HRA and then housing that visiting consultant in his own apartment and charging and receiving \$500 for the stay, for which the City ultimately paid. Hoover also admitted using City equipment in furtherance of his private consulting business. *COIB v. Mark Hoover*, COIB Case No. 99-200 (2000). This fine was the largest settlement fine ever obtained by the Board. Like Commissioner Turner, Mr. Hoover violated rules intended to eliminate coercion and favoritism in government and to prevent misuse of government workers and equipment for personal gain.

In a summary judgment based upon stipulated facts and the report and recommendation of an Administrative Law Judge of the Office of Administrative Trials and Hearings, the Board fined a community board member \$4,000 for voting on a matter involving real property which he and his siblings owned. Because a vote expressing the community’s preference for land use “may result” in a personal and direct economic gain to the community board member, such votes are not permitted. The Board ruled that the language “may result” in the relevant City Charter provision means even a possibility greater than zero. The member may even retain the financial interest and discuss the matter, but is not allowed to vote. *COIB v. Basil Capetanakis*, COIB Case No. 99-157 (2001). This case was the first one in the Board’s history that resulted in a summary judgment (eliminating

the need for trial in the absence of any genuine issues of material fact). Respondent has appealed the decision.

A member of the New York City Housing Authority, Kalman Finkel, was fined \$2,250 for using his office to help obtain a computer programmer's job for his daughter with Interboro Systems Corp., a company with a \$4.3 million contract with the Housing Authority. Two weeks after faxing to Interboro his daughter's resume, Mr. Finkel voted to increase Interboro's contract with the Authority by \$52,408. Mr. Finkel said the vote was inadvertent and that he did not realize that Interboro was the same firm to which he had sent his daughter's resume. Interboro hired Mr. Finkel's daughter. *COIB v. Kalman Finkel*, COIB Case No. 99-199 (2001).

The Board fined a former attorney from the City Commission on Human Rights ("CHR") \$2,000 for investigating a discrimination case involving her mother and recommending agency action (a finding of probable cause to believe that her mother had suffered discrimination), without disclosing the familial relationship to her supervisors. The Board strongly disapproved of the use or misuse of prosecutorial discretion in favor of a family member. *COIB v. Marisa Rieue*, COIB Case No. 2000-5 (2001).

In *COIB v. Frances T. Vella-Marrone*, COIB Case No. 98-169 (2000), the Board fined Frances T. Vella-Marrone, a former School Construction Authority official, \$5,000 for using her position to obtain a job for her husband at her agency and for attempting to obtain a promotion for him in 1996 and 1997. A 16-year-old girl was killed on January 9, 1998, in the area where Marrone's husband had removed a security fence at a public school construction site in Brooklyn. Mr. Marrone had not been supervisor on that site in the three months prior to the accident.

In a three-way settlement, the Board and the New York City Department of Transportation ("DOT") suspended, demoted to a non-supervisory position with a \$1,268 annual pay cut, and fined a City parking official \$2,500 for using his position to solicit a subordinate to marry his daughter in Ecuador and for repairing the cars of subordinates for compensation. Moran was also placed on probation for two years, during which time he is ineligible for promotions or salary increases. In addition, Moran can be terminated summarily if he violates the DOT code of conduct or the conflicts of interest law again. This is a "two strikes" provision originally developed in the *McGann* case, noted below. *COIB v. Milton*

Moran, COIB Case No. 99-51, OATH Index No. DOT-012261 (2001). A court challenge by Mr. Moran of the settlement was dismissed by the New York State Supreme Court on November 5, 2001, Index No. 118741/01 (DeGrasse, J.).

In a joint agreement with the Board of Education (“BOE”), an interim acting principal was fined \$4,000 and admitted that she had asked school aides to perform personal errands for her on school time. Specifically, she asked them to go to a New York City Marshal’s Office to deliver payment of a “scofflaw” fine that had been imposed on her car, and she asked several subordinate employees to deliver a loan application on her behalf. Those employees made these trips on City time. *In re Iris Denizac*, COIB Case No. 2000-533 (2001).

In January 1998, after a full trial, the Board imposed a \$1,000 fine on a former Assistant District Attorney who issued a false grand jury summons to a police officer to interfere with his scheduled testimony against the Assistant District Attorney’s husband in traffic court on the same day. The Assistant District Attorney had previously been dismissed by the District Attorney’s office. *COIB v. Nancy Campbell Ross*, COIB Case No. 97-76 (1997).

In *COIB v. John McGann*, COIB Case No. 99-334 (2000), a construction inspector from the Department of Buildings was fined \$3,000 for giving one of his private business cards to a homeowner at a site where this inspector had just issued six notices of violation. The inspector had written on his private business card the words, “ALL TYPES OF CONSTRUCTION ALTERATIONS,” and he told the homeowner that he used to do construction work and could advise her on such work. The private business cards used by this inspector also contained his Department of Buildings pager number and the name “B.E.S.T. Vending Service.” The inspector was required to cease using the name “B.E.S.T.” in his private business because that name could be confused with the name of his City unit, the “B.E.S.T. Squad” (Building Enforcement Safety Team). He admitted violating sections 2604(b)(2) and (b)(3) of the Charter. This matter was a “three-way” settlement with the Board, the Department of Buildings, and the inspector. An innovative provision in this disposition was a “two strikes” provision, first used by the Board in this case, in which the inspector agreed to summary termination in case of any further violation of the conflicts of interest law.

The Board fined a former housing inspector for working at a gas station in New Jersey at times when he was required to inspect buildings in New York. *COIB v. John Lizzio*, COIB Case No. 2000-254 (2000). The fine was \$250, which ordinarily would have been higher, but took into account the fact that inspector John Lizzio had agreed to resign from the City's Department of Housing Preservation and Development. This was the first prosecution of abuse of City time under the Board's Rule § 1-13, which prohibits City employees from engaging in personal and private activities on City time, absent approval from their agency head and the Board.

In the case of *In re Sara Pecker*, COIB Case No. 2000-322 (2000), the Board issued a public warning letter to the Traffic Safety Director, Sara Pecker, of the Queens Borough President's Office ("QBPO"). Ms. Pecker acted as one of three QBPO employees who voted to select the winning bidder (of two bidders responding) on a QBPO request for proposals ("RFP") dated September 22, 1999. At the time of her vote, Ms. Pecker knew that one of the bidders (who later won the bid unanimously) had entered into a barter relationship in April of 1998 with Ms. Pecker's husband, an attorney, to provide computer services in exchange for office space. Although it declined to bring an enforcement action, the Board wrote that the better practice under Charter § 2604(b)(2) would have been for Ms. Pecker to disclose her husband's business relationship and to offer to recuse herself from the selection process. This was so because the failure to disclose the family business relationship could have given rise to an appearance of impropriety and could have compromised Ms. Pecker's duty of undivided loyalty to the City. Ms. Pecker agreed to allow the Board to make the warning letter public.

In *COIB v. Christopher Sullivan*, COIB Case No. 98-288 (2000), a Tax Assessor working for the City's Department of Finance ("DOF"), assessed a residential building in Queens and noticed a vacant basement apartment. The apartment was not publicly advertised for rent. Several days after conclusion of the assessment, the inspector telephoned the landlord and asked to rent the apartment. The landlord rented the apartment to him. The assessor admitted that he violated the ethics laws by using his position to obtain a benefit for himself (*i.e.*, the apartment) that was not available to anyone else. He entered into a three-way settlement with the Board and the DOF and paid a \$625 fine.

The Board fined Raymond Davila, a former employee of the City

Commission on Human Rights, \$500 for using Human Rights letterhead, typewriters, and office facilities for his own private clients, in *COIB v. Raymond Davila*, COIB Case No. 94-82 (1999). Davila wrote four letters on behalf of his private clients on Commission letterhead to agencies such as the U.S. Veteran's Administration and a U.S. Consulate. He also listed his agency telephone number as the contact number on these letters. Finally, Davila admitted using his Human Rights office to meet with a private client during his City work hours to discuss the client's case and to receive payment from the client. Davila admitted violating Charter §§ 2604(b)(2) and (b)(3). The fine would ordinarily have been substantially higher, but reflected the fact that Davila is retired and ill and has very limited financial means.

In *COIB v. Naomi Rubin*, COIB Case No. 94-242 (1995), an administrative law judge from the City's Parking Violations Bureau admitted violating her official duties by adjudicating her father-in-law's parking tickets. The Board, however, imposed no fine because of the absence at the time of a Board rule identifying conduct prohibited by the "catch-all" section of the Charter, section 2604(b)(2), which prohibits transactions that conflict with the proper discharge of official duties. As of 1998, the Board has a rule, Board Rule § 1-13, which spells out the misuse of public office (such as use of City resources, like letterhead, for non-City purposes) sufficiently to allow the Board to issue fines for violating the general provision as amplified by the rule. Significantly, the rule also prohibits aiding and abetting a violation and holds officials liable for intentionally or knowingly "inducing" or "causing" another City official to violate the Charter.

The Board fined a City manager \$1,250 for conducting a part-time private printing business from his City office; the employee was also forced to retire and forfeit 24 days of accrued annual leave. The fine was worth \$5,000, including the forfeited leave time. *COIB v. Edmund Weinstein*, COIB Case No. 97-394 (1998).

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 that City telephone number. As a result of this case, he ceased the practice of using the phones and destroyed all the offending business cards. *COIB v. Rudolph Hahn*, COIB Case No. 98-102 (1998).

In *COIB v. Mildred Sass*, COIB Case No. 98-190 (1999), the Board

found that the former Director of Administration of the Manhattan Borough President's Office used her position to authorize the hiring of her own private company and her sister's company to clean the Borough President's offices. Sass, who decided to forego a hearing, was fined \$20,000 and found to have violated the prohibitions against abuse of office for private gain and against moonlighting with a firm doing business with one's own City agency.

The Board fined Kevin McAuliffe, a former Press and Speech Aide in the Mayor's Office, \$2,500 in 1994 for using official City letterhead to contest a parking ticket. COIB Case No. 91-214.

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*, COIB Case No. 97-368 (1998).

A former First Assistant Commissioner with the New York City Fire Department, Robert Ungar, admitted that he violated the Charter by identifying himself by his official title in seeking restoration of his personal electrical service with Con Edison, and that his conduct had created the appearance that he was using his position to obtain a personal advantage. COIB Case No. 90-383 (1992).

Gift Cases

In 2000, the Board announced that it had rebuked former NYC Police Commissioner Howard Safir for accepting a free trip to the 1999 Academy Awards festivities in Los Angeles. Revlon was the donor of the trip, valued at over \$7,000. The Board defined for the first time the duties of high-level public servants to inquire about the business dealings of the donor. Because this was the first public announcement of this duty in the context of gifts, and the business dealings of Revlon were small and difficult to discover, the Board declined to charge Safir with violating the Board's Valuable Gift Rule, which prohibits public servants from accepting gifts valued at \$50 or more from persons they know or should know engage or intend to engage in

business dealings with the City. Safir repaid the cost of the trip. *Acceptance of Valuable Gift (Howard Safir)*, COIB Case No. 99-115 (2000).

The Board imposed a \$5,000 fine in 1995 on a former high-level City official, Ellen Baer, who interviewed for a job with a City bidder, Lockheed Information Management Services Company, Inc. (“Lockheed”), and accepted meals worth more than \$50 per year from Lockheed while working on the City matter involving Lockheed, without disclosing the receipt of those meals. COIB Case No. 93-282. In 1994, the Board fined Marvyn Bryson, a contract manager in the Parking Violations Bureau, \$500 for accepting meals from Lockheed worth more than \$50 in the aggregate without disclosing the receipt of those meals. COIB Case No. 93-282. In a case against a former Battalion Chief for Technical Services with the New York City Fire Department, *COIB v. John Morello*, COIB Case No. 97-247 (1998), 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 Fire Department and whose work the Chief had directly supervised.

Appearing as an Attorney Against the Interests of the City

Board of Education employee Wilma Hill-Grier admitted that she appeared, for compensation, as an attorney on behalf of her private client, in a matter involving the City. In appearing on behalf of her client in a litigation in which the New York City Administration For Children’s Services was a party, she appeared against the interests of the City. Hill-Grier made five appearances before Family Court and Criminal Court on her client’s behalf. The City’s Charter and the Board’s Rules prohibit public servants from appearing on behalf of private interests in matters involving the City and appearing against the interests of the City in any litigation to which the City is a party. Hill-Grier was fined \$700. *COIB v. Wilma Hill-Grier*, COIB Case No. 2000-581 (Nov. 16, 2001).

Resume Cases

In *COIB v. Sergio Matos*, COIB Case No. 94-368 (1996), a Department of Environmental Protection (“DEP”) project manager admitted that he violated the City Charter by sending his resume to a City contractor while he was directly concerned with that contractor's particular matter with the City and had recommended that contractor for a \$10 million dollar City contract.

Mr. Matos was not even interviewed for the private job. The Board issued a \$1,000 fine. In the *Baer* matter noted above, the former Chief of Staff to a Deputy Mayor solicited a job with Lockheed at a time when various City agencies were engaged in developing a request for proposals in which Lockheed was interested and involved as a prospective bidder, and Ms. Baer was involved in that City matter. COIB Case No. 93-282.

Moonlighting

The Board fined a firefighter \$7,500 for unauthorized moonlighting with a distributor of fire trucks and spare parts to the Fire Department. As part of the settlement, the firefighter agreed to disgorge income from his after-hours job, and the vendor, in effect, funded the settlement. *COIB v. Wayne Ludewig*, COIB Case No. 97-247 (1999). *See also Matter of David C. Begel*, COIB Case No. 96-40 (1996) (former spokesman for the Chancellor of the Board of Education was found to have a prohibited interest in a firm engaged in business dealings with the City, but no penalty was imposed because of mitigating circumstances). In *Matter of Nicholas Quennell*, COIB Case No. 97-60 (1997), a former Art Commission President who inadvertently failed to recuse himself from Commission matters involving his architecture firm was fined \$100.

A Parks Department employee, Albert Peterson, was fined \$1,500 in a settlement, for using his City position to attempt to obtain City park permits for a private not-for-profit firm called Sportsworld. Mr. Peterson directed basketball programs for the Parks Department and filed five permit applications for basketball courts with the Department on behalf of Sportsworld. These filings are considered business dealings under the conflicts of interest law because the award of these permits is discretionary. Mr. Peterson admittedly made inquiries with the Parks Department, his own City agency, about the status of the permit applications he had filed on behalf of his private organization and also used his position to solicit fellow Parks Department employees to join Sportsworld. *COIB v. Albert Peterson*, COIB Case No. 97-173 (2001).

The Board issued a public warning letter to an Assistant Civil Engineer at the Department of Transportation (“DOT”) who inspected bridges for DOT, including the Williamsburg Bridge. He accepted a position with a sub-consultant on a DOT contract involving inspections of that bridge. He worked for the sub-consultant during four weeks of vacation

from DOT. Although he claimed he did not know that his second employer had business dealings with the City, the Board stated that he should have known of those dealings and should not have taken the job. He resigned upon learning that the matter on which he was working for the private employer was a DOT contract. There was no fine and Mr. Ayo agreed to publication of the Board's letter. *In re Michael Ayo*, COIB Case No. 99-461 (2001).

The Board fined a teacher \$1,500 for owning and operating a tour company that arranged tours for Board of Education schools, including the school where he taught. The tours had been operated with the approval of the school's principal, and the teacher sold his interest in the tour company in March of 1999. *In re Walter Steinhandler*, COIB Case No. 2000-231 (2001).

The Board issued a public warning letter to Louis Abramo, in which the Board reminded public servants who are licensed plumbers that they may file with the Department of Buildings ("DOB") Plumbing Alteration and Repair Slips, which involve minor plumbing jobs, but not Plumbing Affidavits, involving major repairs in connection with building permits, unless they first obtain waivers from the Conflicts of Interest Board. *In re Louis Abramo*, COIB Case No. 2000-638 (2001).

The Board fined City employee James Loughran, a plumbing inspector with the New York City Housing Authority, \$800 for filing seventeen "plumber's affidavits" with the Department of Buildings in connection with his private plumbing business. City employees, like Mr. Loughran, who are also licensed plumbers and operate private part-time plumbing businesses, are not permitted to file plumber's affidavits under the City Charter as interpreted in a Board opinion. In this matter, Mr. Loughran had agreed in writing at the time he began working for the City, that he would not file such plumber's affidavits. Such filings are not permitted because they involve applications to do major repairs or installations and are deemed to be "representing private interests before a City agency," the Department of Buildings. Applications to perform minor repair work, the so-called plumbing alteration and repair slips, are permitted to be filed with the Department of Buildings by City employees. *In re James Loughran*, COIB Case No. 2000-407 (2002).

The Board fined Bert Camarata, a former Department of Employment (“DOE”) Program Manager, \$1,000 for moonlighting with a firm that had business dealings with DOE. Although on leave from their City jobs, City employees are bound by the Charter’s conflicts of interest provisions. While on sick leave from DOE, Mr. Camarata took a job with a contractor to DOE. Because he repeatedly changed his separation date, Mr. Camarata received twice the sick leave payments he would have received had he resigned his job at DOE on the date he originally agreed to do so. *COIB v. Bert Camarata*, COIB Case No. 99-121 (2001).

In *COIB v. Michael Cioffi*, COIB Case No. 97-247 (1998), the Board fined a City firefighter \$100 for working part-time without permission for a company that supplies the Fire Department with equipment. In *Cioffi*, mitigating factors, including financial hardship, affected the size of the fine. See also *COIB v. David Carlin*, COIB Case No. 99-250 (2000), where a sewage treatment worker at the Department of Environmental Protection (“DEP”) entered into a three-way settlement with COIB and DEP in a case where he admitted using DEP equipment to service a private wastewater facility where he was moonlighting and agreed to pay an \$800 fine.

Revolving Door

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, that one had worked on while with the City. *COIB v. Vincent Fodera*, COIB Case No. 96-404 (1998). The Board fined the former Deputy Agency Chief Contracting Officer (“ACCO”) of the Department of Transportation (“DOT”) \$1,500 for violating the revolving door rules. Within two weeks of leaving City office for a firm that sought business with DOT, Egidio Paniccia phoned his former supervisor, the DOT ACCO, and the Mayor's Office of Contracts and asked whether a contract had been awarded to his new employer, the GA Group, Inc. This violated both the one-year ban on contacting one's former City agency on non-ministerial matters and the lifetime ban on appearing before

the City on the same particular matter one worked on for the City. *COIB v. Egidio Paniccia*, COIB Case No. 99-511 (2000).

Superior-Subordinate

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*, COIB Case No. 95-45 (1998). In *COIB v. Marilyn Ross*, COIB Case No. 97-225 (1997), an assistant principal of a City school was fined \$1,000 for borrowing \$1,000 from a subordinate teacher in the first “three-way” disposition among the Conflicts of Interest Board, a City official, and the agency employing her, the Board of Education. *See also COIB v. Jason Turner*, COIB Case No. 99-200 (2000) and *COIB v. Mark Hoover*, COIB Case No. 99-200 (2000), in which the fines of \$6,500 and \$8,500, respectively, encompassed admissions concerning rental of apartments by a First Deputy Commissioner to his superior, the Commissioner, and to five HRA subordinates. And in *COIB v. Ivan Rosenberg*, COIB Case No. 99-358 (2000), a manager at the Department of Information Technology and Telecommunications settled a case in which he admitted purchasing a computer from his subordinate for \$1,350. The ethics law prohibits superiors and subordinates from entering into business transactions. The manager agreed to settle the case by paying a \$1,000 fine.

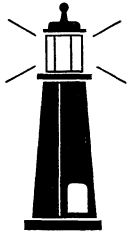
In a settlement between the New York City Department of Correction (“DOC”) and Ronald Jones, a DOC Program Specialist, Mr. Jones admitted violating the City Charter by selling t-shirts and promoting his side business (sales of essential oils and perfumes) to his City subordinates. Mr. Jones forfeited five vacation days. *In re Ronald Jones*, COIB Case No. 98-437 (2001).

The Board fined William Ubinas, then Superintendent of Community School District 1, \$500 for asking a subordinate to guarantee personally the lease for the Superintendent’s rental apartment in Manhattan. COIB Case No. 91-223 (1993).

Political Activities

The Board resolved a political activities claim in a three-way disposition among a school principal, the Conflicts of Interest Board, and the Board of Education in *COIB v. Serge Rene*, COIB Case No. 97-237 (2000). In *Rene*, the Conflicts of Interest Board fined a former principal of P.S. 72 \$2,500 for selling tickets to a political fundraiser to a subordinate teacher during school hours and on school grounds, in violation of Charter § 2604(b)(11)(c), which prohibits a superior from even requesting subordinates to make campaign contributions. This case exemplifies the Board's efforts to resolve cases in "three-way" settlements, among the City official facing departmental charges and Board claims of Charter violations, the Board, and the agency employing the official. Among the benefits of this approach is that it provides finality for the City official and the City employer, and fosters consistent oversight by the Board of agencies' treatment of conflicts of interest cases.

The Board fined Cultural Affairs Commissioner Schuyler Chapin \$500 for holding a political fundraiser in his home for Fran Reiter, then a candidate for Mayor, and inviting guests who had business dealings with his agency or the City. *COIB v. Schuyler Chapin*, COIB Case No. 99-500 (2000). The fine took into account that Commissioner Chapin believed he had sought legal advice and been advised incorrectly that the fundraiser was legal. Agency heads are not permitted to request any person to make political contributions to any candidate for elective office of the City.



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