

# the EthicalTimes

## Bless this *House*

### Unpacking the Revised Rules for Superior/Subordinate Financial Relationships

By Dan Iwrey

It's rare that an Ethical Times article qualifies as breaking news. However, this month, I am proud to introduce some exciting changes to the Rules of the Board. The Conflicts of Interest Board has a new rule to define explicitly what constitutes a "prohibited business or financial relationship between a superior and a subordinate." Once you've taken a moment to regain your composure, we'll examine a few scenarios to see this law in action. Ready? Here we go.

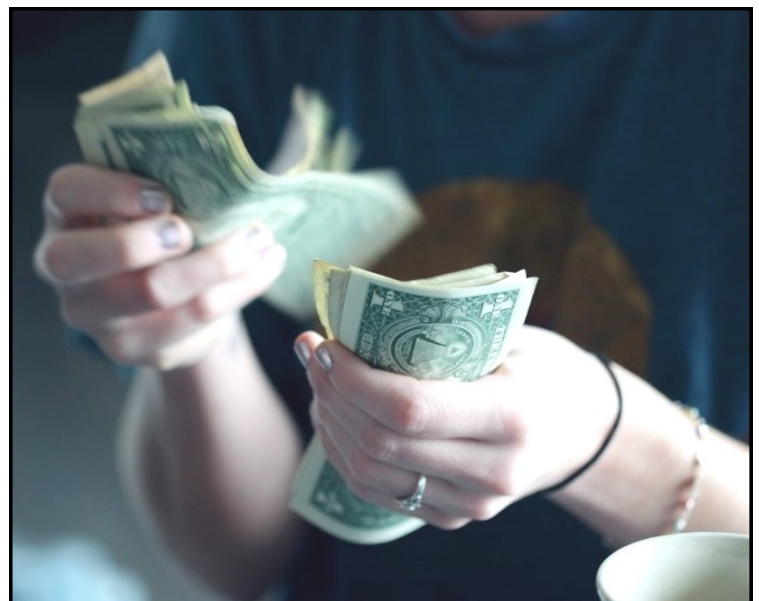
Imagine you are an elementary school teacher working for the Department of Education. You've been teaching happily at your school for five years, but city life is starting to bring you down. You head up to Mt. Vernon to fulfill your picket fence fantasy and find the home of your dreams. It's within your budget and close to a Metro-North station. Your commute would actually be very similar to the current owner's. Identical, in fact. That's because the current owner is your boss, the school's principal. It really *is* a small world. The brokers hammer out the details, and before long you and your family are nestled away far from the noise and grime of the big city. You pay a fair market price, and the principal is delighted to see

one of her brightest young teachers move in. She did not approach you about buying the house or coerce you into paying a higher price, so it does not appear that the principal has misused her position as your supervisor. Everyone seems happy here; how could this possibly be a violation?

Ethics laws exist to prevent official decisions from even appearing to be impacted by a public servant's personal interests. Principals must take official actions concerning the teachers they supervise. If a principal is engaged in a complex and long-term transaction with a teacher the principal manages, any official action toward that teacher will

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## FAST FACTS

- **Financial relationships between superiors and subordinates are, and have always been, prohibited by Chapter 68.**
- **Under a new Board Rule, sales less than \$25 are now explicitly excluded from the definition of a “financial relationship.”**
- **Carpools, coffee clubs, and other expenses related to one’s City job are permitted, so long as the costs and benefits are distributed equally.**
- **A financial relationship initiated by the superior would still constitute a misuse of position.**
- **Lottery pools, savings clubs, cohabitation, and attorney-client relationships are also prohibited.**

appear to be influenced by the principal’s personal interest. How might this play out in the context of your hypothetical dream home? Consider that, on average, home closings take between 6 and 8 weeks. Your principal will likely have to make official decisions, such as evaluations and approving

time sheets, during this period. How can she be seen as impartial if she stands to make hundreds of thousands of dollars from the person she’s evaluating? And even long after the sale is complete, complications may still arise. Let’s say there was an undisclosed issue with the plumbing and the principal is refusing to pay for the repairs. Any action taken towards you will appear to be inflected by this financial dispute. So if you suddenly find your classroom relocated to the supply closet, was this a justified supervisory action, or an unfair instance of personal retaliation? To prevent these sorts of issues and questions from arising, a supervisor selling a house to a subordinate is prohibited under Chapter 68.

Let’s alter this hypothetical just a bit. Instead of looking for a house, you’re looking for *House* Season 3 on DVD. So, you hit Craigslist and find a copy on sale for \$20, but the seller happens to be your boss. The question is: would selling a used DVD of *House* create the same conflicts as selling an actual house? If you answered no, gold star for you! A purchase like this is so unlikely to influence anyone’s official actions that treating it the same as a home purchase would be ridiculous. Therefore, the Board Rules now **explicitly allow the sale of property valued under \$25 between superiors and subordinates**. This *de minimis* transaction would not constitute a “financial relationship,” so print out those invites – it’s time for a *House* Party.

One more iteration: instead of selling a house or a DVD of *House*, your principal is trying to sell tickets to *House of Yes*, Bushwick’s “temple of expression” showcasing the finest in circus, cabaret, and burlesque.

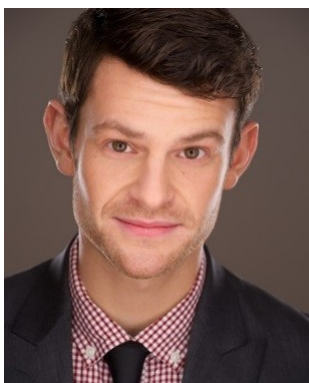


(She performs monthly with an abstract puppetry troupe and is responsible for selling 12 tickets per show at \$24 apiece.) The principal mentions the show at staff meetings and hands out flyers to teachers in the lunch room. Considering evaluations are coming up, you purchase a single ticket and cancel your weekend plans. Is this a prohibited financial relationship? No. Is this a violation? Yes. Even though this transaction falls under the \$25 threshold, the principal *misused her position* by trying to sell to her subordinates.

The rule also states that expenses related to public servants' City jobs such as carpooling and coffee clubs would not constitute prohibited financial relationships between superiors and subordinates, so long as the costs and benefits are distributed equitably among participants. Conversely, the new rule clarifies that lottery pools, savings clubs, cohabitation, and attorney-client relationships are all considered financial relationships under the law and are not permitted between superiors and subordinates.

In essence, these additions serve to codify the Board's longstanding practice and provide clearer guidance for City employees. So, is this life-changing news? Maybe. If you really want life-changing, I'm directing a nouveau burlesque piece at House of Yes next month. In the meantime, visit [nyc.gov/ethics](http://nyc.gov/ethics)

to learn more about Chapter 68, or call (212) 442-1400 to speak to an attorney for confidential legal advice.



Dan Iwrey is an Education & Engagement Specialist at the New York City Conflicts of Interest Board.

## Recent Enforcement Cases

**Misuse of City Resources & Position** As part of her City duties, the Chief Investigator for the Torts Division at the NYC Law Department regularly interacted with several high-ranking employees of the NYC Department of Housing Preservation and Development (HPD). Using her Law Department email account, she sent those high-ranking HPD employees twelve emails asking for assistance in addressing issues she was having with the board of directors of her HPD-administered co-op building, and two emails asking for help to move a friend to a new apartment administered through an HPD program. The Chief Investigator paid a \$1,100 fine to the Board. In determining the appropriate penalty, the Board took into consideration that, although she was seeking assistance from high-level City employees, the Chief Investigator was not a high-level employee herself.

**Misuse of City Position & Confidential Information** A Chief Deputy Counsel for the NYC Department of Education (DOE) was sued for legal malpractice by a former client she represented prior to her DOE employment. She misused her City position and disclosed confidential City information relating to her defense of the personal lawsuit. She:

- asked a DOE subordinate to provide her with claim documents the client had previously filed with the City;
- bypassed the process for requesting documents from the City; and
- disclosed two confidential City documents by including them as part of an exhibit to a filing in the lawsuit

The Chief Deputy Counsel paid a \$3,500 fine to the Board.

## Recent Enforcement Cases

**Misuse of City Position & Prohibited Superior-Subordinate Relationship.** A Manager of Customer Service & Relations at the NYC Department of Finance (DOF) asked for and received a \$400 loan from a DOF subordinate and promised to pay the money back in a week. Nearly a month later, the Manager told her subordinate that she could not repay the money for another month and asked to borrow more money. It was only months later, after the Manager became aware of an official investigation into her conduct, that she repaid the subordinate. In a joint disposition with the Board and DOF, the Manager agreed to pay a \$1,000 fine to the Board.

**Misuse of City Resources** A Forensic Mortuary Technician for the NYC Department of Health and Mental Hygiene—Office of Chief Medical Examiner (DOHMH-OCME) used the DOHMH-OCME insignia to create a counterfeit DOHMH-OCME parking placard and a counterfeit detective shield. On two occasions in 2017, he used these forgeries and a photocopy of his official DOHMH-OCME employee identification to park his personal vehicle on DOHMH-OCME property without authorization. In a joint disposition with the Board and DOHMH that resolved both his conflicts of interest violations and unrelated agency misconduct, the Forensic Mortuary Technician agreed to serve a thirty-day suspension, valued at approximately \$4,413, and a one-year probationary period.

**Misuse of City Resources & Position** The Chair of Manhattan Community Board 10 (CB 10)'s Economic Development Committee, who is also a lawyer, took actions in his official capacity at CB 10 that benefited a private legal client. A restaurant, which had re-

cently come before the Committee seeking to obtain a liquor license, subsequently hired the Committee Chair as its attorney to represent it in matters before the State Liquor Authority related to its liquor license application. The Committee Chair sent two letters on CB 10 letterhead to the State Liquor Authority in support of the restaurant's liquor license application. In sending the two letters, the Committee Chair took official actions that benefited his client and used a City resource—CB 10 letterhead—to do so. In determining the appropriate fine of \$2,000, the Board took into consideration the high level of accountability expected of attorneys; that CB 10 had voted to support the Restaurant's application before the Committee Chair began representing the restaurant; and that the letters the Committee Chair sent were not significantly different from letters he typically sent as Committee Chair.

**Confidential Information** Over the course of nearly three years, and without agency authorization, a Claim Specialist at the NYC Comptroller's Office accessed and reviewed 293 confidential documents related to personal injury claims filed by a law firm where his brother was employed as an attorney.

In a joint settlement with the Comptroller's Office and the Board, the Claim Specialist agreed to a penalty valued at approximately \$11,039, consisting of a 30-calendar-day suspension, forfeiture of 10 days of annual leave, and a fine equal to 15 days' pay. The Claim Specialist also agreed to irrevocably resign or retire from the Comptroller's Office no later than September 30, 2022, and serve a 12-month probationary dismissal period in the interim.



## Recent Enforcement Cases

**Prohibited Position; Prohibited Appearances; Misuse of City Time and Resources** A now-former Intelligence Research Manager for the NYC Police Department (NYPD) also worked as an independent contractor for Nevada Technical Associates (NTA). In November 2015, the Intelligence Research Manager learned that DOHMH planned to develop an emergency radiological response procedure for New York City. From December 2015 to April 2016, the Intelligence Research Manager repeatedly used NYPD time, email, and telephone to communicate with DOHMH in order to promote NTA and its proposed approach to this project. In May 2016, DOHMH awarded NTA the contract, valued at \$19,975. NTA subsequently subcontracted the project to the Intelligence Research Manager and paid him approximately \$17,000 for his work.

The Intelligence Research Manager continued to use NYPD email, telephone, and time to communicate with DOHMH as part of his work on the subcontract, including exchanging 141 emails using his NYPD email, most of which during NYPD work hours, engaging in teleconferencing using his NYPD phone, and attending multiple in-person meetings at DOHMH offices during his NYPD work hours.

The now-former Intelligence Research Manager paid a \$12,000 fine to the Board.

**Prohibited Appearances** In a joint settlement with the Board and NYC Department of Environmental Protection (DEP), a DEP Mechanical Engineer agreed to forfeit five days of annual leave, valued at approximately \$2,034, for communicating on two occasions with DEP personnel on behalf of a construction company where he moonlighted.

**Misuse of City Resources** Over the course of a year, a NYC Department of Correction (DOC) Assistant Chief used his assigned DOC take-home vehicle, intended only for his commute, for nine purely personal trips. In a joint resolution with the Board and DOC, the Assistant Chief agreed to pay a \$2,000 fine to the Board, forfeit four days of compensatory time (worth approximately \$3,027.16), and reimburse DOC \$478.87 for the mileage incurred during his personal travel.

**Prohibited Appearances** The Board issued a public warning letter to a now-former appointed member of the NYC Environmental Control Board (ECB) in connection with her appearances before the NYC Office of Administrative Trials and Hearings (OATH). As ECB is a division of OATH, the now-former ECB member violated the law when, on behalf of a real estate holding company she owns, she submitted two online hearing forms and filed an appeal at OATH to dispute sanitation summonses. After being informed that such appearances presented a conflict of interest, she resigned from ECB.

In deciding to issue a public warning letter rather than impose a fine, the Board took into account the ECB member's resignation and that, prior to becoming an ECB member, and again before appearing at OATH, she inquired and was advised by attorneys at OATH that she was permitted to appear before OATH as a "private citizen." In this public warning letter, the Board clarifies that appearing before a City agency as a "private citizen" is not the same as appearing before a City agency on behalf of a corporation in which one has a financial interest.

## Recent Enforcement Cases

**Misuse of City Resources** An Emergency Medical Services Supervisor at the NYC Fire Department (FDNY) left his post with his assigned FDNY vehicle and traveled to his home in Long Island. From there, he picked up and transported his child to school, and returned to his post in Queens. In a joint disposition with the Board and FDNY, the Supervisor agreed to a four-day pay fine, valued at \$1,235.64.

**Misuse of City Time, Resources, & Personnel, Misuse of City Position, & Prohibited Appearance as an Attorney** At a time when she was employed by the DOE, a now-former Supervising Attorney maintained a private law practice. In pursuing her private legal work, she violated the conflicts of interest law in the following ways:

- she used her DOE computer to access, modify, maintain, save, or store 30 documents related to her private law practice;
- she used her DOE email account to send 24 emails related to her private law practice, 12 of which were sent during her DOE work hours;
- she had a subordinate DOE employee notarize documents for use in a private client's divorce proceeding; and
- she represented a defendant in a Bronx criminal case.

DOE suspended the now-former Supervising Attorney for 30 days, which had an approximate value of \$9,858, for misusing City time and City resources for her private practice and misusing her City position by having a subordinate perform work for her private practice. In a settlement with the now-

former Supervising Attorney, the Board accepted DOE's penalty as sufficient to resolve these violations. However, the Board determined that an additional penalty of a \$1,500 fine was appropriate for the now-former Supervising Attorney's appearance on a Bronx County criminal case.

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

### Congratulations!

To the winner of our recent Public Service Puzzler, **Bernard Braun** of the Law Department.

This month, find the hidden word inside the word search in [Wordception](#).

Submissions are due by Friday, May 10<sup>th</sup> (deadline extended!).



### Schedule a Chapter 68 Class

COIB's Education & Engagement Unit can arrange a class in Chapter 68 for you and your staff

Contact Gavin Kendall at [kendall@coib.nyc.gov](mailto:kendall@coib.nyc.gov)

**Phone: (212) 442-1400**

**Fax: (212) 437-0705**



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