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THE ETHICAL TIMES

A publication of the New York City Conflicts of Interest Board

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Post-Employment

If you are thinking about leaving City service, be aware that the Conflicts of Interest Law sets forth a number of restrictions, covering both seeking a job while working for the City and the kinds of business you can pursue with the City after you leave City service.

As a City employee, you may neither seek a non-City job with anyone with whom you are dealing directly in your City job nor accept such a job if it is offered. The City's Conflicts of Interest Law prohibits a public servant from actively seeking a position or negotiating for a position with a firm while the public servant is involved with that firm as a City employee. If you sign forms authorizing payments from your agency to a certain vendor, for example, you cannot send your resume to that vendor or speak to one of the vendor's employees about working there. The Conflicts of Interest Board (the "Board") fined a former project manager \$1,000 for sending his resume to a City contractor while he was working on that contractor's project. One way to avoid violating the law is to ask your supervisor to remove you from work that involves the vendor whose contracts you administer. If your supervisor agrees with your request, it's fine to contact that vendor about job hunting. If your supervisor cannot or will not reassign you, you must wait until your current assignment ends before approaching that vendor about a job. (You could also quit and go job hunting, but that approach has some obvious drawbacks.)

The following rules apply to public servants who have left City service. The intent of the rules is not to handicap City employees who have switched to the private sector, but to prevent public servants from exploiting confidential City information and misusing their City agency contacts to advance themselves or to give their new employers an unfair advantage.

Rule 1. You must always preserve confidentiality after leaving City service.

Never disclose confidential information. Never use confidential information for your own advantage – or for your new employer's benefit. What is confidential information? Any information that a member of the general public cannot obtain.

Rule 2. You may not appear before your former City agency on business matters for one year after you leave.

This prohibits former City employees from "appearing" before their former City agency by telephoning, writing, faxing, emailing, attending meetings, or having any other contact for their new employer on matters that require non-ministerial decision making at the City agency. The 12-month bar on appearing before your former City agency begins the day that you leave City service. The Board fined a former Deputy Agency Chief Contracting Officer ("ACCO") \$1,500 for violating the one-year bar and other post-employment laws when, less than two weeks after the Deputy ACCO left City service, he contacted his former supervisor to ask if a contract had been awarded to his new employer.

Rule 3. You cannot work on a matter or project that you were directly involved in as a public servant.

There is a lifetime post-employment ban that prevents a former public servant from appearing before any City agency—not just the public servant's former agency—on the same matter that he or she had participated in as a public servant. This applies whether or not the former public servant gets paid for that appearance. Even if the work for the new employer is done "behind the scenes," former public servants are prohibited from engaging in any paid activity involving that matter. This rule relates to conduct where the former public servant's involvement in a decision, approval, investigation, or similar matter was "personal and substantial." A former City engineer paid a \$3,000 fine for working for a private firm, after leaving City service, on the renovation of a courthouse whose renovation the engineer had overseen when he was on the City payroll. Such conduct as typing a contract or checking to see that an applicant had signed and dated a permit application is not considered "personal and substantial" participation.

Exceptions

There are three exceptions to the job-hunting rule, one-year bar, and lifetime post-employment ban. First, the rules don't apply if you are acting on a min-

isterial matter, for example, if you are just picking up papers from the receptionist at your former City agency. Second, these rules don't apply if you are going to work for another government agency. Third, in certain cases, the Board will issue waivers granting exceptions to these rules, but waivers for post-employment activities are rather rare and hard to get. Before you can apply for a Board waiver, you must get permission from the head of your former City agency.

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For more information, call the Conflicts of Interest Board at 212-442-1400 and ask for the attorney of the day. You can also email us through our website (<http://www.nyc.gov/ethics>) by clicking on "Contact COIB." All calls are confidential, and you may contact us anonymously. □

—Susan Bronson,
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Post-Employment Recap:

- Don't seek a non-City job w/ anyone with whom you're dealing in your City job.
- Don't accept a non-City job offered to you by anyone you're dealing with in your City job.
- You must preserve confidentiality after leaving City service.
- Don't appear before your former agency on business matters within one year of leaving City service, except in a ministerial capacity.
- Don't ever work on a matter that you were directly and substantially involved in while in City service.
- If your new job is another government job, these last two restrictions do not apply. □

Recent Enforcement Cases

- The Board fined a New York City Fire Department ("FDNY") Fire Prevention Inspector \$4,000 for moonlighting with a hotel that was inspected by the FDNY, for inspecting, in his official capacity, his non-City employer, and for administering on-site examinations for his non-City employer's fire safety directors.

- The Board concluded a settlement with a former Department of Education ("DOE") Assistant Principal ("AP"). The AP admitted that, while he was a DOE employee, he moonlighted as a tax preparer and performed, for compensation, tax preparation services for at least three of his DOE subordinates. The AP also admitted that he gave the school's fax number to his private clients in order for them to send their tax information to him. The Board fined him \$2,800. □

Recent Advisory Opinion

2005-3: Community Boards Voting

Community board members will not violate Chapter 68 if they vote at the community board concerning the rezoning of a large area in which they own homes, provided that they disclose the interest on the minutes of the community board and to the Board. □

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