

CITY OF NEW YORK
CONFLICTS OF INTEREST BOARD

Notice of Adoption of Amendment to Rule Defining Conduct Prohibited by City Charter
§ 2604(b)(2)

NOTICE IS HEREBY GIVEN THAT, pursuant to the authority vested in the Conflicts of Interest Board by Sections 2603(a) and 2606(d) of the New York City Charter, the Conflicts of Interest Board has adopted an amendment to its rule on conduct prohibited by City Charter § 2604(b)(2), which rule is found at Section 1-13(d) of Title 53 of the Rules of the City of New York. The text of the amendment is set forth below.

Section 1-13. Conduct Prohibited by City Charter § 2604(b) (2).

[Subdivisions (a)-(c) and (e) remain unchanged.]

(d) It shall be a violation of City Charter § 2604(b) (2) for any public servant to intentionally or knowingly:

(1) solicit, request, command, importune, aid, induce or cause another public servant to engage in conduct that violates any provision of City Charter § 2604; or

(2) agree with one or more persons to engage in or cause the performance of conduct that violates any provision of City Charter § 2604.

STATUTORY AUTHORITY: Section 2603(a) and 2606(d) of the New York City Charter.

STATEMENT OF BASIS OF PURPOSE

New York City Charter § 2604(b) (2) provides:

No public servant shall engage in any business, transaction or private employment, or have any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties.

Rule 1-13(d) currently provides:

It shall be a violation of City Charter § 2604(b) (2) for any public servant to intentionally or knowingly induce or cause another public servant to engage in conduct that violates any provision of City Charter § 2604 (emphasis added).

The language “induce or cause” has proven to be too narrow in scope and does not capture all of the conduct that could be subject to accessorial liability under the Penal Law. Accordingly, the amendment would modify the language of the rule to be parallel with that in section 20.20 of the Penal Law, as specified in the proposed paragraph (1) above. In addition, the current rule does not provide for liability for those persons who engaged in a conspiracy with others to violate the conflicts of interest law. The proposed paragraph (2) would adopt the Penal Law definition of conspiracy in the sixth degree found in Penal Law § 105.00 to specify additional conduct that would form the basis for liability for the acts of another under this provision.

A public hearing on these rules was held on November 28, 2006, pursuant to notice published in the City Record on October 19, 2006, and no one attended to provide testimony or comment, nor were comments received prior thereto.