INTRODUCTION

by

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The "code of ethics" governing the more than 300,000 officers and employees of the City of New York is set forth in Chapter 68 ("Conflicts of Interest") of the New York City Charter. Chapter 68 provides for an independent agency, the New York City Conflicts of Interest Board, to interpret and enforce these ethics rules, whose purpose, in the words of the preamble, is "to preserve the trust placed in the public servants of the city, to promote public confidence in government, to protect the integrity of government decision-making and to enhance government efficiency."

New York City's ethics rules have their roots in the common law and in early legislation, going back at least to the Laws of 1830, Chapter 22, Section 11, which prohibited members of the Board of Aldermen and Board of Assistants from having any direct or indirect interest in any contract, the expense or consideration of which was to be paid under an ordinance of the Common Council. The City's ethics rules took their modern form in 1959 when, as a local law and part of the City's Administrative Code, a code of ethics was adopted and a Board of Ethics was established. The Board of Ethics had five members: the City's Corporation Counsel, its Director of Personnel, and three public members appointed by the Mayor. In response to requests from individual public servants, the Board of Ethics issued advisory opinions interpreting the provisions of the ethics code.

That structure was continued with minor changes in 1975 when, as a result of a charter revision process, the ethics provisions of Administrative Code became a new Chapter 68 ("Ethics") of the New York City Charter. The current structure was adopted, and major changes occurred, in the 1989 Charter revision process, which, in addition to such changes as abolishing the Board of Estimate, created a new, independent City agency, the Conflicts of Interest Board. The Board has five members, appointed to staggered six-year terms by the Mayor, with the advice and consent of the City Council. Board members may not be public employees in any jurisdiction, may not hold political party office, and may not appear as lobbyists before the City. In addition to the responsibility of responding to requests for advice on Chapter 68 from current and former public servants, the Conflicts of Interest Board has several significant powers and responsibilities that the Board of Ethics did not have, including the power to enforce Chapter 68 by imposing civil fines, the power to promulgate rules, the duty to provide training on the ethics laws to all City officials and employees, and the responsibility for receiving and reviewing the annual financial disclosure reports required of certain public servants, candidates for public office, and officials and employees of local public authorities (currently over 9,500 reports annually).

In 2006, in the first change to its authority since 1989, the Board was charged with the administration and enforcement of a newly enacted prohibition on lobbyists making gifts to public

servants. Local Law 16 of 2006 prohibited lobbyists from making gifts to public servants of the City and provided for civil fines for violations of the law. As directed in the legislation, the Board promulgated rules interpreting the law's provisions.

In 2010, on the recommendation of the Charter Revision Commission, the voters approved amendments to Chapter 68 (i) making it mandatory that all public servants receive training in Chapter 68; (ii) increasing the maximum fine per violation from $10,000 to $25,000; and (iii) giving the Board the authority to recover ill-gotten gains received by a public servant as a result of his or her violation of Chapter 68, that is, adding a disgorgement remedy.[1]

With Local Law 181 of 2016, the Board was charged with administering and enforcing legislation requiring not-for-profit entities affiliated with elected officials or their agents to report annually certain contributions and limiting permissible contributions to certain of those entities; this law does not become effective until January 1, 2018.

In interpreting Chapter 68, the Conflicts of Interest Board, like its predecessor the Board of Ethics, issues advisory opinions. The Board of Ethics issued 688 such opinions during its 30-year tenure, numbered consecutively from 1 to 688. Since 1989, the Conflicts of Interest Board has issued 246 advisory opinions, starting with a new number each year (*e.g.*, 2005-1, 2005-2). The Conflicts of Interest Board in its opinions does, from time to time, cite and sometimes adopt opinions of the Board of Ethics as authoritative interpretations of the current provisions of Chapter 68. Absent such adoption, the Board of Ethics opinions do not necessarily have any interpretative value in construing the current law. In addition, as a result of having enforcement authority, the Board from 1989 through 2016 received more than 7,100 complaints of Chapter 68 violations and issued public dispositions in 1,084 matters, in 878 of which fines were imposed. These dispositions, which unlike the advisory opinions do identify the public servant in question, also serve as authoritative interpretations of Chapter 68. All of the Board's formal advisory opinions and public enforcement dispositions may be found on the CityAdmin Online Library hosted by New York Law School (http://www.nyls.edu/cityadmin).

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[1] For a more extensive discussion of the history of the New York City Conflicts of Interest Law and Board, *see* Mark Davies, Steven G. Leventhal, & Thomas J. Mullaney, *An Abbreviated History of Government Ethics Laws – Part II*, NYSBA MUNICIPAL LAWYER, Vol. 27, No. 3, at 49 (Fall 2013), reproduced at http://on.nyc.gov/1gSdxTW.

COMMUNITY BOARDS

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A. Introduction

Community board members are chosen because of their professional and personal involvement with, and commitment to, the communities in which they live and work. They often have associations with individuals, businesses, or organizations with matters before their community boards. To protect the integrity of community boards' decision-making processes and to ensure that community board members do not use their positions as public servants to obtain a private advantage for any individual, business, or organization with whom or with which they are associated, Chapter 68 of the City Charter contains specific provisions relating to the official conduct of community board members. In addition, community board members are subject to many of the same restrictions that the conflicts of interest law imposes on public servants generally.

In Advisory Opinion Number 2004-1, however, the Board determined that, while community board members are subject to the provisions of Chapter 68, the so-called "public members" of community board committees are *not* public servants within the meaning of the Charter and are therefore not subject to the provisions of the City's conflicts of interest law.

B. Participating in Discussions and Voting

A community board member is specifically permitted to have an interest in a firm that may be affected by an action on a matter before the community board, but the member should disclose the interest to his or her board.[1] A community board member may not, however, vote on any matter before his or her community board that could result in a personal and direct economic gain to the community board member or to any person or firm associated with the community board member.[2] "Associated" is defined in Charter § 2601(5) to include the public servant's spouse, domestic partner, child, parent, or sibling; a person with whom the public servant has a business or other financial relationship; and each firm in which the public servant has a present or potential interest.

In Advisory Opinion Number 91-3, the Board determined that, while a community board member could not vote on matters before the community board in which he or she had a direct economic interest or that concerned a City agency where he or she was employed, the member could participate in discussions of such matters. Before participating, however, the member is required to disclose to the other members of the community board the nature and extent of his or her private interest in the matter. This Opinion expanded upon the guidelines originally provided in Opinion

Number 305 of the Board of Ethics, the Conflicts of Interest Board's predecessor agency.

In Advisory Opinion Number 93-3, the Board determined that community board members could vote on budget priorities that affected the local development and public benefit corporations that they served as unpaid directors, provided that such votes would not result in a personal and direct economic gain to the community board member or to a person or firm associated with the member.

In a summary judgment based upon stipulated facts, the Board fined a community board member $4,000 for voting on a matter involving real property in which he and his siblings held an ownership interest. Because a vote expressing the community board's preference for land use "may result" in a personal and direct economic gain to the community board member, the community board member with an interest in the property may not participate in the vote.[3] More recently, the Board fined a community board member $1,000 for voting in favor of a proposal submitted by a developer that provided 25% of the annual budget of the not-for-profit organization that the member served as its paid president. In his settlement agreement with the Board, the member acknowledged that he was "associated" with the developer within the meaning of Chapter 68 and that his vote therefore violated the conflicts of interest law.[4]

In Advisory Opinion Number 2003-2, the Board advised that a community board member who owned a business in the community district with a liquor license *could* vote on matters concerning liquor license applications of other businesses in the district, but the member could not vote on his or her *own* liquor license application or on those of people with whom he or she is associated.

In Advisory Opinion Number 2005-3, faced with the proposed down-zoning of a large area in a community district, the Board determined that it would not violate Chapter 68 for a community board member who owns a home in that area to vote on the rezoning application, provided that the member discloses his or her interest on the record of the community board and to the Board.

In Advisory Opinion Number 2008-2, the Board considered several scenarios involving matters before a community board either involving an organization, typically a not-for-profit organization, with which a board member has an affiliation or involving some person affiliated with such an organization. In the first scenario, the Board advised that, if the community board member were an employee or board member of an organization that might receive a direct financial benefit from a matter before the community board, the member could not vote on the matter and could not chair any meeting considering the matter. If, however, the vote would merely advance a position advocated by the organization, but would not financially impact the organization, the member could participate in voting. In the second scenario, the Board advised that a community board member who was the executive director of an organization could not vote on a matter that might provide a direct financial benefit to a member of the board of directors of the organization and likewise could not chair a meeting considering that matter. In contrast, the Board advised that a community board member who was a lower-ranking employee of the organization could vote on a matter benefitting a member of the organization's board of directors, provided that the board of directors was not

involved in determining the terms and conditions of the member's employment. In the third scenario, the Board advised that, where the matter before the community board involved an organization that employed a spouse, sibling, or other person "associated" with the community board member, the member could not vote on the matter (or chair a meeting considering the matter) if it appeared reasonably likely that the *associated party* would receive a direct financial benefit from the matter before the community board. The Board noted that the higher ranking the associated party, the smaller the organization, or the greater the nexus between the work of the associated party at the organization and the matter before the community board, the more likely voting will be impermissible. In the fourth scenario, the Board advised that a community board member who was an employee of a not-for-profit organization could not vote on, or chair a meeting concerning, a matter that might provide a direct financial benefit to a donor of such a significant part of the revenues of the not-for-profit that those funds effectively underwrote the salary of the community board member. In contrast, where the community board member was an unpaid member of the board of directors of the organization, the member could vote on matters at the community board that might benefit even major funders of the organization. The Board cautioned, however, that in no case may a community board member who is either an employee or a board member of a not-for-profit organization solicit contributions for that organization from any person or firm with a matter before, or about to be before, the community board. The Board concluded by repeating the holding of Advisory Opinion Number 91-3, namely, that, even where a community board member is barred from voting on a matter, the member is permitted to participate in the community board's discussion of the matter, provided that the member first discloses his or her disqualifying interest.

C. Doing Business with the Community Board

Although Charter § 2604(a)(1)(a) permits a community board member to have an interest in a firm that may be affected by an action on a matter before the community board, a community board member may not have an interest in a firm directly engaged in business dealings with the community board itself.[5] An interest may be either an ownership interest in a firm or a position with a firm.[6] Ownership interests are discussed in more depth in the chapter on Outside Activities. Note that *full-time* community board *employees* are prohibited from having an interest in any firm doing business with *any* City agency, not just the community board for which they work. Orders and waivers are sometimes granted by the Conflicts of Interest Board permitting an otherwise prohibited interest.[7] Waivers are discussed in more depth in the chapter on Outside Activities.

For example, a member of a community board is also the owner of Print Fast, a printing company. The community board needs 1,000 pamphlets printed for an upcoming event and would like to contract with Print Fast to do the work. Print Fast has a reputation in the community for fast service at fair prices. If Print Fast takes on the job, the community board member would have violated Charter § 2604(a)(1)(a) because Print Fast, a company in which he has an ownership interest, would be engaged in business dealings with his community board.

In Advisory Opinion Number 92-31, a community board member who also had a private law

practice requested an opinion as to whether she could be retained by the community board to represent it in connection with public improvement projects planned for an area served by the community board. The attorney had been a member of the community board for 14 years and had provided voluntary legal services to the community board in the past. The Board determined that the proposed engagement would violate Chapter 68 because, among other things, it could give rise to an appearance that the community board was rewarding a long-standing member with a private consulting contract instead of seeking qualified outside counsel to perform the work.

D. Representing Private Clients Before the Community Board

In addition to being prohibited from doing business with their community boards, community board members are also prohibited from representing private clients for compensation before their community boards or from appearing anywhere, directly or indirectly, in matters involving the community board.[8] "Appear" means to "make any communication, for compensation, other than those involving ministerial matters."[9] This includes attending meetings, making telephone calls, writing letters, and engaging in similar types of activities. A "ministerial matter" means "an administrative act, including the issuance of a license, permit or other permission by the city, that is carried out in a prescribed manner and that does not involve substantial personal discretion."[10] Thus, in 2016 the Board issued a public warning letter to a member of Manhattan Community Board 2 ("CB2") who appeared as an architect on behalf of a paying client before a CB2 committee. In deciding to issue a public warning letter rather than impose a fine, the Board considered, among other things, that prior to appearing before the committee the member was incorrectly advised by the CB2 Chair that she could make that appearance so long as she recused herself from voting on the matter, which she did.[11]

In Advisory Opinion Number 96-4, the Board not only confirmed that community board members may not represent private clients before their community boards but also advised that neither their partners nor the employees of their private firms may represent private clients before their community boards or community board committees. For example, a community board member is a partner in a law firm. One of her clients has applied for a variance on his property and has asked the community board member to represent him before the community board in this matter. The community board member declines, stating that it would violate Chapter 68 to appear before her community board on behalf of a private client. However, the community board member asks one of her partners in her law firm to represent the client before the community board. This also poses a problem under the conflicts of interest law because the community board member is so closely associated with the firm that her firm's appearance before the board would be considered an indirect appearance by the member herself. In this case, neither the community board member nor any member or employee of her private law firm may represent private clients before her community board, absent a waiver from the Conflicts of Interest Board under Charter § 2604(e).

In Advisory Opinion Number 98-9, the Board granted such a waiver, permitting a community board member's private law firm to appear before the community board, provided that

the community board member recused himself from any community board discussions concerning the firm's business before the community board and further recused himself from working on the matter for the firm. In the same Opinion, the Board granted a waiver to a community board member who is also an architect, permitting him to appear before other City agencies and a Borough President's Office in a matter pending before his community board, conditioned on the same recusal requirements. The Conflicts of Interest Board further held that, in applying for waivers, a community board member must certify to the Board that his or her proposed conduct is not in conflict with the purposes and interests of the City and must also supply the Board with a complete set of facts describing the circumstances of his or her representation or his or her firm's representation of the client. The Board makes its determination on a case-by-case basis as to whether a waiver is appropriate, given the particular facts and circumstances of each case.

E. Chairing a Community Board or Chairing or Serving on Committees

1. Chairing Community Boards

In Advisory Opinion Number 96-8, the Board determined that a community board chair may have interests in firms or organizations that regularly have matters before the community board, provided that the chair steps down at meetings involving discussions or votes on matters involving such private interests and that the chair refrains from making any decisions or taking any other official actions on matters involving his or her private interests. The chair may otherwise continue to participate at community board meetings, with proper disclosure, and discuss matters involving his or her private interests to the same extent as other community board members.

2. Chairing Committees

As a result of their private interests or employment, community board members are prohibited from chairing certain committees of their community boards. In Advisory Opinion Number 93-2, a community board member who was also a local school board member requested an opinion as to whether he could chair the Youth Services Committee of his community board, which would vote on matters that would also be voted upon by the school board. The Board cited several prior opinions of its predecessor agency, the Board of Ethics, and agreed with the view expressed in those opinions that it would be "unseemly" and "improper" for a community board member who was also an employee of a City agency to cast a vote that might be in opposition to a position taken by his or her City agency. In addition, the Board stated that "the same concerns which arise when a community board member votes on matters involving his or her other City agency also arise when a community board member chairs a committee which votes on matters which have been or may be considered by him or her in another official capacity on behalf of his or her other City agency."[12] The Board noted that this was true because a committee chair could greatly influence a committee by controlling the agenda, recognizing speakers, and making rulings. Thus, the Board determined that it would be a violation of Chapter 68 for a community board member who was also a member of a local school board to chair the Youth Services Committee of his community board. The community board member could, however, participate in discussions of matters that involved the

school board, provided that, before participating, he disclosed the nature and extent of his interest in the matters as a member of the school board. The Board reaffirmed this principle in 2016 in a joint disposition with the New York City Department of Transportation ("DOT") and a DOT Administrative Manager who agreed to a ten-day suspension, which had the approximate value of $2,000, for serving as co-chair of her community board's Municipal Services Committee, which regularly considered matters brought before it by DOT.[13]

In Advisory Opinion Number 2010-1, the Board considered the case of a person serving both on her local community board and on the community education council ("CEC") of her local school district. In that Opinion, the Board distinguished Advisory Opinion Number 93-2, noting that the powers of CECs are considerably less than those of their predecessor body, the community school board. Since the powers of the two bodies on which she served were largely advisory, the Board determined that a person who concurrently serves on a CEC and on a community board could chair a committee at one entity that would regularly consider matters that had been or might be considered at the other, and likewise could vote on a matter at one entity that had been or might be considered at the other.

In Advisory Opinion Number 95-18, the Board was asked to clarify the circumstances under which a community board member may chair a committee that considers matters related to the community board member's private interests. In this Opinion, the Board explained that the restrictions imposed by Chapter 68 on community board members are intended to "insure that actions taken by a community board are not tainted by questions of self-interest or divided loyalty on the part of any member." Since there is a possibility that a community board member could use or appear to use his or her position as a committee chair for the private advantage of a firm in which the community board member has an interest, to avoid potential conflicts, the Board determined that a community board member may not chair a committee if that committee is likely to have matters before it that concern the community board member's private interests or employment.

In Advisory Opinion Number 2003-2, the Board advised that a community board member with an interest in a licensed liquor facility in the community district could not serve as the chair of the community board committee responsible for considering liquor license applications.

A community board member *may* chair a committee if that committee is unlikely to have matters before it concerning the member's private interests. However, if such matters come before the community board, then, as the Board advised in Advisory Opinion Number 2008-2, discussed above in Section B, the community board member may not serve as chair during any meeting where those matters are discussed.

3. Serving on Committees

The concerns about the ability of a committee chair to greatly influence the agenda of committee meetings are not present where a community board member merely serves as a member of a committee. Thus, a community board member is permitted to serve as a member of committees likely to have matters before them that concern the member's private interests and employment. However, as noted above, if community board members wish to participate in discussions about

matters that concern their private interests or employment, they must disclose to the members of the committee the nature and extent of the private interests.

F. Fundraising

Faced with budget restrictions, community boards, like many other City agencies, find it necessary to reach out to private individuals and organizations to gain financial support for their programs and initiatives. Generally, community boards may engage in fundraising, provided that they act in accordance with certain conditions that have been imposed by the Board.

In Advisory Opinion Number 95-27, the Board determined that a community board could solicit and accept donations from individuals and firms. The community board, however, should not solicit or accept donations from individuals, firms, or other organizations that have matters pending before the community board, or that have matters where the community board's involvement is imminent, or where a fundraising solicitation would be likely to be perceived as a promise of special treatment in return for a contribution. In addition, such fundraising efforts must comply with the conditions set forth in Advisory Opinion Number 92-21, which was then the Board's general opinion on the acceptance of donations by City agencies. In light of these rules, donors should be informed that giving donations or gifts will not affect the bidding process or result in special treatment from the community board; solicitation should be done by general appeal; specific entities should not be targeted; and "donation" staff should be separate from those officials who make decisions on agency contracts.

More recently, in Advisory Opinion Number 2003-4, the Board set forth its determination on fundraising for *all* City agencies, including community boards. That Opinion held, consistent with much of Opinion Number 95-27, that, subject to certain safeguards, elected officials, and indeed all public servants, could solicit gifts to the City and to not-for-profit corporations closely affiliated with City agencies and offices, provided that fundraising had been "pre-cleared" by the Board. The safeguards imposed on such "fundraising for the City" are the following: (1) a City official may not engage in a direct, targeted solicitation of any prospective donor who the official knows or should know has a specific matter either currently pending or about to be pending before the City official or his or her agency and where it is within the legal authority or duties of the soliciting official to make, affect, or direct the outcome of the matter; (2) all solicitations must make clear that the donor will receive no special access to City officials or preferential treatment as a result of a donation; and (3) each City agency or office must twice a year file a public report with the Board setting forth certain information concerning the gifts received by the agency during the reporting period, including the identity of the donor and the nature and approximate value of the gift received.

G. Political Activities

Community board members generally may engage in political activities. They must, however, abide by the prohibitions contained in Chapter 68, which are designed to prevent public servants from using their official City positions to promote their private political interests. Community board members thus may not coerce any public servant to engage in political activities or request any subordinate public servant—which, for community board members, would include the employees of the community board (*see* Advisory Opinion Number 2004-3) —to participate in a political campaign.[14] In addition, community board members may not coerce anyone to make a political contribution or even request a subordinate public servant to make a political contribution.[15] In Advisory Opinion Number 91-12, however, the Board determined that community board chairs and district managers were *not* public servants "charged with substantial policy discretion" and hence were not subject to additional restrictions on political activities applicable to certain high-ranking City officials.[16] Political activities are discussed in more depth in the chapter of that name.

H. Restrictions on Who May be Appointed to Community Boards

In Advisory Opinion Number 93-21, the Board held that a Member of the City Council could not nominate a close family member to a community board. The Board reasoned that community board positions hold "a certain degree of power and prestige" so that appointment to a community board would confer an "advantage" on the Member's relative, in violation of Charter § 2604(b)(3). The Board also noted that Charter § 1135 prohibits an employee of a City Council Member or a Borough President from being appointed to a community board to which the Borough President makes appointments or to which the Council Member makes recommendations.

In Advisory Opinion Number 2003-3, the Board advised that a Council Member could nominate the *spouse* of a member of his or her staff for membership on a community board, provided that the Council staff member did not participate in the nomination process. In the same Opinion, however, the Board ruled that it would violate Chapter 68 for a member of a community board to be employed in the office of a Council Member who has appointment power to that community board.

In Advisory Opinion Number 2004-3, in a ruling that affects both community board members and the employees of community boards, the Board determined that community board members are the "superiors" of the employees of the community board for the purposes of Chapter 68 and accordingly that it would violate Chapter 68 for anyone "associated" with a community board member, including the member's spouse, domestic partner, parents, children, and siblings, to serve as staff to that member's community board. The Board also determined that it would violate Chapter 68 for any other person with whom a board member has a financial relationship to serve as a staff member to that community board.

I. Complying Generally with Chapter 68

Community board members and their staffs are subject to the same restrictions that Chapter 68 imposes on all other public servants, except as noted above. Thus, in 2007, the Board fined a member of a community board $1,000 for accepting a gift of two mattress and box spring sets from a hotel owner doing business with the City.[17]

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[1] Charter § 2604(a)(1)(a).
[2] Charter § 2604(b)(1)(b).
[3] *COIB v. Capetanakis*, COIB Case No. 1999-157 (2001).
[4] *COIB v. Bergman*, COIB Case No. 2003-153a (2007).
[5] Charter § 2604(a)(1)(a).
[6] Charter §§ 2601(12), (16), (18).
[7] Charter §§ 2604(a)(3), (a)(4), (e).
[8] Charter § 2604(b)(6).
[9] Charter § 2601(4).
[10] Charter § 2601(15).
[11] *COIB v. Brandt*, COIB Case No. 2015-551 (2016).
[12] Advisory Opinion Number 92-3 at 5.
[13] *COIB v. Lawrence*, COIB Case No. 2016-018 (2016).
[14] Charter § 2604(b)(9).
[15] Charter § 2604(b)(11).
[16] Charter §§ 2604(b)(12), (b)(15).
[17] *COIB v. Russell*, COIB Case No. 2006-423a (2007).

GIFTS AND HONORARIA

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A. Introduction

Public servants sometimes receive items of value or compensation from private individuals who or entities that do business with the City. In many cases these "gifts and honoraria" create a conflict of interest with respect to the public servant's performance of his or her official duties. As a result, guidelines have been established to assist public servants in identifying which gifts and honoraria may be accepted. This Chapter discusses the applicable sections of Chapter 68 of the New York City Charter, the Conflicts of Interest Board's Valuable Gift Rule, and the City's honoraria guidelines, plus relevant advisory opinions and enforcement cases.

B. Prohibited Gifts

1. What is a Gift?

Charter § 2604(b)(5) provides that no public servant shall accept any valuable gift, as defined in the Board's Rules, from a person who or firm that the public servant knows is engaged in, or intends to become engaged in, business dealings with the City, *except* gifts that are customary on family or social occasions. If a public servant receives a prohibited gift, he or she must return the gift to the donor if possible and, whether or not the gift is returned, report receipt of the gift to the Inspector General at the New York City Department of Investigation assigned to the public servant's agency; if return of the gift is not possible, the Inspector General shall determine the appropriate disposition of the gift.

"Valuable gift" is defined in Board Rules § 1-01—also known as the "Valuable Gift Rule"—as any gift to a public servant with a value of $50 or more in the form of money, service, loan, travel, entertainment, hospitality, thing, or promise, or in any other form.[1] In Advisory Opinion Number 96-3, the Board held that a public servant may not avoid the restrictions of the Valuable Gift Rule by accepting a gift worth more than $50 and then paying the donor the difference between the actual value of the gift and $50. Thus, a public servant may not accept a gift over $50, even if the public servant pays for the portion of the gift that exceeds $50.

In 2007, the Board imposed a $6,500 fine on a former Assistant Commissioner of Medical Affairs for the New York City Fire Department ("FDNY") for, among other things, accepting gifts from a firm whose business dealings with the FDNY he evaluated. The gifts included reimbursement of travel expenses, dinners, and tickets to a Broadway show.[2] In 2013, the Board

reached a settlement with the former Executive Director of Coney Island Hospital, part of the New York City Health and Hospitals Corporation ("HHC"), who agreed to pay a $6,000 fine for violating the Board's Valuable Gift Rule. Among his official duties as Executive Director of Coney Island Hospital was the negotiation, implementation, and oversight of the hospital's contract with University Group Medical Associates ("UGMA") to provide clinical staffing to the hospital. At two events in 2005, the former Executive Director accepted from UGMA (1) four or five bottles of wine; (2) a customized fountain pen; (3) a $500 gift card from Macy's; and (4) the $110.97 balance from two other gift cards.[3]

In 2016, the Board reached a settlement with the New York City School Construction Authority ("SCA") and an SCA Technical Inspector, who agreed to pay a $1,500 fine to the Board and to accept a six-month extension of his probationary period for asking an employee of an SCA contractor for sidewalk scaffolding material for a personal project he was working on at his home and for taking the material home. The Technical Inspector returned the material to the contractor after learning of SCA's investigation of his conduct. In determining the penalty, the Board took into account both that the Technical Inspector routinely cited and documented items to be rectified by the contractor when inspecting its work and the grave appearance of impropriety created by the Technical Inspector's conduct.[4]

Two or more gifts to a public servant are deemed to be a single gift for purposes of the Valuable Gift Rule if they are given to the public servant within a twelve-month period under one or more of the following circumstances: (1) they are given by the same person; or (2) they are given by persons who the public servant knows or should know are (i) relatives or domestic partners of one another or (ii) are directors, trustees, or employees of the same firm or affiliated firms.[5] For example, a gift by one employee of a corporation in June and a gift by another employee of the same corporation the following April are aggregated for purposes of determining whether the recipient of the gifts has violated the Valuable Gift Rule. The terms "relative," "affiliated," "firm," and "domestic partner" are defined in the Valuable Gift Rule. In a case demonstrating the "cumulative" nature of the $50 rule, that is, that the ban looks to the total of gifts from the same source during a twelve-month period, the Board in 2008 fined a manager for the New York City Department of Parks and Recreation ("Parks") $600 for accepting the gifts of two meals in May and August 2007, valued collectively in excess of $50, from Kiska Construction, a firm doing business with the New York City Economic Development Corporation ("EDC") and Parks. Kiska had been awarded three major contracts by EDC related to construction at the High Line; at Parks, the manager served as the Project Administrator for the High Line Project.[6]

The Board has made clear, with respect to the "knowledge" element of the Valuable Gift Rule, not only that public servants may not accept valuable gifts from those who they *should have known* had City business, but has stated that public servants have a duty to a make a reasonable inquiry about the presence or absence of such business before accepting valuable gifts.[7]

In 2016 the Board imposed a fine of $7,000 on a Council Member for accepting a gift of services in support of her effort to become Council Speaker. In so doing, the Board did not deviate

from its long-standing determination that contributions to a campaign committee established under the Election Law in support of a campaign for elective office are not "gifts" within the meaning of the conflicts of interest law. In this case, however, the Council Member acknowledged that she was seeking "a leadership position within the Council and [ ] not an independent public office."[8]

2. Gifts that Conflict with Official Duties

Separate and apart from the gifts provision discussed above, solicitation of a gift and in some instances acceptance of a gift, even one under $50 or one from a person or firm having no business dealings with the City, may violate other provisions of Chapter 68–specifically the prohibition against using one's City position to benefit oneself or a person who or firm with which the public servant is associated, found in Charter § 2604(b)(3). In an Order imposing a $20,000 fine on an elected official for accepting gifts of travel for his wife, the Board noted that "a public servant may violate Charter Section 2604(b)(3) by accepting a gift even if the donor does not have such business dealings, if the public servant is receiving the gift only because of his or her City position."[9]

In another Board enforcement proceeding, a community board member solicited money from a local church that had applied to the community board to obtain a City-owned vacant lot. Admitting that he violated Charter § 2604(b)(3) prohibiting use of his position to obtain financial gain, the community board member agreed to pay a fine to the Board.[10] As noted above, public servants must avoid the appearance that a gift was received solely because of the public servant's official City position, even if the gift was under $50 or was given by a person or firm having no business dealings with the City. For example, in Advisory Opinion Number 92-10, an elected official requested an opinion as to whether he could accept the invitation of a firm that had no business dealings with the City to attend an event sponsored by the firm at a resort outside of the state. The Board concluded that, in the absence of a governmental purpose, the elected official's acceptance of the trip might create the appearance that he received a valuable gift solely because of his official position.

In another advisory opinion (Number 92-23), an elected official asked whether he could accept from a common carrier two free tickets to an out-of-state destination. The tickets were presented to the official at a community event sponsored by a number of business organizations. The Board concluded that acceptance of the tickets could create the appearance that the elected official had received a valuable gift because of his official position, without promoting any governmental purpose.

In Advisory Opinion Number 94-12, a high-level public servant was advised that he must return a ceremonial sword presented to him by a restaurant and entertainment center after a ribbon cutting ceremony that he attended in his official capacity when the firm opened its sales and information center in Manhattan. The Board held that acceptance of the sword could create the appearance that the public servant received a valuable gift solely because of his official City position.

Gifts between City employees may also implicate Charter § 2604(b)(3), although such gifts will typically not violate Charter § 2604(b)(5) (because the donor is not a person with business dealings with the City) nor will they violate the ban in Charter § 2604(b)(14) against superiors and subordinates having business or financial relationships (because a gift, unlike a loan, does not establish such a relationship). In Advisory Opinion Number 2013-1 the Board summarized and clarified the guidance, both formal and informal, that it had given over the years on the subject of gifts between City employees. These gifts will be prohibited, the Board noted, where necessary to prevent inappropriate pressure on one City employee to make a gift to another or to prevent the loss of necessary impartiality that the gift receiver might experience. Recognizing that these evils are not significantly present in the case of gifts between City employees who are peers or in the case of gifts from a City superior to his or her subordinate, the Board advised: (1) it will not violate the conflicts of interest law for a City employee to give a gift to or receive a gift from a peer City employee; and (2) except in unusual circumstances, such as when gifts are extremely frequent or extravagant, it will not violate the law for a City superior to give a gift to a subordinate or for a subordinate to accept a gift from a superior. In contrast, the Board advised that it would violate the conflicts of interest law for a superior to solicit a gift from a subordinate and that it would violate the conflicts of interest law for a superior to accept a gift from a subordinate, except on unique special occasions. On these special occasions, such as a wedding or the birth or adoption of a child, the Board advised that a superior may accept an appropriate gift from a subordinate, that is, a gift of the type and value customary to the occasion in question, so long as it is clear that, under all relevant circumstances, it is the occasion and not the superior's position that is the controlling factor in the giving. On more frequent special occasions, such as birthdays and the holidays, the Board indicated that a superior may accept gifts from subordinates only of nominal value.

Consistent with the Board's determination in Opinion Number 2013-1, and cited therein, the Board issued a public warning letter in 2012 to a public servant who violated Charter § 2604(b)(3) by accepting a gift from her subordinates on an occasion, and in an amount, that was beyond what would be considered ordinary or customary. In that case, a Department of Sanitation District Superintendent accepted $800 from her subordinates, who had collected this money among themselves to enable the District Superintendent to repair her personal vehicle, which had been scratched while at the Sanitation Garage. The Board advised the District Superintendent, who did not initiate the collection or solicit the $800 and had agreed to return the money, that, in accepting this gift, she violated Chapter 68.[11]

Subsequently, the Board reached a settlement with a former New York City Department of Correction ("DOC") Department Chief, who paid a $6,000 fine to the Board for requesting that his subordinate repair and enhance his vehicle. The subordinate purchased between $400 and $500 worth of car parts and worked on the vehicle for several weeks. The Chief did not pay his subordinate for his work or reimburse him for the parts. The former Department Chief acknowledged that his conduct violated the conflicts of interest law, in particular Charter § 2604(b)(3), which prohibits City employees from using their City positions for their own personal gain, including, as Opinion Number 2013-1 advises, by soliciting a gift from a subordinate public servant.[12] Similarly, in 2014, in a joint disposition with the New York City

Department of Education ("DOE"), a DOE Principal admitted that he had traveled abroad twice with his subordinate, a School Aide, and that the School Aide had paid in full for both trips, a total of $10,829. The Principal acknowledged that by accepting these free trips from his subordinate he violated Section 2604(b)(3). He paid a fine of $4,500 to the Board.[13]

C. Permitted Gifts

A public servant may accept gifts from persons or firms doing business with the City in certain circumstances.

1. Family and Social Occasions

Under Charter § 2604(b)(5) and Board Rules § 1-01(c), a public servant may accept gifts that are customary on family or social occasions from someone engaged in business dealings with the City, provided that: (1) the reason for the gift is the family or personal relationship rather than the business dealings and (2) receipt of the gift would not result in an *appearance* of a conflict, such as an appearance of using one's office for private gain, giving preferential treatment to any person or entity, losing independence or impartiality, or accepting gifts or favors for performing official duties.

In *COIB v. Morello*, a City employee's personal friendship with the gift givers (who were principals of a vendor to the City and the vendor's subcontractor) did not insulate that employee, a former Battalion Chief with the New York City Fire Department, from liability under Section 2604(b)(5) for receiving valuable gifts. The Battalion Chief admitted that the controlling factor in his dealings with the gift givers was not personal friendship, but rather the vendor's business dealings with the City. He accepted valuable gifts consisting of the use of a ski condo, meals, and Broadway tickets from the principals of the vendor and the subcontractor. Admitting his violation of Section 2604(b)(5), the Battalion Chief paid a $6,000 fine to the Board.[14]

More recently, in 2008 the Board fined the former Vice President of Capital Programs for the New York City Economic Development Corporation ("EDC") $11,500 for accepting gifts of (1) a portion of his son's honeymoon trip to Istanbul, Turkey – which included accommodations, transportation to and from the airport and around the city of Istanbul, group tours, and room service – valued at $4,000; and (2) two meals at New York City restaurants, valued collectively in excess of $50, from Kiska Construction, a firm doing business with EDC and the New York City Department of Parks and Recreation. Kiska had been awarded three major contracts by EDC and Parks related to construction at the High Line; in his job duties at EDC, the former Vice President was responsible for twelve capital projects, one of which was the High Line Project. The Board fined the former Vice President $10,000 for accepting a portion of his son's honeymoon trip (the maximum fine permitted at that time under the City Charter for a violation of the conflicts of interest law) and $1,500 for accepting the meals.[15]

2. Awards and Plaques

Under Board Rules § 1-01(d), a public servant may accept awards or plaques when they are publicly presented in recognition of public service, provided that the item has no substantial resale value.

In Advisory Opinion Number 2010-2, the Board addressed the case of City employees who are awarded *cash* prizes in recognition of their public service. The Board first noted that, absent a waiver from the Board, accepting such a cash prize would violate the prohibition in Charter § 2604(b)(13) against accepting compensation from a party other than the City for performance of one's official duties. The Board stated, however, that it would accept applications for such waivers from agency heads and that it would evaluate these applications according to such criteria as the identity of the person or entity presenting the award, the involvement of the City in administering the award and in selecting the recipient, the amount of the cash prize, and the history of the award, that is, whether there is a "track record of apparent disinterested promotion of excellence in public service." Finally, the Board determined that it would consider applications to exempt certain long-established awards from the requirement of case-by-case waiver applications and, to that end, determined that public servants could accept the cash prizes associated with the following awards without making a waiver application, absent material changes in the administration of the awards: the Frederick O'Reilly Hayes Prize, the Alfred P. Sloan Public Service Award, the Isaac Liberman Public Service Award, and the E. Virgil Conway College Scholarship.

3. Meals and Refreshments

Under Board Rules § 1-01(e), a public servant may accept free meals or refreshments when offered during a meeting the public servant is attending for official reasons; when offered at a company cafeteria or club where there is no public price structure and individual payment is impractical; when a business meeting continues through normal meal hours in a restaurant and refusal to participate in the meal and/or individual payment is impractical; when the free meals are provided at a meeting held at an out-of-the-way location, alternative facilities are unavailable, and individual payment is impractical; *or* when the public servant would not have otherwise purchased food or refreshments if not placed in such a situation while representing the interests of the City. This Rule would *not* permit the acceptance of meals when the meeting is specifically scheduled during mealtime (*e.g.*, "let's discuss this contract over lunch").

Under Board Rules § 1-01(f)(1), a public servant may accept a meal while serving as a panelist or speaker in a professional or educational program, if the meal is provided to all panelists.

4. Attendance at Functions or Annual Events

Under Board Rules § 1-01(f), a public servant may be present at a professional or educational program as a guest of the sponsoring organization; may be a guest at functions sponsored or encouraged by the City as a matter of City policy; may attend a public affair of an organization composed of representatives of business, labor, professions, news media, or organizations of a civic, charitable, or community nature, when invited by the sponsoring organization, *unless* the organization has business dealings with, or matters before, the public

servant's agency; and may be a guest at any widely attended function or occasion when the employee's agency head, or a deputy mayor if the public servant is an agency head, gives written approval in advance, or within a reasonable time thereafter, that attendance of the public servant is in the interests of the City. With respect to the exception of Board Rules § 1-01(f)(5), permitting acceptance of complimentary attendance at widely attended public events with the written approval of the agency head or deputy mayor, the Board has, as discussed below, made clear in Advisory Opinion Number 2012-4 that this exception is sharply narrowed in the case of sporting and entertainment events.

In Advisory Opinion Number 94-23, a high-level public servant requested an opinion as to whether he could accept an invitation to attend a trade association's annual golf and tennis outing. Although the association did not have business dealings with the City, several of its member firms conducted business with various City agencies, including the public servant's own agency. The Board determined that the public servant could attend the sporting event, since the public servant had been invited to attend the event by the association and since the association itself did not have any contracts or other business dealings with the public servant's agency.

Under Board Rules § 1-01(g), elected officials and members of their staffs may attend any function given by an organization composed of representatives of business, labor, professions, or news media, or organizations of a civic, charitable, or community nature, when invited by the organization who sponsored the function.

In Advisory Opinion Number 2000-4, the Board addressed a number of questions raised concerning gifts of tickets. The Board determined that: (1) it would not violate Chapter 68 for an elected official or designated member of his or her staff to accept a gift of a ticket to an event, even where the sponsoring organization is funded by the elected official's office, regardless of the price of the ticket, *when attending in his or her official capacity* and when the conditions of Board Rules § 1-01(f)(5) or § 1-01(g) are met; (2) in circumstances where the elected official or designated member of his or her staff has permissibly accepted a gift of a ticket to an event for his or her official use, it would likewise not violate Chapter 68 to accept *one* complimentary guest ticket, regardless of its value; (3) it *would* violate Chapter 68 for a staff member of an elected official to receive for his or her *personal use* a gift of a ticket to an event, or gifts from the same donor of tickets to events over a twelve-month period, with an aggregate value of $50 or more, where the value is determined by their price to the public**,** *not* their price to the sponsoring organization; (4) it *would* violate Chapter 68 for an elected official's office to accept a gift of a block of tickets with an aggregate value of $50 or more to be distributed to staff for their personal use, regardless of the value of the individual tickets, *unless* there was a *City purpose* for the gift; (5) it would not violate Chapter 68 for members of an elected official's staff to accept an offer to purchase with their own funds, for their personal use, tickets to events, where access to those tickets is limited and where they are provided access because of their public office, provided that, as noted above, the public servant did not affirmatively seek to purchase tickets, in which case, depending on the circumstances, such solicitation might violate Section 2604(b)(3), so that the public servant who does not first inquire of the Board acts at his

or her own peril; and (6) it would not violate Chapter 68 for an elected official's office to accept the gift of a block of tickets to a free event for the personal use of the office's staff, where access to such tickets is otherwise difficult and where the offer is made to the elected official's office because it is a public office, again provided, as noted above, that the public servant did not affirmatively seek the tickets, in which case, depending on the circumstances, such solicitation might violate Section 2604(b)(3), so that the public servant who does not first inquire of the Board prior to accepting such tickets acts at his or her own peril.

Where attendance at an event is for personal entertainment and not for an official purpose, however, a gift of complimentary tickets from a City vendor will not fall within the above exceptions. In 2011 the Board fined a Principal Administrative Associate for the New York City Administration for Children's Services ("ACS") $3,000 for accepting five tickets to "The Lion King" from a firm doing business with ACS.[16]

In Advisory Opinion Number 2006-2, the Board noted that the requirement of Board Rules § 1-01(g) that the gift of a ticket be from the sponsor of the event is *not* satisfied when the gift is from the sponsor's lobbyist, so that an elected official's acceptance of such a gift would be permissible only with written agency head approval pursuant to Board Rules § 1-01(f)(5). In addition, the Board cautioned that, even when these rules do permit acceptance of complimentary attendance to an event, they do not permit elected officials to accept gifts of items offered at the event (such as gift bags) with a value of $50 or more.

In Advisory Opinion Number 2006-3, the Board considered questions involving attendance by City employees at union conventions, including attendance at conventions of a union to which one belonged; attendance at conventions of a union to which one did not belong; attendance at union conventions in one's official capacity; and attendance at events at these conventions underwritten by City vendors. The Board determined that it would not violate Chapter 68 for City employees to attend the convention of their own union, on their own time, at the union's expense; that it would not violate Chapter 68 for City employees to attend the convention of a union of which they are not a member, on their own time, at the union's expense; that it would not violate Chapter 68 for City employees to attend, at union expense and on City time, a union convention at which they are performing their official City duties, provided they have received prior approval from their agency head and have otherwise satisfied the conditions of Board Rules § 1-01(h) on length of stay and appropriateness of the accommodations and meals; that City employees may attend cocktail parties and other events at these conventions that are sponsored by City vendors, so long as the party or event is a part of the regular agenda of the convention and is open to all attendees; that City employees may not accept at these conventions gifts from a City vendor worth $50 or more cumulatively in a twelve-month period, including in particular invitations to private dinners or recreational events that are not part of the convention program; and that, notwithstanding the foregoing, at no time may a City employee accept any benefit, no matter the value, in exchange for taking, or failing to take, some future official action, or as a reward for taking, or having refrained from taking, some official action.

In Advisory Opinion Number 2012-4, the Board addressed, as noted above, the question of complimentary admission to sporting and entertainment events, such as the United States Open Tennis Championships, for which tickets are often hard to come by and for which New Yorkers and visitors to the City often pay hundreds of dollars for a single admission. Noting that the general public typically attends such events for their personal pleasure, the Board stated that it would look for objective evidence that public servants who purport to be attending such events in the course of their official duties are serving the public in some meaningful way. To that end, the Board determined and advised that the receipt by City officials of complimentary attendance to sporting and other entertainment events and the corresponding gift by lobbyists of free admission to these events will be permissible only when *both* of two requirements are satisfied: first, there must be a clear and direct nexus between the public servant's official duties and the event; and second, the public servant must be performing some official function at the event. One example of such an official function is a specific ceremonial role at the event appropriate to the official's City position. The Board advised, however, that the mere public address announcement of the official's presence at the event and the official's acknowledgement of that announcement is not a ceremonial role sufficient to permit the gift or acceptance of complimentary admission to such entertainment events.

5. <u>Payment for Travel-Related Expenses</u>

Under Board Rules § 1-01(h), a public servant's acceptance of travel-related expenses from a private entity can be considered a gift to the City when the trip is for a City purpose and could properly be paid for with City funds; the travel arrangements are appropriate to the City purpose; and the trip is no longer than necessary to accomplish the City business. For public servants other than elected officials, it is recommended that the trip be approved in writing and in advance by the agency head or by the deputy mayor if the public servant is an agency head. On the question of what expenses may properly be paid for with City funds, the Board, in fining an elected official for accepting gifts of overseas travel for his wife, noted that, in contrast with a public servant's own official travel, his or her spouse's overseas travel is not something that could properly be paid for with City funds.[17]

In Advisory Opinion Number 92-19, the Acting Director of the Mayor's Office of Film, Theatre and Broadcasting asked the Board whether she could attend the 1992 Cannes Film Festival at the expense of three private entities. Two of the entities had business dealings with the City, and the other did not. The purpose of the trip was to encourage the production of films in New York City, which would generate several million dollars in economic activity. The Board held that the public servant could accept payment from the entities for this trip as a gift to the City.

In Advisory Opinion Number 2011-2, the Board described its consideration of a number of advice requests it had received from elected officials and high-ranking appointed officials who were proposing to accept expenses-paid travel, often overseas. The Board first noted not only that the acceptance of such complimentary travel from a private person who or firm that has business dealings with the City would implicate Charter § 2604(b)(5), the Valuable Gift Rule, but also that

the acceptance of gifts of travel from entities without City business dealings, including foreign governments, could, as noted in Section B(2) above, implicate the prohibition in Charter § 2604(b)(3) against misuse of one's City position for personal gain. The Board went on to state that, whatever the identity of the donor, it would apply the standard set forth in Board Rules § 1-01(h) to evaluate requests for its advice about accepting gifts of travel and that in order to determine whether the criteria of the Rule were satisfied, especially to determine whether the proposed trip had a City purpose rather than simply a personal purpose and whether the proposed trip was no longer than necessary to accomplish that City purpose, it would expect such advice requests to be presented well in advance of the scheduled departure date. The Board further stated that requests for the Board's advice should include a statement of the City purpose(s) of the trip; a detailed itinerary of the trip, reflecting the trip's City purpose; the identity of the trip's sponsor, including a description of any business dealings that the sponsor has with the City; and a statement of the cost of the trip to be paid for by the non-City source. Finally, while the Rule simply *recommends* that appointed officials receive the prior written approval of their travel from their agency head (or, in the case of agency heads, from their deputy mayor), the Board stated that it expects to receive that written approval as part of the official's request for advice and will consider the presence or absence of such approval in reaching its determination of whether the trip serves a City purpose.

More recently, in Advisory Opinion Number 2016-1, the Board held that an elected official may not accept as a "gift to the City" payment from a third party for the entire cost of out-of-town travel that includes political as well as governmental activities, even where the political activity adds no cost to the travel expenses. Instead, the cost of the trip must be allocated on a reasonable basis between its governmental and political purposes, and the official may accept payment on behalf of the City only for costs allocated to the governmental purposes. The Board reiterated that nothing in Advisory Opinion Number 2016-1 changes the long-standing requirement for all public servants to personally bear the extra costs incurred when the non-governmental purpose adds cost to a trip undertaken for a City purpose.

6. <u>Gifts to the City or for a City Purpose</u>

The Board has long held that, under particular circumstances set out by the Board, City agencies, as distinct from individual public servants, may accept and may indeed solicit gifts from private entities engaged in business dealings with the City.

In a comprehensive opinion (Advisory Opinion Number 2003-4) that reviewed not only the Board's prior opinions concerning gifts to the City but also examined precedents from other jurisdictions, the Board determined that, subject to certain safeguards, elected officials and indeed all public servants could solicit gifts to the City and to those not-for-profit organizations closely affiliated with City agencies and offices that had been "pre-cleared" by the Board. The safeguards imposed on such "fundraising for the City" are the following: (1) a City official may not engage in the direct, targeted solicitation of any prospective donor who the official knows or should know has a specific matter either currently pending or about to be pending before the City official or his or her agency and where it is within the legal authority or duties of the soliciting official to make, affect, or

direct the outcome of the matter; (2) all solicitations must make clear that the donor will receive no special access to City officials or preferential treatment as a result of a donation; and (3) each City agency or office must twice a year file a public report with the Board setting forth certain information concerning the gifts received by the agency during the reporting period, including the identity of the donor and the nature and approximate value of the gift received. As a general matter, therefore, Opinion Number 2003-4 approves of all unsolicited gifts to the City, subject to the disclosure requirement set forth in the Opinion; approves of untargeted solicitations of gifts to the City, subject to both the disclosure requirement and the requirement that the solicitation contain the above-stated disclaimer about access and favoritism; and approves of targeted solicitations of gifts to the City, subject to all the above-listed safeguards.

7. Discounts and Frequent Flier Miles

In Advisory Opinion Number 95-14, employees in a branch office of a City agency asked whether they could accept an offer of special banking privileges and incentives from a local bank. The privileges and incentives were also offered to other businesses and organizations located in the same geographic area as the branch office. The Board determined that City employees could take advantage of this offer because it did not target City employees and, in accepting the offer, the City employees would merely have been taking advantage of a business incentive offered to both City employees and private businesses. By contrast, in Advisory Opinion Number 95-5, a fraternal organization whose membership consists solely of City employees was advised that its members could not solicit discounts from local merchants on behalf of its members because such solicitation would have been using their City positions to obtain special discounts that were available to non-City employees.

In Advisory Opinion Number 2006-4, the Board further considered the "government employee" discounts offered by various businesses. Recognizing that these discounts, when offered to all government employees, do not seek to influence official action, but rather aim to capture a large class of potential customers, the Board determined that a City employee may accept a discount offered to government employees by a hotel chain, a car rental agency, a cellular service provider, or other similar vendor for the City employee's private use, where the discount is available generally to all government employees and the vendor has been made aware that the City employee is not on official City business.

In Advisory Opinion Number 2006-5, the Board considered whether City employees may use, for their own personal travel, airline frequent flyer miles earned while traveling on City business. Recognizing the administrative difficulties for the City in "harvesting" these miles for City use, the Board determined that it would not be a violation of Chapter 68 for City employees to accumulate and use for personal travel the frequent flyer miles earned while traveling on official business. The Board cautioned, however, that a City employee must not make a flight selection for official travel at additional expense to the City in order to receive or increase personal frequent flyer benefits and further noted that the Opinion should not be read to restrict a City agency from requiring that miles earned on City travel be used only for subsequent City

travel.

D. Compensation and Gratuities from Non-City Sources

Charter § 2604(b)(13) provides that no public servant shall receive compensation, except from the City, for performing any official duty *or* accept or receive any gratuity from any person whose interests may be affected by the public servant's official actions.

In 2001, two officials of the New York City Department of Buildings were prosecuted for accepting gifts from expediters. In *Hilton*, the defendant pleaded guilty to a misdemeanor violation of Chapter 68. In *Cox*, the defendant was convicted of the misdemeanor of receiving unlawful gratuities and of two felony counts of filing a false instrument, the instrument being his City financial disclosure form in which he failed to list the gifts.[18]

In 2011, the Board fined a former Administrative Chaplain for the New York City Department of Correction $2,500 for accepting a solid silver Kiddush cup and plate, with an estimated value in excess of $500, from an inmate as a token of appreciation for arranging a private event at the Manhattan Detention Complex to celebrate the Bar Mitzvah of the inmate's son. The former Administrative Chaplain acknowledged that his conduct violated the ban in Charter § 2604(b)(13) on public servants accepting gratuities from any person whose interests may be affected by their official actions.[19] In 2014, in a joint disposition with the Board and the New York City Department of Sanitation ("DSNY"), a Sanitation Worker agreed to resign from DSNY and pay a $1,500 fine to the Board for accepting $20 for collecting a Queens resident's household garbage, the collection of which was part of the Sanitation Worker's official duties.[20]

In Advisory Opinion Number 95-28, a public servant requested an opinion as to whether he could accept an award of a watch, given to him in recognition of an act of heroism he performed in the course of his official duties. Since the award was made after the public servant had performed his act of heroism, he could not have been influenced by the incentive of an award in performing his official duties. In addition, the nature of the public servant's position was such that he would not have been able to use his position for the private advantage of anyone at the watch company, which had no business dealings with the City. Finally, neither the company nor its officials directly benefited from the public servant's actions. Thus, under the particular circumstances of the case, the Board determined that the public servant could accept this award.

In Advisory Opinion Number 2005-1, the Board again considered a question concerning not-for-profit organizations closely affiliated with City agencies or offices, this time considering not the question addressed in Opinion Number 2003-4 about whether and how public servants might raise funds for these organizations, but rather the question of one particular use of any raised funds, namely, to supplement a City employee's City salary. The Board determined, as an initial matter, that such supplementation, "whether . . . denominated overtime pay, a salary supplement, a bonus, or payment for consulting work," will violate the prohibition of § 2604(b)(13) against receiving compensation from anyone other than the City for performing an official duty. The Board further stated, however, that it would consider waiver applications on a case-by-case basis, with the

requisite written agency head approval. The Board cautioned that it would not grant such waivers routinely and listed a series of circumstances that might cause it to deny a request to approve such payments.

E. Honoraria Guidelines

By memorandum dated August 11, 1989, the Mayor's Office established the following guidelines on acceptance of honoraria by City managers:

A City manager should not accept an honorarium or expenses for an appearance before any group when it might appear that the group or one of its members might receive favorable treatment as a consequence. For example, a public servant should not accept an honorarium from an organization that does business with the public servant's agency. Furthermore, a City manager should not accept an honorarium when it is not reasonably related to the services requested.

A City manager should not accept requests for paid speaking engagements so often that there is an appearance that the public servant is neglecting his or her official duties. He or she should not accept honoraria and/or expenses related to paid speaking engagements each calendar year in excess of 20% of his or her annual salary.

Senior City managers are encouraged to represent their agencies before civic, business, and other groups. A City manager, however, may not accept honoraria for speeches or appearances made as part of his or her official duties. For example, no honorarium should be accepted if a manager speaks to a group on a matter related to the operations of his or her agency.

When a City manager makes a public appearance as part of his or her official duties, he or she may accept payment, on behalf of the City, for the reasonable and necessary expenses incurred as a result of the public appearance. The trip and acceptance of payment for expenses should be approved in advance and in writing by the head of the public servant's agency or by a deputy mayor if the public servant is an agency head.

The Conflicts of Interest Board should be consulted if the City manager is uncertain as to the propriety of accepting an honorarium and/or expenses for a particular speaking engagement.

The foregoing guidelines do not apply to teaching or lecturing, which are also subject to Chapter 68 of the Charter. These matters are discussed in the chapter on Outside Activities.

In Advisory Opinion Number 91-4, an elected official asked whether it would be a violation of Chapter 68 to accept a $500 honorarium for speaking at a meeting sponsored by a firm that, at the time of the speech, did not have business dealings with the City. The topic of the speech was related to the official's City duties, and the honorarium was paid a year after the elected official made the speech, by which time the firm had numerous business dealings with several City agencies. The Board held that the elected official should not accept the honorarium to avoid creating the appearance that the honorarium was offered as a *quid pro quo* for the firm's getting City business.

In Advisory Opinion Number 94-29, employees of the New York City Department of Health ("DOH") asked whether they could request that honoraria they receive for their speaking engagements or personal appearances be contributed directly to a particular not-for-profit corporation working with DOH on many projects. The Board noted that City managers are generally prohibited from accepting honoraria from firms that have business dealings with the City or accepting honoraria when they deliver speeches or make personal appearances as part of their official duties. However, the Board determined that the employees in this case could request that the honoraria they were offered for speaking engagements or personal appearances be contributed directly to the not-for-profit, provided that the employees did not solicit payment of the honoraria; the amounts offered were reasonable and customary for similar speaking engagements and appearances; and the employees acted in accordance with the Board's guidelines concerning the solicitation of gifts.

F. Additional Gift Rules

It must be emphasized that many City agencies have rules that are stricter than the rules set forth in Chapter 68 or general City guidelines, such as the Honoraria Guidelines. Agency rules, however, may not be less strict than those promulgated by the Board. Stricter agency rules are particularly common in the area of gifts and are encouraged. If an agency has rules that are stricter than those of Chapter 68, the agency's rules apply.[21]

Furthermore, nothing in the Board's Valuable Gift Rule shall be deemed to authorize a public servant to act in violation of any applicable federal, state, or local law, rule, or regulation, including, but not limited to, the New York State Penal Law and Mayoral Executive Orders. Thus, for example, Mayoral Executive Order Number 16 of 1978, as amended, may require a public servant to report gifts and offers of gifts to his or her agency's Inspector General, whether or not the gift is accepted or returned.

G. Gifts from Lobbyists

It should be noted that the foregoing discussion of gifts speaks only of the regulation of the public servant who *receives* gifts, not of the regulation of the private-sector gift giver. Indeed, Chapter 68 historically has regulated the interests and conduct only of the City public servant, and not of the frequently involved private party.

Local Law 16 of 2006, which regulates the *giving* of gifts by lobbyists, was thus a first, prohibiting lobbyists from making gifts to public servants, providing for civil fines for lobbyists who violate the law's restrictions, and giving to the Board the authority to administer and enforce the Law. Pursuant to the Law's direction that the Board adopt a rule that is, to the extent practicable, consistent with the Board's rule on the receipt of gifts by public servants (Board Rules § 1-01), the Board in 2006 promulgated Board Rules § 1-16, entitled "Prohibited Gifts from Lobbyists and Exceptions Thereto," and defining prohibited gifts and exceptions, including *de minimis* gifts (such as pens and mugs), gifts that public servants may accept as gifts to the City, and gifts from family members and close personal friends given on family or social occasions.

The Board provides the same training, advice, and enforcement functions with respect to the lobbyist gift law that it provides with respect to the restrictions on public servants set forth in Chapter 68. Thus, in 2007 the Board issued the comprehensive Advisory Opinion Number 2007-3 on the subject of complimentary invitations to public servants to events from organizations subject to the lobbyist registration requirement. Pursuant to the directive in Local Law 16 that the rules on the giving and the receipt of gifts be as consistent as practicable, this Opinion in substantial part parallels Advisory Opinion Number 2000-4, discussed above, on the subject of the *receipt* by public servants of free tickets to events. Advisory Opinion Number 2007-3 responded to an inquiry from a not-for-profit organization that sponsored a number of widely attended events, such as annual fundraising events, exhibits, and conferences, addressing each of these events in turn. Essentially, the Board advised that the sponsoring organization could provide free admission to elected officials and high-ranking appointed officials to events such as fundraisers and exhibit openings, since the officials' presence at such events could advance legitimate City purposes. In contrast, free admission for such public servants to the regular exhibits or performances of the organization would not advance a City purpose, except that invitations to such regular events for that small number of City employees, typically lower-ranking, whose duties include, for example, overseeing the programs of organization, would be permissible. As noted in Section C(5), above, the Board in Advisory Opinion Number 2012-4 addressed in detail when a public servant might accept, and when a lobbyist might permissibly give to a public servant, complimentary admission to a sporting or other entertainment event, setting forth a two-part test: first, there must be a clear and direct nexus between the public servant's official duties and the event; and, second, the public servant must be performing some official function at the event. Opinion Number 2007-5 concluded with a caution to City lobbyists that their gift-giving is subject to regulation by the State (*see* Legislative Law § 1-m) as well as by the Board.

In 2016 the Board imposed a $4,000 fine on a lobbyist for violating the City's lobbyist gift ban, the first such penalty imposed by the Board. In this matter, the lobbyist had provided free consulting services, including the expenditure of funds by his firm, in support of a Council Member's effort to become Speaker of the City Council.[22]

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[1] Board Rules § 1-01(a).
[2] *COIB v. Clair*, COIB Case No. 2005-244 (2007).
[3] *COIB v. Wolf*, COIB Case No. 2012-848 (2013).
[4] *COIB v. Flynn*, COIB Case No. 2016-473 (2016).
[5] Board Rules § 1-01(a).
[6] *COIB v. Bradley*, COIB Case No. 2008-423b (2008).
[7] *In re Safir*, COIB Case No. 1999-115 (2000).
[8] *COIB v. Mark-Viverito*, COIB Case No. 2013-903 (2016).
[9] *COIB v. Markowitz*, COIB Case No. 2009-181 (2011).

[10] *COIB v. Harvey*, COIB Case No. 1997-368 (1998).
[11] *COIB v. Mooney*, COIB Case No. 2012-201 (2012).
[12] *COIB v. Davis*, COIB Case No. 2012-365a (2013).
[13] *COIB v. Kwait*, COIB Case No. 2013-296 (2014).
[14] COIB Case No. 1997-247 (1998),
[15] *COIB v. Mir*, COIB Case No. 2008-421 (2008).
[16] *COIB v. Concepcion*, COIB Case No. 2008-963a (2011).
[17] *Markowitz*, *supra*.
[18] *People v. Hilton*, Indictment No. 6313/2000 (Sup. Ct. N.Y. Cty.); *People v. Cox*, Indictment No. 6311/2000 (Sup. Ct. N.Y. Cty.).
[19] *COIB v. Glanz*, COIB Case No. 2010-831 (2011).
[20] *COIB v. L. Dixon*, COIB Case No. 2013-782a (2014).
[21] *See* Board Rules § 1-01(j).
[22] *COIB v. Levenson*, COIB Case No. 2013-903a (2016).

MISUSE OF CITY OFFICE

by

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A. Introduction

Public servants are prohibited from using their City positions to obtain any financial gain or advantage for themselves, their immediate family, or their associates. Under the City's ethics law, public servants owe the City a duty of undivided loyalty. In addition, a Conflicts of Interest Board rule specifically prohibits public servants from using City time, letterhead, personnel, equipment, resources, or supplies for any non-City purpose. That rule also prohibits public servants from causing or inducing other public servants to violate the ethics law.[1]

B. Use of City Office for Personal Gain

Charter § 2604(b)(3) prohibits public servants from using or attempting to use their City positions to obtain any financial gain, contract, license, privilege, or other private or personal advantage, direct or indirect, for themselves or for any person or firm with whom or with which they are associated. "Associated" with the public servant means a spouse, domestic partner, child, parent, or sibling of the public servant; a person with whom the public servant has a business or other financial relationship; and each firm in which the public servant has a present or potential interest.[2] A public servant need not be actually aware of the conduct giving rise to a Section 2604(b)(3) violation to be found liable. If that public servant "should have known" of the conduct, he or she is liable for it.[3]

The Board has consistently advised that the prohibition against using one's City position for the benefit of one's "associates" means, among other things, that a public servant must fully recuse himself or herself from all matters that might benefit an associated party. Recusal means, without limitation, not participating in discussions or meetings regarding the matter in question and not receiving copies of relevant documents. If, for example, a public servant's sibling is applying for a job at the public servant's City agency, that public servant will violate the conflicts of interest law not only by sitting on the hiring committee but also merely by forwarding the sibling's resume to the committee. The Charter, however, contains three limited exceptions to the recusal requirement:[4] one specific to community board members, permitting discussion, but not voting, on matters that might advantage an interest of the community board member;[5] one permitting, on disclosure to the Board, actions that benefit an interest with

a value below $10,000;[6] and one permitting, again on disclosure to the Board, certain actions by elected officials that might benefit the official or an associated party.[7]

In Advisory Opinion Number 2009-2, in an examination of the sponsorship by Members of the City Council of discretionary awards of funding to not-for profit organizations, the Board addressed the scope of this last exception and determined that, since the exception applies only to the essential functions of elected officials, it would apply to a Member's *voting* on the budget but would not apply to the sponsorship of discretionary awards. Thus, as to the sponsorship of discretionary awards, the general rule against taking action to benefit one's associates applies, that is, Council Members may not sponsor discretionary awards that might benefit an associated person or organization. The Opinion then addressed a number of scenarios that arise with respect to such possible sponsorships and made determinations that, since they are applications of the general rule, are relevant beyond the context of these discretionary awards. More particularly, the Board determined that a Council Member: (i) could not sponsor funding for an organization that the Member served as a paid employee, officer, or director; (ii) could not sponsor funding for an organization that the Member served as an unpaid board member, unless the Member served *ex officio*, that is, as part of his or her official duties rather than as a personal activity; (iii) could sponsor funding for an entity for which the Member was an "honorary," unpaid board member, with no legal rights or responsibilities; (iv) could sponsor funding for an entity where the Member's spouse, domestic partner, parent, child, sibling, or other associated party was a paid officer or employee *only if* it did not appear reasonably likely that the associated party would benefit from that funding; (v) could sponsor funding for an organization where a person "associated" with the Member was an unpaid board member; and (vi) could sponsor funding for an organization where a member of the Member's Council staff had some affiliation, because public servants are not associated with their subordinates within the meaning of the conflicts of interest law.

As noted above, however, the exception that permits an elected official to vote on a matter that would benefit a person or firm "associated" with the official requires that the official disclose the conflict to the Board and also on the official records of the body in question. In 2015 the Board thus fined a former Member of the City Council $9,000 for, among other things, failing to make this required disclosure at the time he voted at the Council on three resolutions concerning a developer of affordable housing, a developer who was also the Member's landlord. In admitting this misconduct, the former Council Member acknowledged that he had violated Section 2604(b)(3).[8]

Because public servants are associated with their children within the meaning of the conflicts of interest law, and because a supervisor inevitably will take actions to benefit his or her subordinates, if only by not firing them, a public servant may not supervise his or her children or other associated persons. In Advisory Opinion Number 2004-3, for example, the Board determined that it would violate Chapter 68 for a person to serve on a community board that employed on the board's staff an "associate" of that person. In 2010 the Board thus fined the former Chief of Staff for a City Council Member $2,500 for directly supervising his daughter, a Councilmanic Aide, during her five-year tenure in the Member's district office.[9] Similarly, because living with another

person unavoidably means having a financial relationship with that person (and thus being "associated" within the meaning of the conflicts of interest law), the Board fined a former principal for the New York City Department of Education $3,000 for supervising his live-in girlfriend, an assistant principal at his school, for one year and eight months.[10]

In 2011 the Board fined a former Senior Supervising Communications Electrician at the New York City Fire Department ("FDNY") $12,500 for supervising his son-in-law from at least 2007, when his son-in-law was a Communications Electrician, until the father-in-law's retirement in 2010. The former Senior Supervising Communications Electrician acknowledged that, both by supervising his son-in-law and by approving overtime for his son-in-law, he violated the City's conflicts of interest law, which prohibits a public servant from using his City position to benefit himself or a person or firm with which he is associated. While the law does not explicitly include a public servant's son-in-law within its definition of "associated" parties, it does include children, including the supervisor's daughter, who plainly benefitted from her husband's continued employment at FDNY and from the overtime that her father authorized for her husband.[11] Similarly, in 2015, the Board imposed a $10,000 fine on the Queens Republican Commissioner of the New York City Board of Elections ("BOE") for using his position to twice promote his daughter's domestic partner to higher positions in the BOE Queens borough office.[12]

In 2015, in imposing a $3,000 fine on the Executive Director of a facility of the New York City Health and Hospitals Corporation ("HHC") for authorizing a 10% pay increase for his brother, who was also employed at the facility, the Board implicitly recognized that a high ranking employee in a City agency will not necessarily be in violation of the ban on supervising an associated person simply because a lower ranking employee in the same City agency is an associated person. The Board emphasized, however, that such a higher ranking employee may take no action to benefit the lower ranking employee and noted that the HHC Executive Director plainly violated that prohibition by approving his brother's raise.[13]

The Board has also made clear that the prohibited "private or personal advantage" need not be financial. In Advisory Opinion Number 93-21, the Board advised that elected officials' nominations of family members to unpaid community board positions would violate § 2604(b)(3), noting that "there is a certain degree of power and prestige in holding such a position." In *COIB v. Campbell Ross*,[14] an Assistant District Attorney used her office to obtain a private benefit for her husband by summoning a police officer, who was a witness against her husband in a traffic matter, to a grand jury in an unrelated case in which the officer had no involvement, in order to delay or prevent the officer from testifying against her husband. The Board fined Campbell Ross $1,000. In a similar case, the Board found that a City official's attempt to use his official position to restore his personal electrical service with Con Edison violated Charter § 2604(b)(3) as an attempt to misuse position to secure a personal advantage.[15] In 2015, the Board entered into a joint disposition between HHC and the former Senior Director for Human Resources at HHC for, among other violations, creating a volunteer internship position in Human Resources for her daughter and directing her subordinates to supervise her

daughter's work. For these and for other infractions involving the former Senior Director's misuse of her position, the Board fined her $12,000.[16] .

Violations of Charter § 2604(b)(3) are punishable by civil fines of up to $25,000, plus the Board can order payment to the City of the value of any benefit obtained by the public servant as a result of the violation.[17] Thus, in 2012, the former Director of Central Budget for the New York City Department of Education ("DOE"), who used his City position to obtain a DOE job for his wife, paid the Board a $15,000 fine plus the value of the benefit he received as a result of his violations, namely, the total of his wife's net earnings from her employment at DOE, in the amount of $32,929.29, for a total financial penalty of $47,929.29.[18] The Board may also recommend that the public servant be suspended or removed from City office or employment.[19] Violations of § 2604 or § 2605 are also misdemeanors that may be prosecuted by a District Attorney's Office.[20]

Consistent with its enforcement dispositions, the Board has also sought to regulate certain private activities of public servants to insure that these public servants do not obtain any advantage by virtue of their offices. For example, in Advisory Opinion Number 95-22, the Board prohibited a public servant from serving as a paid director on two cooperative boards because in his City job he was a manager of an agency that considered matters affecting the co-ops. In Advisory Opinion Number 95-11, a public servant was prohibited from serving on a co-op board on Section 2604(b)(3) grounds because he was in charge of the agency division that administered loans for which the co-op was applying. In Advisory Opinion Number 93-14, a public servant from a regulatory City agency was precluded from continuing to serve on the board of directors of a not-for-profit real estate development corporation if the corporation acquired property subject to the jurisdiction of the public servant's agency. In contrast, in Advisory Opinion Number 2006-4, the Board determined that a City employee may accept a discount offered to government employees by a hotel chain, car rental agency, cellular service provider, or other similar vendor, for the City employee's *private* use, where the discount is available generally to all government employees and the vendor has been made aware that the City employee is not on official business.

In Advisory Opinion Number 98-12, dealing with sales of beauty products in the workplace, the Board prohibited public servants from selling anything to their subordinates or from requesting charitable contributions from their subordinates. However, subordinates could sell products to or solicit contributions from their superiors up to $25. In Advisory Opinion Number 2004-2, the Board, applying the ban in Charter § 2604(b)(14) against financial relationships between superiors and subordinates, determined that City superiors and subordinates could not participate together in a *sou-sou*, an informal savings club.

The Board has held that Section 2604(b)(3) prohibits public servants from practicing law in circumstances where their City jobs would give them an advantage. In Advisory Opinion Number 93-23, a law enforcement officer who in his official capacity was deemed a police officer, and who was also an attorney, was not permitted to represent defendants charged with criminal offenses because a perception could be created that he was using his City position to obtain preferential treatment for his private clients. In Advisory Opinion Number 95-17, a public servant who served as a full-time

aide to a City Council Member was not permitted to practice law part-time with a firm where more than one-third of the firm's business consisted of matters involving the City and the official duties of the public servant involved working in some of the same areas of the law in which the firm was active and with some of the same City agencies.

The Board has also restricted lobbying by public servants where these activities could appear to violate Charter § 2604(b)(3). For example, in Advisory Opinion Number 94-28, the Board prohibited a City Council Member from contacting City agencies, elected officials, and community boards on behalf of a developer with whom the Council Member had a financial relationship.

In *Holtzman v. Oliensis*,[21] the landmark case construing Section 2604(b)(3), the New York Court of Appeals upheld the Board's finding that the former City Comptroller, Elizabeth Holtzman, had violated Charter § 2604(b)(3) by using her office to obtain a personal advantage in dealing with a creditor of her campaign committee for U.S. Senate. The Court of Appeals upheld the Board's $7,500 fine and Decision and Order that Holtzman's use of her City office to obtain a three-month delay in the debt collection process was the type of impermissible advantage that Charter § 2604(b)(3) prohibited. In *Holtzman*, the creditor's affiliate had responded to the Comptroller's Request for Proposals for City bond business. Holtzman had used this fact to impose a "quiet period" in which the creditor could not discuss with Holtzman the repayment of a loan, which she had personally guaranteed, for three months. Rejecting Holtzman's claims that she was not actually aware of her office's dealings with the creditor, the Court of Appeals held: "A city official is chargeable with knowledge of those business dealings that create a conflict of interest about which the official 'should have known.'"[22]

In contrast with *Holtzman*, where the former Comptroller had a business relationship with the lender to her campaign before the lender's affiliate sought bond business with her City office, the Board in 2011 fined a former Borough President $10,000 for hiring an architect to design improvements on his home when the architect was already involved in a project that would require the Borough President's official review. The former Borough President admitted that he did not receive a bill from the architect for two years after the construction work in question was completed and paid that bill only after the press had contacted him about the architect's services.[23] This case and *Holtzman* together stand for the proposition that a public servant may not at the same time have City dealings and personal business or financial dealings with a person or firm. In a 2013 application of this prohibition, in a joint resolution with the Board and the New York City School Construction Authority ("SCA"), an SCA Project Officer agreed to serve a six-week suspension, valued at approximately $10,400, for soliciting a $15,000 loan from an SCA contractor, as well as for soliciting and accepting a part-time position with a firm whose work he supervised for SCA.[24]

In *COIB v. Katsorhis*,[25] the Board found that the former New York City Sheriff violated Charter § 2604(b)(3) by using the supplies, equipment, personnel, and title of his City office to engage in the private practice of law. Finding that his habitual misuse of his City office benefited both Katsorhis and his law firm, with which he had a financial or business relationship, the Board fined him $84,000. Similarly, in 2008, the Board concluded a settlement imposing a $15,000 fine on the former chair of the New York

City Civil Service Commission ("CCSC") for using the staff, equipment, and facilities of the CCSC office to perform tasks related to his private law practice.[26]

In *COIB v. Vella-Marrone*,[27] the Board fined a former SCA official $5,000 for using her position to obtain a job at SCA for her husband and for attempting to obtain a promotion for him. In *COIB v. Finkel*,[28] the Board fined a member of the New York City Housing Authority ("NYCHA") $2,250 for using his office to help his daughter obtain a computer programming job with a company with a $4.3 million contract with NYCHA.

In *COIB v. Turner*,[29] the Board fined the New York City Human Resources Administration ("HRA") Commissioner $6,500 for hiring his business associate as his first deputy commissioner; for using his executive assistant to perform tasks for his private company; for using City time and equipment for his private work; and for renting an apartment from his subordinate.

In *COIB v. Hoover*,[30] the Board fined the First Deputy Commissioner of HRA $8,500 for using a City subordinate to perform private work for him; for using City resources in furtherance of his private consulting business; for using his position to obtain payment for renting out his apartment to a visiting consultant; and for renting out his apartments to subordinates and to his superior.

In *COIB v. Kerik*,[31] the Board fined former Police Commissioner Bernard Kerik $2,500 for using three New York City police officers to perform private research for him. He used information the officers gathered to prepare a book about his life that was published in November 2001.

In *COIB v. Denizac*,[32] in a joint agreement with the Board of Education ("BOE"), an interim 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 Marshall's Office to deliver payment of her scofflaw fine and also asked them to deliver a loan application on her behalf.

In *COIB v. Sass*,[33] 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 her City office. She was found to have violated Sections 2604(a)(1)(a), 2604(b)(2), and 2604(b)(3) and was fined $20,000. Similarly, in 2016, after a full hearing, the Board imposed a $42,000 fine on a former NYCHA Property Maintenance Supervisor, assigned to Sotomayor Houses, for using her position to financially benefit a private construction company owned and operated by her husband. Specifically, the Property Maintenance Supervisor: 1) made the company eligible to receive NYCHA small procurement contracts, by adding it to the list of approved NYCHA suppliers, ultimately resulting in the award of 39 small procurement contracts, totaling $96,000, which did not require competitive bidding; 2) personally awarded 11 procurement contracts to the company for work at Sotomayor Houses; and 3) recommended the company's services for work at another NYCHA housing development.[34]

The Board also fined a New York City Department of Buildings employee $1,000 for using a City telephone for his private home inspection business. The employee, a City building inspector, had private business cards printed that showed his City telephone number. As a result of this case, he ceased the practice of using City phones for private business and destroyed all the offending business cards.[35]

In *COIB v. King*,[36] the Board fined a Deputy Chief Engineer at the New York City Department of Transportation ("DOT") $1,000 for asking several DOT contractors to place advertisements in a fundraising journal the proceeds of which would help support the hockey club on which his sons played. The Deputy Chief Engineer worked on DOT matters involving the eight contractors who contributed $975 for ads, but represented there was no *quid pro quo* for the donations. In Advisory Opinion Number 2008-6, the Board repeated the admonition that where a public servant has, as the Deputy Chief Engineer did, a personal "association" with a not-for-profit organization, such as when the public servant is a member of the organization's board of directors, the public servant may not use his or her City position for the benefit of the organization. In that Opinion the Board cited, as another example of such impermissible fundraising, a public warning letter it issued in 2008 to an agency head for providing a list that included the representatives of firms with present and potential business before his agency to an out-of-state not-for-profit on whose board the agency head served in order that these individuals might be invited to a fundraising event of the not-for-profit.[37] More recently, in 2013, the Board and the New York City Department of Design and Construction ("DDC") concluded joint settlements with a DDC Assistant Commissioner and with a DDC Program Director who used their City positions to solicit funds from a DDC vendor for a non-profit professional organization in which they held positions. Both the Assistant Commissioner and the Program Director were responsible for overseeing the construction of an Emergency Medical Service Station in Brooklyn, including overseeing the DDC vendor's work on a construction management contract. On two occasions, prior to soliciting funds, the Assistant Commissioner told the DDC vendor that it was at risk of receiving a poor performance evaluation. The Assistant Commissioner agreed to pay an $8,000 fine and resign from City employment; the Program Director agreed to pay a $2,500 fine and be placed on an indefinite probation.[38]

In *COIB v. Blake-Reid*,[39] the Board and the Board of Education ("BOE") concluded a settlement with a BOE official who agreed to pay a fine of $8,000 for repeatedly directing her subordinates, over a four-year period, to work on projects for her church and for a private children's organization, on City time and using City copiers and computers.

In *COIB v. Mumford*,[40] the Board and the New York City Department of Education ("DOE") concluded a settlement with a DOE 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. The teacher was fined $5,000 for the improper payment of $3,500 to her husband's company and an additional $2,500 for the conflicts of interest violation, for a total fine of $7,500. In 2004, the Board fined a Deputy Commissioner of the New York City Office of Emergency Management ("OEM") $3,500 for hiring his girlfriend, with whom he had a financial relationship that included a joint bank account and co-ownership

of shares in a cooperative apartment, to take photographs for OEM.[41] Similarly, in 2006 the Board and the DOE reached a three-way disposition with a DOE employee who had twice hired his daughter to work in a youth summer employment program that he supervised. The employee agreed to repay DOE the $1,818 that his daughter had earned and to receive training regarding conflicts of interest.[42]

In *COIB v. Adams,*[43] the Board concluded a settlement with a former officer of a community school board who had testified at an administrative hearing in her official capacity on behalf of her sister, an assistant principal, without disclosing the family connection. Ms. Adams, who had been removed from the community school board by the Chancellor because of this conduct, agreed to pay the Board a fine of $1,500 in settlement of the Board's proceeding.

In *COIB v. Andersson,*[44] the Board concluded a settlement with the Commissioner of the Department of Records and Information Systems ("DORIS") in which he agreed to pay a fine of $1,000. The Commissioner acknowledged that he had used DORIS records to conduct genealogy research for at least four private clients, in violation of the prohibition against public servants using City office for private gain and against using City time and resources for non-City purposes.

In *COIB v. Thompson*, the Board concluded a settlement with the Kings County District Attorney, in which he agreed to pay a fine of $15,000. The District Attorney acknowledged that he had members of his security detail advance their own money to pay for his meals and that those security detail members had been reimbursed from the Kings County District Attorney's Office (the "Office") for those purchases, which totaled $2,043; that he had the members of his security detail advance their own money for other purchases totaling $1,992, for which the District Attorney periodically reimbursed the Office; and that he received reimbursement totaling $1,489 from the Office for his weekday evening and weekend meals incurred while working. In determining the amount of the fine, the Board took into account the high level of accountability required by the District Attorney's position and that, prior to the Board's commencement of an enforcement action, the District Attorney had reimbursed that Office for all funds it had improperly paid for his meals.[45]

In 2017, the Board imposed a $75,000 fine, reduced to $5,000 on a showing of financial hardship, on a former Traffic Enforcement Agent IV at the New York City Police Department ("NYPD") for his multiple violations of the City's conflicts of interest law, primarily relating to his work for his private business, Junior's Police Equipment, Inc. ("Junior's"). In particular, the former Traffic Enforcement Agent: 1) submitted an application on behalf of Junior's to be added to the NYPD authorized police uniform dealer's list; 2) submitted a letter to the NYPD Commissioner, asking that Junior's be permitted to obtain a license from the NYPD to manufacture and sell items with the NYPD logo; 3) arranged with the commanding officer at the NYPD Traffic Enforcement Recruitment Academy ("TERA") to sell uniforms for Junior's there and presented a sales pitch at TERA to a group of recruits – all on-duty public servants commanded to attend, taking in, over a two-day period, more than $32,781 in orders at TERA and receiving $3,704.85 in cash and credit card deposits; 4) over a three-month period, worked for Junior's at times when he was supposed to be working for the City; 5) over a thirteen-

month period, used his NYPD vehicle, gas (approximately two tanks of gas per week), and NYPD EZ-Pass ($8,827.93 in tolls) to conduct business for Junior's, to commute on a daily basis, and for other personal purposes; 6) on 26 occasions, used his police sirens and lights in non-emergency situations in order to bypass traffic while conducting business for Junior's, commuting, and engaging in other personal activities; and used an NYPD logo on his Junior's business card without authorization. The Traffic Enforcement Agent engaged in the above conduct in contravention of prior advice from Board staff, which directed that he seek the Board's advice if he ever wanted to apply to become an NYPD uniform dealer and that warned him not to use City time or resources for his outside activities, or to appear before the City on behalf of Junior's.[46]

The Board has fined a number of City supervisors for using their positions as supervisors to obtain benefits for themselves and their associates through the use of their City subordinates to perform personal tasks. For example, in 2004, the Board and the DOE fined an interim acting principal $900 for using a school aide to transport her children.[47] More recently, in 2013, the Board and the DOE concluded a joint settlement with an assistant principal who paid a $6,000 fine to the Board. The assistant principal admitted that, among other things, he misused his position by having a subordinate babysit his three children in the mornings before school and by allowing his daughter to attend the DOE school where the assistant principal worked without enrolling her, thus avoiding payment of non-resident tuition, in violation of Charter § 2604(b)(3).[48]

The Board regularly fines City employees who seek jobs or other benefits for their associates from City vendors whose work the employees supervise. For example, in 2009, the Board fined the former Director of the DDC Office of Community Outreach and Notification ("OCON") $2,500 for using her City position to help her two adult children obtain jobs with private companies that did business with DDC. The former OCON Director admitted that she helped her son obtain a position with a DDC vendor by asking the vendor's President whether he knew of any positions in the private sector for her son. She also admitted that she helped her daughter obtain a position with a DDC contracting firm by giving her daughter's resume to a representative of the contractor and then allowing DDC to approve the hiring of her daughter by the contractor.[49] Additionally, in 2017, the Board fined the First Deputy Executive Director of the New York Financial Information Services Agency ("FISA") $2,500 for helping her daughter obtain a position with a City vendor with which the First Deputy Executive Director interacted in her City position. Specifically, during an official meeting with the vendor's CEO, the First Deputy Executive Director learned that the vendor wanted to hire a recent college graduate with compliance experience. The First Deputy Executive Director suggested her daughter as a candidate. The daughter applied for the position, using the First Deputy Executive Director's name, and the vendor hired the daughter for a position other than the one its CEO had mentioned. No other candidates were interviewed for that position.[50]

The Board fined an employee of the housing application unit of NYCHA $2,250 for interviewing his own wife in her application for a NYCHA apartment, for processing her application, and for repeatedly contacting his colleagues to urge them to expedite the application, all without disclosing his relationship to the applicant.[51] Similarly, in 2008,

the Board and the DOE concluded a three-way settlement with the then-Deputy Director of Budget for DOE's Region 2 for passing his brother's name on to a DOE colleague so that the brother could be interviewed for a principal's position at the DOE. The settlement provided for a $1,250 fine payable to the Board.[52]

As noted above, Charter § 2604(b)(3) prohibits a public servant from using his or her office to obtain a private or financial advantage for the public servant or any person or firm with whom or which the public servant is "associated." The Board in 2011 issued a public warning letter to a DOE teacher who had a second job as a representative for a multi-level marketing company for placing his business card and a gift certificate for a free needs analysis from his firm inside the envelopes of the holiday greeting cards being sent home to the parents of his school.[53] Similarly, the Board in 2017 fined a DOE Paraprofessional $2,500, reduced to $600 upon the Paraprofessional's documented showing of financial hardship, for using emergency contact information from confidential DOE student records to call and visit the homes of two students in her assigned class in an attempt to sell insurance products to their parents.[54]

In 2007, the Board imposed a $4,000 fine upon a member of the City Planning Commission for taking an action to benefit a firm with which the member was associated. The Commissioner cast a vote at the Commission on a zoning change of an area that included a site that was part of a private development plan in which the Commissioner was an investor; the vote on the site in question permitted its use for residential as well as commercial purposes, which conferred a benefit on the private development plan.[55]

In 2012, the Board fined the former Commissioner of the New York City Department of Finance $22,000 for her multiple violations of the City's conflicts of interest law, including several violations related to her use of her City position for her own personal benefit or for the benefit of people with whom she was associated. One such violation illustrates the requirement that, in order to avoid using one's City position for the benefit of an "associated" party, a public servant must recuse himself or herself from -- that is, participate in no way concerning -- any City matters involving the associated party. The former Finance Commissioner failed to meet that standard by involving herself in the employment of her half-brother, who was employed at Finance as a paid summer intern and part-time college aide, including intervening with her half-brother's supervisor concerning supervisory and performance issues. Other "misuse of City position" violations by the former Finance Commissioner involved actions that she ostensibly took in her personal capacity but where she effectively traded on her City position by seeking favors for her "associates" from persons over whom she had some authority in her position at the Department of Finance. In one such case, the former Finance Commissioner sent an e-mail from her Finance e-mail account to the Vice President and General Counsel at a corporation that owned approximately twenty luxury rental apartment buildings in the City, with whom and with which owner she had dealt in her official capacity as Finance Commissioner, asking the Vice President to assist her registered domestic partner in looking for an apartment, which ultimately resulted in the domestic partner renting an apartment in one of the corporation's buildings. The former Finance Commissioner acknowledged that she was "associated" with her domestic partner within the meaning of the City's conflicts of interest law. In another such case,

the former Finance Commissioner sent an e-mail from her Finance e-mail account to a Senior Client Manager at a bank, with whom and with which bank she had dealt in her official capacity as Finance Commissioner, inquiring about the time frame for the bank's decision to extend loan commitments and provide additional financing to a company on whose board of directors she served as a compensated member and about whether that time frame might be extended. As a paid director of the company, the former Finance Commissioner was "associated" with the company within the meaning of the City's conflicts of interest law. Her inquiry on its behalf, to a person with whom she had dealt in her official capacity, therefore was, like her inquiry on behalf of her domestic partner to another person with whom she had dealt in her official capacity, a violation of the ban on using one's official position for the benefit of an associated party.[56]

In 2014, the Board fined the Queens Democratic Commissioner of the New York City Board of Elections (the "BOE") $10,000, the maximum fine then possible, for hiring his wife to work in the BOE Queens Borough Office in order to obtain health insurance for their family.[57]

The Board in 2016 entered into a joint disposition with the New York City Department of Education, in which an Assistant Principal was fined $7,000 – $6,000 to DOE and $1,000 to the Board – for hiring her brother's company to cater events at her school and for personally authorizing payment to the company of a total of $7,443.75 in DOE funds. In particular, she reimbursed herself a total of $1,289 from DOE funds for purchases she had made from his company to cater events at her school and she signed off on an additional $6,154.75 in direct DOE payments to his company to cater such events.[58]

The Board has also sanctioned public servants who misuse their City positions by using confidential City information for their own personal advantage. In 2016, the Board entered into a joint disposition with the New York City Administration for Children's Services ("ACS"), in which a Child Protective Specialist I agreed to serve a sixty-day suspension, valued at $10,317, for, among other ACS disciplinary charges, accessing New York State's confidential CONNECTIONS database on three separate occasions to learn the status of an ACS investigation in which he had a personal interest.[59]

C. Duty of Undivided Loyalty to the City

Charter § 2604(b)(2) prohibits a public servant from engaging in any "business, transaction or private employment, or hav[ing] any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties." The Board has construed this Section as requiring of all public servants a duty of undivided loyalty to the City. Indeed, "Section 2604(b)(2) reaches all forms of private conduct by public servants that may reasonably cause the public to question the public servant's undivided loyalty to the City."[60] "[T]o determine the scope of a public servant's official duties," within the meaning of Charter § 2604(b)(2), the Board "may properly look at the provisions of other laws, rules or statutes."[61]

Thus, in *COIB v. Rubin*,[62] an Administrative Law Judge ("ALJ") in the Parking Violations Bureau of the New York City Department of Finance publicly admitted that her adjudication of two summonses issued to her father-in-law, where the ALJ dismissed one case and reduced the fine in the other, violated § 2604(b)(2). Although the ALJ did not obtain any financial gain from her violation, she breached her duty of undivided loyalty to the City.

In Advisory Opinion Number 93-5, the Board refused to permit a high-level appointed official to act as the director of a large, publicly held corporation on Charter § 2604(b)(2) grounds. The Board stated that taking on a director's obligations could compromise the official's commitment to his City job and interfere with the proper discharge of his official City duties. Similarly, in Advisory Opinion Number 93-24, the Board noted that the prohibitions in Charter § 2604(b)(2) are "intended to insure that public servants dedicate their energies, during official working hours, to the welfare of the citizens that they serve."

Under Charter § 2606(d), penalties may be imposed for a violation of Charter § 2604(b)(2) only if the violation involved conduct identified by Board Rule as prohibited by that provision, although, as noted by the Charter Revision Commission, "the board may in some situations adjudicate a public servant to be in violation of paragraph two [of Charter § 2604(b)] without imposing any penalties."[63] Effective August 8, 1998, the Board enacted Board Rules § 1-13, entitled "Conduct Prohibited by City Charter § 2604(b)(2)," to identify conduct that violates Charter § 2604(b)(2). A violation of that rule thus subjects the violator to a civil fine of up to $25,000. Conduct other than that identified in Board Rules § 1-13 may still constitute a violation of Charter § 2604(b)(2), but, under Charter § 2606(d), the Board may not impose any penalties for such other conduct, unless it violates some other provision of Charter § 2604.

Board Rules § 1-13, with limited exceptions, prohibits public servants from (a) performing personal and private activities on City time; (b) using City letterhead, personnel, equipment, resources, or supplies for any non-City purpose; and (c) intentionally or knowingly soliciting, requesting, commanding, inducing, or causing another public servant to violate any provision of Charter § 2604. A 2011 disposition illustrates the prohibition on inducing or causing another public servant to violate the conflicts of interest law: an FDNY Communications Electrician admitted that, by requesting and accepting overtime from his superior, who was his father-in-law, the son-in-law had caused his father-in-law to violate the conflicts of interest law and thus had himself violated the prohibition against soliciting, requesting, commanding, aiding, inducing, or causing another public servant to violate the law. The Board fined the son-in-law $1,500 for this conduct.[64] In 2013, in a settlement with the former Senior Director of the Corporate Support Services ("CSS") Division of the HHC, who paid a $9,500 fine to the Board, the former Senior Director admitted, among other things, that he suggested to a CSS Director that she ask her subordinate, an Institutional Aide, to refinish the floors in her personal residence. The CSS Director paid the Aide $100 for performing this work. The Senior Director acknowledged that, by suggesting that the Director hire her subordinate, an action prohibited by the ban on financial relationships between superiors and subordinates, the Senior Director induced their violation, a violation itself of Board

Rules § 1-13. Similarly, in 2015, the Board fined a DOE teacher $1,250 for asking his supervisor, a DOE Assistant Principal, for a $100 loan. Such a loan, which the Assistant Principal declined to make, would have likewise violated the ban on financial relationships between superiors and subordinates, so that by requesting the loan the teacher violated the prohibition in Board Rules § 1-13 against requesting or soliciting a violation of Chapter 68. In his settlement with the Board the teacher acknowledged having received a public warning letter from the Board two years earlier for having borrowed $500 from a DOE superior.[65]

In Advisory Opinion Number 2009-1, an opinion explicitly confined to City elected officials, the Board determined that such officials could, contrary to the general prohibition against the use of City resources for private or personal purposes, make certain use of their official City vehicles for non-City purposes. More particularly, elected officials for whom the New York City Police Department has determined that security, in the form of an official vehicle and security personnel, is required may make any lawful use of the official vehicle and security personnel for personal purposes, including pursuit of outside business or political activities, without any reimbursement to the City, provided that such use is not otherwise a conflict of interest and further provided that the elected official is in the vehicle during all such use. Elected officials for whom security protection has not been mandated by the Police Department, but whose duties require them to be constantly available to respond to the needs of constituents and to public emergencies, may make any lawful use of their allotted City vehicles and/or drivers within the five boroughs, including pursuit of outside business or political activities, without reimbursement to the City, provided that the use is not otherwise a conflict of interest and further provided that the elected official is in the vehicle during all such use. Outside the five boroughs within a range permitting timely return to the City, such elected officials may use the vehicle and/or driver for any lawful personal purpose, including pursuit of outside business or political activities, with reimbursement to the City. If, however, the elected official can clearly demonstrate that the particular use outside the City's limits was for official business, reimbursement to the City is not required.

As with any ethics law, Board Rules § 1-13 must be interpreted in light of reason, experience, and common sense. A brief telephone call to a friend or doctor would not constitute a violation of the rule. Running an outside business from one's City office would, as would spending an afternoon at the beach during City time.[66] The Board accordingly fined a housing inspector $250 for working at a gas station in New Jersey at times when he was required to inspect buildings in New York, a fine that might well have been higher but for the inspector's agreement to resign from City service.[67] The Board also fined a former school custodian $1,000 for using, for his private business, personnel and equipment paid for by the DOE.[68] In 2005 a DDC employee agreed to pay the Board a fine of $3,000 and to serve a 25-day suspension without pay for using his City phone on City time for approximately 2,000 calls related to his private business.[69] In 2007, the Board and HRA entered into a three-way settlement in which an HRA Associate Staff Analyst was suspended for thirty days without pay, valued at $4,450, for using his City computer to do work for his private real estate practice during his City work hours.[70]

As noted, the conflicts of interest law does not prohibit certain *de minimis* personal use of City resources, and some City agencies (but not all) will in fact permit such limited use. In an effort to describe that permissible use with more particularity, the City's Department of Information Technology and Telecommunications, in consultation with the Department of Investigation and the Law Department, developed a "Policy on Limited Personal Use of City Office and Technology Resources," commonly known as the Acceptable Use Policy ("AUP"), that sets forth in some detail permissible, and impermissible, uses of such City resources as computers, telephones, copiers, and email. The Board has reviewed that policy and determined that the permissible uses described therein will not violate Chapter 68. In addition, the Board has long advised that certain impermissible uses described in the AUP will likewise violate Chapter 68 even at the lowest level of use, that is, there is a zero tolerance policy for these uses. Thus, for example, there is no acceptable or permissible level of use of City time or resources in connection with a City employee's outside job or private business or for a political campaign. While there is no permissible amount of *City time* that may be devoted to a paid activity, the conflicts of interest law does not place any limits on the amount of *non-City time* a City employee may spend on such activity. That said, in judging whether it is credible that the restriction against any use of City time will be observed, the Board, in responding to requests for advice about proposed outside work, "regularly inquires about the demands and the schedule of proposed outside work."[71]

Where a charitable or philanthropic activity, such as the annual toy collection drive or the Combined Municipal Campaign, is sanctioned by the Mayor as a *City activity*, neither Charter § 2604(b)(2) nor Board Rules § 1-13 comes into play. Accordingly, City employees may use City time, letterhead, and resources in connection with that activity.[72]

Furthermore, in drafting the Rule, the Board recognized that certain public service activities, such as volunteering one's services for a professional organization, may in some instances further the City's interests. For example, a public servant's uncompensated participation on a bar association committee not only may help the public servant meet his or her obligations to the legal profession but also may reflect favorably upon the City and the public servant's agency, may assist in the professional development of the public servant, and may provide him or her with new insights into the performance of his or her City job, all to the City's benefit.

Accordingly, to cover such situations, the Rule contains a limited exception to the prohibition against use of City time, equipment, personnel, resources, or supplies for a non-City purpose.

Thus, Board Rules § 1-13(c) permits an agency head to apply to the Board for permission for the employees of the agency to engage in such activities during normal working hours and to use City equipment, resources, personnel, and supplies—but not City letterhead—in connection with the activity. If, however, the activity has a direct impact upon another City agency, then the employee's agency head must give the head of that other agency at least ten days' written notice before approving the employee's request. For example, the Corporation Counsel could seek the approval of the Board for attorneys in the Law Department to attend bar association committee meetings during the day and even to type and photocopy a bar association report on City computers and photocopiers—but not

to use Law Department letterhead. If, however, the work of the bar association committee has a direct impact upon another City agency, such as the Juvenile Justice Committee might for ACS, then the Corporation Counsel would have to give the head of that other agency at least ten days' written notice before approving the employee's request.[73]

Once a type of activity has been approved by the Board for the employees of a particular agency under this provision, other employees of that agency who wish to engage in the same type of activity need obtain approval only from their agency head. Additional approval from the Board is not required.[74]

As noted above, Board Rules § 1-13(c) will *not* permit the use of City letterhead even for Board-sanctioned public service activities. Chapter 68 indeed prohibits any use of City letterhead for a non-City purpose. The Board fined a NYCHA superintendent $500 for writing a letter on NYCHA letterhead to the Police Department in support of a fellow NYCHA employee's petition to annul the revocation of the fellow employee's gun permit.[75] The Board similarly issued public warning letters to 17 Sanitation Department employees who used City letterhead to write letters in support of a Sanitation colleague who was scheduled to be sentenced for a felony drug charge.[76] In 2011 the Board fined the former Vice-Chairman of NYCHA $2,000 for using NYCHA letterhead and his NYCHA subordinate for personal, non-City purposes. The former Vice-Chairman admitted using NYCHA letterhead on two occasions for purely personal purposes: once to write a letter to the Executive Director of Prudential Douglas Elliman praising the Prudential broker who handled the sale of his apartment, and who was also a personal friend of thirty-five years, and then to write a letter to a federal judge seeking leniency for a family friend about to be sentenced on one count of distribution of child pornography.[77]

In 2016, the Board entered into a joint disposition with the New York City Police Department ("NYPD"), in which a Detective paid a $200 fine and forfeited one day of annual leave, valued at approximately $360, for giving a letter to his landlord for use as evidence at an Environmental Control Board hearing. Although the NYPD had no involvement with the matter, the Detective wrote the letter on NYPD letterhead, attested that the landlord was not responsible for the violation, and signed off with his NYPD title and squad number. In determining the amount of the fine, the Board took into consideration that there is no evidence the Detective benefited personally from providing the letter to his landlord.[78]

In Advisory Opinion Number 2013-2, the Board recognized that use of City letterhead for letters of reference may, in certain circumstances, advance the interests of the City and not just the personal interests of the involved parties. The Board accordingly advised that, while it will typically violate the conflicts of interest law for a City employee to use City letterhead for a reference letter for a fellow City employee, if the writer is the superior of that City employee or is otherwise authorized by that City agency's leadership to write a reference letter with respect to that employee, use of City letterhead will be permissible. But, even when City employees are barred from using City letterhead for a reference letter for a colleague, they are permitted, the Board noted, to send reference letters in their personal, non-City capacities using their personal stationery.

D. Coercion of Subordinates

Chapter 68 contains several provisions that seek to protect City employees from undue coercion by their superiors. For example, Charter §§ 2604(b)(9)(b) and 2604(b)(11)(c) forbid a public servant from even *requesting* a subordinate to engage in political activity or to make a political contribution. In 2006, the Board fined a former Assistant Commissioner of the New York City Department of Sanitation $2,000 for, among other violations, recruiting his subordinates to work on a mayoral campaign.[79] In addition, Charter § 2604(b)(14) prohibits a superior and subordinate from entering into a business or financial relationship. This provision, for example, prohibits loans between superior and subordinate; forbids a lease or sub-lease between superior and subordinate; and prohibits a sale of a car between superior and subordinate.

In actions to enforce this provision, the Board fined an assistant principal $1,000 for borrowing $1,000 from a subordinate; fined a Housing Authority supervisor $1,750 for selling a car to his subordinate for $3,500, a disposition in which he also agreed to forfeit annual leave with a value of $1,600; fined an assistant principal $2,800 for preparing, for compensation, the income tax returns of several of his subordinates; fined a New York City Department of Homeless Services supervisor $1,500 for renting an apartment for six months to a subordinate; and fined the Chief Clerk of the Staten Island Office of the New York City Board of Elections $3,500 for regularly obtaining free car rides from her subordinates over a period of eight years.[80]

Even if the financial relationship exists prior to the superior-subordinate relationship, once the parties become superior and subordinate they must take immediate steps to end the financial relationship. In 2008, the Board and the DOE concluded two three-way settlements with a DOE principal and a DOE assistant principal, each fined $500 by the Board for continuing to jointly own and share a mortgage on a time share unit after the DOE principal became the assistant principal's supervisor.[81]

Since marriage is, among other things, a financial relationship, Charter § 2604(b)(14) prohibits a superior from being married to his or her subordinate. The Board imposed a $1,000 fine on a City Council Member who, having married his Chief of Staff, continued to employ her in that capacity, as his subordinate, for eight months after their marriage. The Board took the occasion of the publication of this disposition to remind public servants that a marriage is a "financial relationship" within the meaning of Chapter 68 and also that such a relationship between a superior and a subordinate is prohibited even if the superior-subordinate relationship precedes the marriage.[82]

To protect subordinates from undue pressure, Chapter 68 prohibits a superior from borrowing money from a subordinate to pay for an expense, even if the City itself could pay for it. In 2007 the Board issued a public warning letter to a DOE assistant principal for asking two of his subordinates to charge to their personal credit cards $525 and $845 respectively to enable the assistant principal to attend a DOE-related function.[83]

While Charter § 2604(b)(14) serves, among other purposes, to protect subordinates from coercion from superiors, the Board will nevertheless in the appropriate case sanction the subordinate as well as the superior. In 2016, the Board fined both HHC's Supervisor of Plumbers *and* his subordinate Plumber ($3,000 for the former, which fine included other violations, and $450 for the latter) for engaging in a prohibited superior-subordinate financial relationship, namely the sale of a vehicle from the subordinate to the superior.[84] In 2007, the Board fined a former supervisor of roofers at the DOE $2,000 for recommending three of his subordinate roofers for private roofing work and then accepting commissions from the subordinates for his referrals.[85] Note that the violation of the conflicts of interest law lies not in referring one's subordinates for paid outside work, but rather for accepting compensation in connection therewith.

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[1] In *COIB v. Lucks*, COIB Case No. 2008-962 (2009), the Board fined a New York City Department of Education principal $1,500 for allowing one of his subordinates to hire and supervise her children and for allowing another subordinate to hire and supervise her brother.

[2] Charter § 2601(5).

[3] *Holtzman v. Oliensis*, 91 N.Y.2d 488, 673 N.Y.S.2d 23 (1998).

[4] Charter § 2604(b)(1).

[5] Charter § 2604(b)(1)(b); *see also* Advisory Opinion Number 91-3.

[6] Charter § 2604(b)(1)(c).

[7] Charter § 2604(b)(1)(a).

[8] *COIB v. Dilan,* COIB Case No. 2011-201 (2015).

[9] *COIB v. Reid*, COIB Case No. 2008-246 (2010).

[10] *COIB v. Piazza*, COIB Case No. 2010-077 (2010).

[11] *COIB v. Zerillo*, COIB Case No. 2010-285 (2011).

[12] *COIB v. Michel,* COIB Case No. 2014-317 (2015).

[13] *COIB v. Hagler*, COIB Case No. 2013-866 (Dec. 2, 2015), *adopting* OATH Index. No. 581/15 (June 17, 2015).

[14] *COIB v. Campbell Ross*, OATH Index No. 538/98, COIB Case No. 1997-76 (Order Dec. 22, 1997).

[15] *COIB v. Ungar*, COIB Case No. 1990-383 (1992).

[16] *COIB v. Velez*, COIB Case No. 2014-663 (2015).

[17] By vote of the electorate on November 2, 2010, the maximum fine was raised from $10,000 to $25,000 per violation and the disgorgement provision added.

[18] *COIB v. Namnum*, COIB Case No. 2011-860 (2012).

[19] Charter § 2606(b).

[20] Charter § 2606(c).

[21] 91 N.Y.2d 488, 673 N.Y.S.2d 23 (1998).

[22] 91 N.Y.2d at 497.

[23] *COIB v. Carrión*, COIB Case No. 2009-159 (2011).

[24] *COIB v. Giwa*, COIB Case No. 2013-306 (2013).

[25] COIB Case No. 1994-351 (1998).

[26] *COIB v. Schlein*, COIB Case No. 2006-350 (2008).

[27] COIB Case No. 1998-169 (2000).
[28] COIB Case No. 1999-199 (2001).
[29] COIB Case No. 1999-200 (2000).
[30] COIB Case No. 1999-200 (2000).
[31] COIB Case No. 2001-569 (2002).
[32] COIB Case No. 2000-533 (2001).
[33] COIB Case No. 1998-190 (1999).
[34] *COIB v. Hawkins,* OATH Index No. 1043/16, COIB Case No. 2015-208 (Order Sept. 22, 2016).
[35] *COIB v. Hahn*, COIB Case No. 1998-102 (1998).
[36] COIB Case No. 1998-508 (2001).
[37] *COIB v. Cosgrave*, COIB Case No. 2007-290 (2008).
[38] *COIB v. Devgan*, COIB Case No. 2013-177 (2013); *COIB v. Shah*, COIB Case No. 2013-177a (2013).
[39] COIB Case No. 2002-188 (2002).
[40] COIB Case No. 2002-463 (2003).
[41] *COIB v. Berkowitz*, COIB Case No. 2004-180 (2004).
[42] *COIB v. Whitlow,* COIB Case No. 2005-590 (2006).
[43] COIB Case No. 2002-88 (2003).
[44] COIB Case No. 2001-618 (2004).
[45] *COIB v. K. Thompson*, COIB Case No. 2015-110 (2016)
[46] *COIB v. Vega*, COIB Case No. 2016-090 (2017).
[47] *COIB v. McKen*, COIB Case No. 2004-305 (2004).
[48] *COIB v. L. Castro*, COIB Case No. 2013-097 (2013).
[49] *COIB v. Dodson,* COIB Case No. 2007-330 (2009).
[50] *COIB v. R. Myers*, COIB Case No. 2016-735 (2017).
[51] *COIB v. Vale,* COIB Case No. 2006-349 (2007).
[52] *COIB v. Namnum*, COIB Case No. 2007-723 (2008).
[53] *COIB v. Cooks*, COIB Case No. 2011-250 (2011).
[54] *COIB v. Salazar*, COIB Case No. 2016-444 (2017).
[55] *COIB v. Williams*, COIB Case No. 2004-517 (2007).
[56] *COIB v. Stark*, COIB Case No. 2011-480 (2012).
[57] *COIB v. Araujo,* COIB Case No. 2013-426 (2014).
[58] *COIB v. CoPenny*, COIB Case No. 2015-502 (2016).
[59] *COIB v. Viverette*, COIB Case No. 2015-732 (2016).
[60] Decision and Order at 27, in *COIB v. Holtzman*, COIB Case No. 1993-121 (April 3, 1996), *aff'd sub nom., Holtzman v. Oliensis*, 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 (1998).
[61] Findings of Fact, Conclusions of Law, and Order at 6, *COIB v. Katsorhis,* OATH Index No. 1531/97, COIB Case No. 1994-351 (Sept. 17, 1998).
[62] COIB Case No. 1994-242 (1995).
[63] Volume II, REPORT OF THE NEW YORK CITY CHARTER REVISION COMMISSION, DECEMBER 1986 – NOVEMBER 1988, at 175-176.
[64] *COIB v. LaBella*, COIB Case No. 2010-285a (2011).
[65] *COIB v. Butz,* COIB Case No. 2014-894 (2015).

[66] "Statement of Basis and Purpose," in "Notice of Adoption of Rule Identifying Certain Conduct Prohibited by Charter § 2604(b)(2)," p. 4, published in *City Record*, July 9, 1998 ("Statement of Basis and Purpose"). More recently, the Board approved as consistent with Chapter 68 a model Acceptable Use Policy (the City's "Policy on Limited Personal Use of City Office and Technology Resources"). This Policy outlined what sorts of minimal personal use of City equipment, especially personal computers, a City agency might choose to permit.

[67] *COIB v. Lizzio*, COIB Case No. 2000-254 (2000).

[68] *COIB v. Powery*, COIB Case No. 2004-466 (2005).

[69] *COIB v. Carroll*, COIB Case No. 2005-151 (2005).

[70] *COIB v. Tulce*, COIB Case No. 2007-039 (2007).

[71] Advisory Opinion Number 2012-1, footnote 2, at page 13.

[72] Statement of Basis and Purpose at 4.

[73] Statement of Basis and Purpose at 3-4.

[74] Board Rules § 1-13(c)(1).

[75] *COIB v. Lucido*, COIB Case No. 2007-362 (2007).

[76] *COIB v. 17 Named Individuals*, COIB Case Nos. 2007-187/a-p (2007).

[77] *COIB v. Andrews*, COIB Case No. 2011-156 (2011).

[78] *COIB v. Davis*, COIB Case No. 2016-045 (2016).

[79] *COIB v. Russo*, COIB Case No. 2001-494 (2006).

[80] *See respectively COIB v. Ross*, COIB Case No. 1997-225 (1997); *COIB v. Vazquez*, COIB Case No. 2004-321 (2005); *COIB v. Gutman*, COIB Case No. 2004-214 (2005); *COIB v. Hall*, COIB Case No. 2006-618 (2007); *COIB v. del Giorno*, COIB Case No. 2015-269 (2016).

[81] *COIB v. Richards*, COIB Case No. 2006-559 (2008); *COIB v. Cross*, COIB Case No. 2006-559a (2008).

[82] *COIB v. Sanders*, COIB Case No. 2005-442 (2007).

[83] *COIB v. Anderson*, COIB Case No. 2007-002 (2007).

[84] *COIB v. Cook*, COIB Case No. 2016-388 (2016); *COIB v. Bosco*, COIB Case No. 2016-388b (2016).

[85] *COIB v. Della Monica*, COIB Case No. 2004-697 (2007).

OUTSIDE ACTIVITIES

by

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A. Introduction

Many public servants seek to augment their City incomes by taking on second jobs or starting up or investing in private businesses. Many public servants also seek to continue the spirit of their public service by volunteering for not-for-profit organizations. This chapter will address the rules that must be followed whenever a public servant seeks to perform any activity outside his or her City employment, whether that activity is paid or unpaid.

Among the moonlighting activities the Conflicts of Interest Board has specifically addressed are: teaching; practicing law; engaging in various kinds of contracting work, such as architecture, engineering, electrical work, and plumbing, that might involve representing private interests before the City; and writing books. Charter §§ 2604(a), 2604(b), and 2604(e), which cover these activities, contain the minimum standards of conduct. Some City agencies promulgate and enforce stricter rules.

The Board has consistently advised that the moonlighting restrictions apply not only to active public servants, but also to those on leaves of absence. In 2001 the Board fined a public servant $1,000 for working, while on sick leave, at a firm that had a contract with his City agency.[1] Similarly, in 2013, the Board fined a former Elevator Mechanic Helper for the New York City Housing Authority ("NYCHA") $1,000 for working, while he was on leave from NYCHA, as an Elevator Mechanic Helper for a private firm with NYCHA business dealings.[2]

The Board has also issued a number of advisory opinions on the more general question of who is a "public servant" of the City, that is, opinions that determine whether certain categories of people are subject to the moonlighting restrictions or indeed to any of the restrictions of the conflicts of interest law. For example, in Advisory Opinion Number 93-10 the Board held that Administrative Law Judges of the Parking Violations Bureau were subject to the conflicts of interest law. Similarly, in three opinions issued in 2009, the Board determined that the following persons were subject to the Board's jurisdiction: the trustees and employees of the City's municipal employee pension systems; law firm associates who defer work at their firms to work for a year, at their firms' expense, for City agencies; and the members of the New York City Water Board.[3]

The Conflicts of Interest Board has also issued advisory opinions and orders on the following ownership questions, among others: imputed ownership of a spouse's business; blind trusts; ownership of residential co-operatives or condominiums; and ownership of apartments rented to public assistance recipients. The Charter sections that cover these interests are also

Sections 2604(a), (b), and (e).

Many City employees are involved in, or want to be involved in, volunteering for not-for-profit organizations. Public servants volunteer for religious organizations, bring food to the elderly, work with troubled youth, feed the homeless, and engage in other civic-minded volunteer activities. These activities not only generate goodwill in the City, but also help to improve the quality of life for all City residents. Public servants are not prohibited from volunteering for not-for-profits. There are, however, some restrictions, as discussed below.

B. General Provisions

A public servant shall not engage in any business, transaction, or private employment, or have any financial or other private interest, direct or indirect, that conflicts with the proper discharge of his or her official duties.[4] For example, a public servant may not pursue outside employment on City time or use City equipment, supplies, letterhead, personnel, or other City resources for the outside employment.[5] In 2000, the Board fined the Commissioner and First Deputy Commissioner two top officials of the New York City Human Resources Administration ("HRA") $6,500 and $8,500 for, among other things, using City resources and their City subordinates in furtherance of their outside private businesses.[6] In 2007, the Board fined two City employees $2,000 each for violations that included the use of City time for a non-City purpose. In one case, a New York City Department of Sanitation ("DSNY") Assistant Commissioner promoted his outside travel business and also made calls in support of a mayoral candidate during his City work hours.[7] In the second case, a New York City Housing Authority ("NYCHA") Staff Analyst, over a six-month period, made hundreds of telephone calls and exchanged hundreds of emails during her NYCHA work day in support of several not-for-profit organizations unrelated to her NYCHA employment.[8] In 2009, the Board and the New York City Department of Correction ("DOC"), in a three-way settlement, fined an attorney in the DOC Office of Trials and Litigation $1,800 for, while on City time, using his City computer to store and edit documents related to his private law practice.[9] In 2012, the Board fined a former Engineering Auditor for the New York City Economic Development Corporation ("EDC") $7,500 for, during his EDC work hours, using his EDC computer and e-mail account to perform work for his private sneaker business, including completing 106 seller transactions on eBay, totaling $9,724.99, and hitting the bidding websites bid.openx.net and eBay a combined total of approximately 802 times during each workday over a three-month period.[10]

In 2010, the Board imposed a substantial fine on a public servant who had received the Board's advice that he could own and operate a restaurant, but with an explicit caution that he not use City time or resources in the pursuit of this private enterprise. The Board imposed a $20,000 fine on this public servant, the former Senior Deputy Director for Infrastructure Technology in the Information Technology Division at NYCHA, for his multiple violations of the City's conflicts of interest law. Despite the prior specific written instructions from the Board, the former Senior Deputy Director proceeded to engage in the prohibited conduct, specifically, by: (a) using his NYCHA computer and e-mail account to send hundreds of e-mails related to the restaurant, in some of which he provided his NYCHA office telephone number and NYCHA cell phone number as his contact information for the restaurant; (b) creating and/or

saving at least thirteen documents on his NYCHA computer related to the restaurant; (c) using his NYCHA office telephone to make approximately 800 calls to the restaurant, totaling 28 hours of telephone time; (d) using his NYCHA-issued Blackberry to make or receive approximately 830 calls to or from the restaurant, totaling 34 hours of telephone time; and (e) using his NYCHA-issued van to make food deliveries for the restaurant. The former Senior Deputy Director also acknowledged that he had resigned from NYCHA while disciplinary proceedings were pending against him for this misconduct.[11]

In 2017, the Board imposed a $75,000 fine, reduced to $5,000 on a showing of financial hardship, on a former Traffic Enforcement Agent IV at the New York City Police Department ("NYPD") for his multiple violations of the City's conflicts of interest law, primarily relating to his work for his private business, Junior's Police Equipment, Inc. ("Junior's"). In particular, the former Traffic Enforcement Agent: (a) submitted an application on behalf of Junior's to be added to the NYPD authorized police uniform dealer's list; (b) submitted a letter to the NYPD Commissioner, asking that Junior's be permitted to obtain a license from the NYPD to manufacture and sell items with the NYPD logo; (c) arranged with the commanding officer at the NYPD Traffic Enforcement Recruitment Academy ("TERA") to sell uniforms for Junior's there and presented a sales pitch at TERA to a group of recruits – all on-duty public servants commanded to attend, taking in, over a two-day period, more than $32,781 in orders at TERA and receiving $3,704.85 in cash and credit card deposits; (d) over a three-month period, worked for Junior's at times when he was supposed to be working for the City; (e) over a thirteen-month period, used his NYPD vehicle, gas (approximately two tanks of gas per week), and NYPD EZ-Pass ($8,827.93 in tolls) to conduct business for Junior's, to commute on a daily basis, and for other personal purposes; (f) on 26 occasions, used his police sirens and lights in non-emergency situations in order to bypass traffic while conducting business for Junior's, commuting, and engaging in other personal activities; and (g) used an NYPD logo on his Junior's business card without authorization. The Traffic Enforcement Agent engaged in the above conduct in contravention of prior advice from Board staff, which directed that he seek the Board's advice if he ever wanted to apply to become an NYPD uniform dealer and that warned him not to use City time or resources for his outside activities, or to appear before the City on behalf of Junior's.[12]

A 2013 settlement with a DOC Special Operations Officer illustrates that use of City resources for a private purpose may result in a substantial penalty even where the use is not in connection with an outside business or other compensated activity. The Officer admitted that, without authorization, he commuted in a DOC vehicle using DOC gasoline to Rikers Island from his home in Port Jefferson nearly daily over an eight-month period in 2011, for which violation he agreed to pay a $4,500 fine to the Board.[13] In 2017, the Board entered into a joint settlement with the New York City Department of Health and Mental Hygiene ("DOHMH") and a Supervising Exterminator who agreed to serve a forty-day suspension without pay, valued at approximately $4,867, for driving a DOHMH vehicle while off duty to a bar, then, approximately seven hours later, and now impaired, causing a multi-car accident that rendered the DOHMH vehicle unrepairable and inoperable.[14]

While there is no permissible amount of *City* time that may be devoted to paid private work, the conflicts of interest law does not place any limits on the amount of *non-City* time a City

employee may spend on such activity. That said, in responding to requests for advice about outside work, the Board "regularly inquires about the demands and the schedule of proposed outside work" in order to evaluate whether it is credible that the restriction against any use of City time will be observed by the City employee seeking such advice.[15]

In addition, no public servant shall use or attempt to use his or her official City position to obtain any financial gain, contract, license, privilege, or other private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant.[16] "Associated" is defined in Charter § 2601(5) to include the public servant's spouse, domestic partner, child, parent, or sibling; a person with whom the public servant has a business or other financial relationship; and each firm in which the public servant has a present or potential interest. Because a City employee with an outside job is clearly "associated" with his or her private employer within the meaning of the Charter, the City employee must have nothing to do with any of her private employer's City business. In 2004 the Board accordingly fined a NYCHA appraiser $2,000 for hiring her private employer to do work for NYCHA.[17] In 2012, the Board issued a public warning letter to an English as a Second Language teacher who, on his own, enrolled fifteen of his ESL students in the Special Education Services program run by Perfect Score Tutoring, where he worked as a tutor; the Board advised the ESL teacher that, in so doing, he used his City position to benefit a firm with which he was associated.[18]

In Advisory Opinion Number 2002-1, which concerned the financial interests of Mayor Michael Bloomberg, the Board considered whether the major customers of, and the partner of, Bloomberg L.P., the financial services firm of which the Mayor was the majority owner, were "associated" with the Mayor within the meaning of the Charter. With respect to the customers, the Board reserved that question, finding that the public disclosure of the identities of the firm's 100 leading customers, none of which accounted for more than 4% of the firm's revenue, relieved the Mayor of any obligation to recuse himself from City matters involving those customers. On the other hand, the Board determined that Mayor Bloomberg was "associated" with Merrill Lynch, the minority partner in his firm, and that Chapter 68 required him to recuse himself from matters involving Merrill. Further, in Advisory Opinion Number 2007-4, where the Board reviewed and approved a greater diversity of private investment options for Mayor Bloomberg, the Mayor agreed, in response to the Board's concern that he might be "associated" with certain financial institutions involved in financing distributions to Bloomberg L.P. that would fund those investments, to recuse himself in his official capacity from all matters involving those financial institutions.

No public servant shall disclose any confidential information concerning the City that is obtained as a result of the public servant's official duties and that is not otherwise available to the public, or use any such information to advance any direct or indirect financial or other private interest of the public servant or any person or firm associated with the public servant.[19] The Board in 2017 fined a DOE Paraprofessional $2,500, reduced to $600 upon the Paraprofessional's documented showing of financial hardship, for using emergency contact information from confidential DOE student records to call and visit the homes of two students in her assigned class in an attempt to sell insurance products to their parents.[20] Similarly, in 2012, the Board and the New York City Department of Parks and Recreation ("Parks") concluded a

joint settlement with a Parks Construction Project Manager who was suspended for sixty days, valued at approximately $11,478, for disclosing confidential Parks information to a private vendor. The Construction Project Manager admitted that without authorization from Parks he had provided Parks engineer and construction pricing estimates to a private vendor who was in the process of preparing a bid for a Parks construction project. The Construction Project Manager also admitted that, at the time he disclosed the information, the vendor was completing construction on a residence owned by the Construction Project Manager's sister, in which residence the Construction Project Manager then resided.[21] This Charter section (2604(b)(4)) does not, however, prohibit the disclosure of information concerning waste, inefficiency, corruption, criminal activity, or conflict of interest.

Finally, full-time public servants are prohibited from representing private interests for compensation before any City agency or from appearing anywhere, directly or indirectly, on behalf of private interests in matters involving the City.[22] For persons who are public servants but who are not regular, full-time employees of the City, this prohibition extends only to the public servant's own agency. "Appear" is defined in Charter § 2601(4) as making any communication (in person, in writing, or by telephone) for compensation, other than those concerning ministerial matters. "Ministerial matter" means an administrative act, including the issuance of a license, permit, or other permission by the City, that is carried out in a prescribed manner and that does not involve substantial policy discretion.[23] Although "represent" is not defined in Chapter 68, the phrase "representing private interests before any City agency" means just what it says: acting as a representative of a person or entity to bring an issue before a City agency. Such representation is not prohibited, however, in ministerial matters.

The Board fined a now-former Housing Inspector $6,000 for, while employed by the New York City Department of Housing Preservation and Development ("HPD"): (1) appearing before the New York City Department of Buildings ("DOB") on behalf of his private architectural business on forty-seven occasions between 2013 and 2015; and (2) contacting an HPD colleague to request the removal of HPD violations and a vacate order from the property of one of the Housing Inspector's private clients, inquiring about the status of that request, and requesting a further expedited inspection to remove the vacate order.[24] As noted above, however, full-time City employees are prohibited from appearing for compensation on behalf of private interests before *any* City agency. Thus, in 2009, the Board fined a DSNY Senior Electrical Estimator $1,000 for twice submitting bids for contracts with the New York City Department of Parks and Recreation on behalf of his private electrical company.[25] In 2011 the Board and the New York City Department of Education ("DOE") concluded a three-way settlement with a former DOE teacher who was fined $4,000 by the Board for, among other violations, contracting with DOE schools, while still employed by the DOE, for a software product he had developed, in violation of the ban on full-time City employees communicating for private compensation with any City agency.[26] In 2016, the Board and the DOHMH Office of Chief Medical Examiner ("OCME") concluded a three-way settlement with a Forensic Mortuary Technician who agreed to pay a $2,000 fine ($1,500 to DOHMH-OCME and $500 to the Board) for appearing before DOHMH-OCME on three occasions to remove decedent bodies from OCME morgues in her private capacity as a funeral director.[27]

Even uncompensated appearances on behalf of private interests before the City may violate Chapter 68, particularly where, as in appearances before a public servant's own agency, it may appear that the public servant is using his or her City position to private advantage or is otherwise violating the duty of loyalty to the City. Thus, in 2007, the Board issued a public warning letter to a former DOE teacher who, during her tenure at the DOE, made uncompensated appearances on behalf of the parents of three different children at impartial hearings to determine whether the children were entitled to receive special education services from the DOE. The Board advised that it would not have violated Chapter 68 if the teacher had appeared at the hearings as an unpaid fact witness, but that her appearance as an advocate, even an unpaid one, did in fact violate the conflicts of interest law.[28]

C. Outside Activities Where There Are No Business Dealings with the City

1. Moonlighting

A public servant may engage in part-time employment with a person who or firm that has *no* business dealings with the City or with any City agency, provided that the public servant complies with those Charter sections discussed in Section B above. The Board in 2005 accordingly advised that the then Finance Commissioner could, subject to a number of conditions corresponding to these Charter sections, accept a position as a compensated independent member of the board of directors of a publicly-traded real estate investment company that had no business dealings with the City, indeed that owned no real estate in New York City. For the violation, however, of a number of these conditions, among other admitted violations, the Board in 2012 fined the former Finance Commissioner $22,000.[29] There are additional restrictions on public servants who engage in the private practice of law or who serve as expert witnesses, discussed in Section G below.

2. Ownership Interests

A public servant may have an ownership interest in a firm that has *no* business dealings with the City or with any City agency, provided that the public servant complies with the Charter sections discussed in Section B above. In 2012 the Board accordingly advised a Deputy Mayor who had recently joined City service that he could retain his position as an owner of a privately held corporation formed, shortly before he joined City service, for the purpose of investing in small, distressed banks. The corporation did not have any business dealings with the City and did not expect to invest in any bank in New York State.[30] In addition, Charter § 2604(b)(1) provides that a public servant "shall not take any action as a public servant particularly affecting" an otherwise permitted interest. One exception is provided for interests less than $10,000, where interested action *is* permitted, but must be disclosed to the Conflicts of Interest Board.[31] Similarly, in the case of an elected official, certain narrowly-prescribed interested actions are not prohibited, but the elected official must disclose the interest to the Board and, if the matter is before the City Council, on the official records of that body.[32]

3. Volunteer Activities

Public servants are generally permitted to volunteer for not-for-profits that have *no* business dealings with the City. However, such public servants must comply with the general provisions of Charter §§ 2604(b)(2), (b)(3), and (b)(4), discussed in Section B above.

D. Outside Activities Where There Are Business Dealings with the City

The rules in this area are a little different for full-time public servants (called "regular employees" in Chapter 68) and part-time public servants. Regular employees include "all elected officials and public servants whose primary employment, as defined by rule of the board, is with the city, but shall not include members of advisory committees or community boards."[33]

The Board has defined "primary employment with the City" as "the employment of those public servants who receive compensation from the City and are employed on a full-time basis or the equivalent or who are regularly scheduled to work the equivalent of 20 or more hours per week" and has exempted "(i) members of the City Planning Commission, except for the Chair; (ii) interns employed in connection with a program at an educational institution or full-time students; (iii) persons employed on special projects, investigations or programs, in excess of six months but of limited duration, as the Board shall determine."[34]

1. Moonlighting for Full-Time Public Servants (Regular Employees)

No full-time public servant may have a position with a firm that the public servant knows, or should know, is engaged in business dealings with *any* agency of the City, not just the public servant's own agency.[35] "Position" includes not only an officer, director, trustee, employee, or management position with a firm but also an attorney, agent, broker, or consultant to the firm.[36] Consequently, for example, a full-time public servant may not act as an agent or attorney for any firm that does business with any agency of City government.

"Firm" means a "sole proprietorship, joint venture, partnership, corporation or any other form of enterprise, but shall not include a public benefit corporation, local development corporation or other similar entity as defined by rule of the board."[37] Under Advisory Opinion Number 94-1, "firm" includes an individual seeking business on behalf of himself or herself. "Business dealings" with the City means any transaction involving the sale, rental, or disposition of any goods, services, or property, any license, permit, grant, or benefit, and any performance of or litigation with respect to any of the foregoing, but does not include any transaction involving a public servant's residence or a ministerial matter.[38] "Ministerial matter," as noted above, means an administrative act, including the issuance of a license, permit, or other permission by the City, that is carried out in a prescribed manner and that does not involve substantial policy discretion.[39] Note that a public servant is deemed to know of a firm's business dealing with the City if he or she should have known of the business dealing.[40]

In Advisory Opinion Number 2002-1, the Board noted that the *donor* of a gift to the City will not have "business dealings with the City" by virtue of that donation within the meaning of Chapter 68, except in unusual cases like the gift of an untested product.

The Board in 2008 fined two New York City Department of Correction ("DOC") steamfitters $3,000 each for working for a firm that had business dealings with the City, but not with DOC. The steamfitters each acknowledged that the fact that they were performing their outside work in City parks put them on notice of the firm's City business dealings.[41] Similarly, in 2009 the Board and the Office of Chief Medical Examiner ("OCME") concluded a three-way settlement with an OCME Mortuary Technician who, in 2008, had a position with Building Services International ("BSI"), which firm contracted with OCME to clean its facilities. The Mortuary Technician acknowledged that, on at least five occasions in April and May 2008, he performed work for BSI during times when he was required to be working for OCME. For these violations, the OCME Mortuary Technician agreed to an eleven-day suspension, which had the approximate value of $1,472, to be imposed by OCME.[42]

In the case of *COIB v. Begel*, the former spokesman for the Chancellor of the Board of Education ("BOE") consented to the Board's finding that, for a short time in 1995, he held a prohibited consulting position with a firm engaged in business dealings with the BOE while he also worked for the BOE. The Board imposed no penalty because of mitigating circumstances, including the spokesman's return of the consulting fee, the short time involved, and his having reported the conflict to the Board.[43] In *COIB v. Steinhandler*, however, the Board fined a teacher $1,500 for owning and operating a tour company that arranged tours for public schools, including the school where he taught, an offense similar to that for which the Board imposed a fine of $5,000 in 2008 in *COIB v. Sender*.[44]

A special rule exists for officers of the New York City Police Department ("NYPD"). In its Advisory Opinion Number 98-4, the Board determined that, pursuant to Charter § 2604(c)(5), NYPD officers may participate in the NYPD Paid Detail Program, which permits police officers in the program to work as part-time security guards for private firms and, in so doing, wear their uniforms.

In Advisory Opinion Number 2005-2, faced with the growing number of charter schools, the Board considered what restrictions Chapter 68 imposes on City employees who wish to moonlight or volunteer for charter schools (a question the Board had reserved in Advisory Opinion Number 2000-1, where it determined that charter schools are not City agencies for the purposes of Chapter 68). In Opinion Number 2005-2, the Board determined that charter schools are not "firms" within the meaning of Charter § 2604(a)(1)(b), so that public servants need not apply for Board waivers in order to work at a charter school; that charter schools are not "private interests" for the purposes of Charter § 2604(b)(6) and are not "not-for-profit corporations" for the purposes of § 2604(c)(6), so that those provisions do not prohibit a public servant who works at or volunteers for a charter school from communicating with the City on behalf of the charter school; but that Charter § 2604(b)(2) may restrict such communications by DOE employees or officials to their DOE subordinates or by certain public servants, such as employees of the DOE's Office of Charter Schools and their superiors, whose official duties require them to oversee charter schools.

2. <u>Moonlighting for Part-Time Public Servants</u>

For a public servant who is not a regular, full-time employee of the City, the prohibitions that apply to moonlighting, ownership interests, and volunteer activities extend only to the public servant's *own* agency.[45] That means a part-time employee may moonlight for a firm that does business with any City agency *except* the employee's own agency. A special rule exists for appointed members of community boards. Community boards are discussed in detail in the chapter devoted to that topic.

In Advisory Opinion Number 2006-1, the Board considered the outside work of a particular group of part-time public servants, the members of the Community Education Councils ("CEC") of the New York City Department of Education ("DOE"). In this Opinion, the Board noted that CEC members who work at companies that do business with the DOE will indeed require a waiver from the Board. The Board went on to state that, upon the written approval of the DOE Chancellor, it will, in appropriate circumstances, grant such waivers to permit CEC members to hold such positions, but it will condition such waivers on the requirements that the member not participate at the CEC in any matter involving his or her outside employer; not communicate on behalf of that employer with staff *of the district* on whose CEC the member sits, or with the staff of any school within that district; not use any DOE equipment, supplies, or other resources in connection with the outside employment; and not use or reveal confidential City information. Similarly, in Advisory Opinion Number 2007-1, the Board announced that in considering applications by former CEC members for waivers of the ban against appearing for one year after leaving City service before the "agency served" by a former public servant, it would as a general matter consider the agency served to be *the DOE district* on whose CEC the member had served.

Not only is a part-time public servant prohibited from having a position with a firm that does business with his or her own agency but, as noted in Section B above, such a public servant may not communicate on behalf of that firm with his or her City agency. In 2010 the Board fined a former unpaid member of the Board of Directors of the New York City Health and Hospitals Corporation ("HHC"), a part-time public servant, $13,500 not only for having a position with a foreign medical school that had contracts with HHC but also for communicating with HHC employees at different HHC facilities on behalf of the school.[46]

3. Ownership Interests for Full-Time Public Servants

No full-time public servant may have an ownership interest in a firm that the public servant knows is engaged in business dealings with *any* agency of the City, not just the public servant's own agency. Note that a public servant is deemed to know of a firm's business dealing with the City if he or she should have known of the business dealing.[47]

As noted above, "firm" means a "sole proprietorship, joint venture, partnership, corporation or any other form of enterprise, but shall not include a public benefit corporation, local development corporation or other similar entity as defined by rule of the board."[48] Under Advisory Opinion Number 94-1, "firm" includes an individual seeking business on behalf of himself or herself. "Business dealings" with the City means any transaction involving the sale, rental, disposition, or exchange of any goods, services, or property; any license, permit, grant, or

benefit; and any performance of or litigation with respect to any of the foregoing, but does not include any transaction involving a public servant's residence or a ministerial matter.[49]

On its face, Section 2604(a)(1)(b) appears overwhelmingly restrictive (no ownership interest in any firm doing business with the City of New York), especially in light of the democratization of the stock market through pension plans and other deferred compensation devices. The Charter's definitions, however, starting with the definition of "ownership interest," significantly narrow the scope of the prohibition.

"Ownership interest" means an interest in a firm held by a public servant, or by the public servant's spouse, domestic partner, or unemancipated child, that exceeds five percent of the firm or an investment of $48,000, whichever is less, or five percent or $48,000 of the firm's indebtedness, whichever is less, and any lesser interest in a firm when the public servant, or the public servant's spouse, domestic partner, or unemancipated child exercises managerial control or responsibility regarding the firm.[50] Also excluded, independent of the above, are interests held in any pension plan, deferred compensation plan, or mutual fund if the investments are not controlled by the public servant, the public servant's spouse, domestic partner, or unemancipated child, or in any blind trust that holds or acquires an ownership interest.[51]

In 2006, the Board fined a psychiatric technician at the HHC $2,500 for having an ownership interest in two companies that had business dealings with HHC. The technician was the registered owner of her husband's two companies, each of which bid on a contract with HHC. One was awarded a contract, and the other was disqualified when HHC discovered its employee's interest in the bidder.[52] In 2008, the Board and the DOE concluded a three-way settlement with a former DOE special education teacher who was fined $3,000 by the Board and required by the DOE to irrevocably resign by August 29, 2008, for co-owning a firm engaged in business dealings with the DOE and for appearing before the DOE on behalf of that firm. The special education teacher acknowledged that, from 2001 through 2006, he co-owned A-Plus Center for Learning, Inc., a special education support services provider that was engaged in business dealings for five years with the DOE. The special education teacher further acknowledged that he appeared before the DOE on behalf of his firm each time his firm requested payment from the DOE for the tutoring services provided by his firm to DOE students.[53]

In Advisory Opinion Number 94-10, the Board examined the investment portfolio of a public servant and determined that his interests in pension funds, deferred compensation plans, and mutual funds were not prohibited ownership interests. The Board determined that, since government entities are not "firms," United States government bonds and Treasury notes are not prohibited ownership interests. In Advisory Opinion Number 2009-7, however, the Board determined that the small number of public servants personally and substantially involved in the issuance and management of City debt securities, most of whom work at the City's Office of the Comptroller, the Office of Management and Budget, or the Law Department, could not buy, sell, or hold such securities for their own accounts or for the accounts of any persons or firms associated with them.

In Advisory Opinion Number 94-18, the Board determined, among other things, that a public servant could retain his ownership interest in his investments and assets, provided he placed them in

a blind trust established in accordance with the Board's Blind Trust Rule (Board Rules § 1-05). The Board also approved blind trust arrangements in Advisory Opinion Numbers 94-25 and 94-26.

In Advisory Opinion Number 2003-7, in considering the financial interests of then Deputy Mayor Daniel Doctoroff, both the Board and Deputy Mayor Doctoroff recognized that placing assets into a blind trust will not always fully satisfy the requirements of the City's conflicts of interest law. Taking a cue from the parallel federal ethics regulations, the Board noted that, at the establishment of a blind trust, the public servant knows what assets the trust holds and could therefore take, or could appear to be taking, official action to benefit those assets. Thus, except in the case of a diversified portfolio of readily marketable securities, the public servant will be required to recuse himself or herself from taking official action involving the trust's assets. However, in order that the public servant's recusal will not extend beyond the time when he or she has a beneficial interest in an asset placed into blind trust, the trustee will be permitted to inform the public servant when the trust no longer holds an interest in a particular asset, at which time the public servant's obligation to recuse with respect to that asset ceases. The Board accordingly determined that the blind trusts established by Mr. Doctoroff satisfied the conflicts of interest law, provided that Mr. Doctoroff recuse himself from all matters involving certain listed holdings placed into trust unless and until the trustee informed him that he no longer had a beneficial interest in any particular holding.

Finally, the ownership rule does not apply, by its terms, to ownership in publicly traded companies, defined in Board Rules § 1-04 as "a firm which offers or sells its shares to the public and is listed and registered with the Securities and Exchange Commission for public trading on national securities exchanges or over-the-counter markets." This exception does not apply, however, to publicly traded companies having business dealings with the employee's own agency.

Prior to acquiring or accepting an interest in a firm whose shares are publicly traded, a public servant may submit a written request to the head of the agency served by the public servant for a determination as to whether the firm is engaged in business dealings with the agency. That determination must be in writing, must be rendered expeditiously, and shall be binding on the City and the public servant with respect to the prohibition against having an ownership interest in a firm doing business with the public servant's agency.[54]

4. <u>Ownership Interests for Part-Time Public Servants</u>

For a public servant who is not a regular, full-time employee of the City, the prohibitions discussed above extend only to the public servant's *own agency*.[55] This means that a part-time employee may have an ownership interest in a firm that does business with any City agency *except* the employee's own agency.

The definition of "ownership interest" is discussed in Section B above and includes the proviso that the publicly-traded-shares exception does not apply to shares in a firm that does business with one's own agency. Ownership of such shares, therefore, if valued over $48,000 and not held in some excepted form such as a blind trust or a pension plan is prohibited.

A special rule exists for appointed members of community boards.[56] Community boards

are discussed in detail in the chapter devoted to that topic.

5. Special Rule for Condominiums and Cooperatives

Public servants may retain their ownership interests in, and generally sit on the boards of directors of, the cooperative or condominium apartments where they reside. In Advisory Opinion Number 92-7, the Board observed that mere ownership in a cooperative that does business with the City is *not* proscribed by Chapter 68, since "any transaction involving a public servant's residence" is by the terms of Charter § 2604(8) excluded from the definition of "business dealings with the city." In Advisory Opinion Number 95-25, the Board also stated, among other things, that ownership of real estate, without more, does not constitute business dealings with the City.

Advisory Opinion Number 92-7 notes, however, the potential for misuse of a public servant's City position and therefore advises public servants to comply with Charter § 2604(b)(3) by, among other things, not communicating with their own City agencies on behalf of their condominiums and cooperatives. Thus, in 2010, the Board fined a New York City Department of Housing Preservation and Development ("HPD") Project Manager $2,000 for communicating with several HPD employees on behalf of a cooperative corporation, while he was the president of the cooperative's board of directors, in an effort to get his cooperative out of paying to HPD 40% of the profits of sales of its apartments.[57] Advisory Opinion Number 92-7 further advises agency heads and high-level public servants not to serve on these cooperative or condominium boards when their agencies are likely to come into contact with their buildings. One exception to this rule against board membership exists, as pointed out in Advisory Opinion Number 94-27, where the public servant's official duties are sufficiently removed from the regulation of private cooperative corporations and related issues, and the public servant recuses himself or herself, as a cooperative board member, from any matters involving the City. By contrast, in Advisory Opinion Number 95-11, a public servant was not allowed to serve as an officer and as a member of the board of directors of the cooperative corporation where he resided while the cooperative was applying for a loan through the City agency where the public servant was employed.

6. Volunteering for Not-for-Profit Organizations Having Business Dealings with the City

Charter § 2604(c)(6) provides that a public servant may work as an attorney, agent, broker, employee, officer, director, or consultant for any not-for-profit corporation, or other such entity that operates on a not-for-profit basis, interested in business dealings with the City, subject to certain conditions. First, the public servant may take no direct or indirect part in the organization's business dealings with the City. Recusal, as defined in Advisory Opinion Number 92-5, means not voting on or participating in the discussion of any matters that involve the not-for-profit's business dealings with the City. This includes, but is not limited to, internal discussions, meetings with City officials, and receiving copies of relevant documents.

Second, the public servant's agency must not have any business dealings with the not-for-profit organization, unless the public servant's agency head (or the Mayor if the public servant is an agency head) determines that the public servant's proposed activity is in furtherance of the purposes and interests of the City. This approval need not be submitted to the Board.

Third, the public servant may work for the organization only during his or her own time (*i.e.*, not during his or her City work hours). Fourth, the public servant may not receive any compensation for this work.

Failure to comply with these requirements can result in Board penalties, even when the public servant has not received any compensation or personal benefit from his or her work for the not-for-profit organization. For example, in 2008 the Board fined the former Director of the Call Center for the New York City Department of Health and Mental Hygiene ("DOHMH") $7,500 for (a) serving as an *unpaid* member and Vice-Chair of the Board of Directors of a not-for-profit organization with substantial business dealings with the City, including with an agent of DOHMH; (b) being directly involved in that not-for-profit's City business dealings; (c) performing work for the not-for-profit while on City time and using City resources, such as her DOHMH computer, e-mail account, and telephone; (d) hiring a subordinate DOHMH employee to perform work for that not-for-profit; and (e) directing her subordinate to perform some of that work on City time.[58] Similarly, in 2013, the Board and the New York City Administration for Children's Services ("ACS") concluded a joint settlement with an ACS employee to address violations related to his long-term role on the board of a not-for-profit with business dealings with ACS. In addition to failing to have the required approval of the ACS Commissioner for this board service, this employee, during times he was required to be performing work for ACS, used his City computer and e-mail account to send, receive, and store a number of e-mails related to the not-for-profit. The ACS employee also used his City position to obtain a criminal history check and a criminal background check on the not-for-profit's employees. Finally, he asked another ACS employee to run a license plate for him and then used the confidential information he thereby obtained for a personal, non-City purpose. For these violations, ACS reassigned the employee from his prior position to his underlying civil service title, in connection with which his annual salary was reduced from $111,753 to $77,478.[59]

In Advisory Opinion Number 99-1, the Board considered a request from public servants who are also elected officials regarding their *ex officio* membership on boards of directors and also asking whether they may designate members of their staff to serve *ex officio* in their place. The Board determined that elected officials may serve *ex officio* without first obtaining a waiver from the Board and that they may also designate, in writing, members of their staffs to serve on their behalf as *ex officio* members or directors of not-for-profit organizations. In Advisory Opinion Number 2009-2, however, the Board cautioned that the mere assertion that an elected official's membership on a not-for-profit board is *ex officio* will be insufficient and that the Board would closely examine the circumstances of each case to determine whether holding the board position was indeed part of the elected official's duties rather than a personal activity.

The Board, in Advisory Opinion Number 98-8, determined that public servants who are volunteering for not-for-profits that engage in business dealings with their own agencies do not need either agency head approval or Board approval where the public servant has no policy-making or administrative authority at the not-for-profit. In other words, no approvals are required if the public servant, for example, merely works with the client population served by the not-for-profit, even if the public servant's agency provides funds to that not-for-profit, unless the public servant has contact with the not-for-profit as part of his or her City duties. On the other hand, providing volunteer assistance in submitting grant applications to the federal government

for that same not-for-profit would be considered policy-making, and agency head approval would therefore be required.

E. Waivers for Moonlighting and Volunteer Positions

For both full-time and part-time public servants, waivers may be obtained pursuant to Charter § 2604(e). This section provides that a public servant may hold an otherwise prohibited position when the public servant obtains the written approval of the public servant's agency head *and* the Board then determines, in writing, that the position would not conflict with the purposes and interests of the City. The Board prefers that the agency head approval be more than *pro forma* and that, in all but the most routine cases, the agency head explain why he or she believes no conflict exists.

In determining whether to grant a waiver, the Board considers, among other things, the hours and compensation involved and whether there is any possible relationship between the public servant's official duties and his or her outside activities.

Teaching waivers are particularly common. Many public servants hold adjunct or part-time teaching positions with colleges and universities located in New York City. Most private universities, such as Fordham University and St. John's University, have some kind of business dealings with the City. Thus, most public servants who are teaching at a private college or university in the City will, therefore, require a waiver. However, in Advisory Opinion Number 99-6, the Board determined that public servants teaching at CUNY or SUNY colleges do not require waivers because these government institutions are not "firms," as defined in Charter § 2601(11). Public servants with teaching positions at CUNY or SUNY are still subject to the other restrictions of the conflicts of interest law, most notably, the prohibitions on using City time or City resources (such as a City computer or e-mail account) for their outside employment.

In Advisory Opinion Number 98-7, the Board determined that a waiver was required for a public servant who, as sole proprietor, is a consultant with an ongoing relationship to his customer firms and therefore has a position with those firms. Based on the written approval of the public servant's agency head, a waiver was granted.

Upon obtaining the waiver, the public servant may accept the position with the firm, but is still bound by the confidentiality restriction and the restrictions on use of City time or City resources, as well as by any additional restrictions set forth in the waiver letter. The Board usually requires that the public servant not be involved, directly or indirectly, in City matters on behalf of the private employer. This includes, but is not limited to, not participating in discussions at the private employer in matters involving the City, not attending meetings with City officials and others on behalf of the private employer, and not receiving copies of relevant documents. This is generally a "two-way" recusal, meaning that the public servant would be subject to the same restrictions in his or her City role in dealing with the private employer as he or she would be in her private position in dealing with matters involving the City.

F. Orders Allowing Ownership Interests

Charter §§ 2604(a)(3) and 2604(a)(4) set forth the procedure for obtaining an "order" from the Board allowing a public servant to hold an otherwise prohibited ownership interest.

Charter § 2604(a)(3) requires public servants holding or acquiring prohibited ownership interests either to divest themselves of the ownership interests or to disclose the interests to the Board and comply with the Board's order. In Advisory Opinion Number 98-3, the Board determined that reporting an ownership interest on annual financial disclosure reports filed with the Board does *not* satisfy the disclosure requirement.

If the public servant discloses his or her ownership interest to the Board, then, pursuant to Charter § 2604(a)(4), the Board shall issue an order setting forth its determination as to whether the interest, if maintained, would conflict with the proper discharge of the public servant's official duties. Section 2604(a)(4) sets forth the following factors for the Board to consider in making its determination: the nature of the public servant's official duties; the manner in which the interest may be affected by any action of the City; and the appearance of conflict to the public. In addition to the foregoing factors, the Board takes into account the financial burden on the public servant caused by the Board's decision.

A decision by the Board permitting the retention of an otherwise prohibited ownership interest is, as noted above, issued in the form of an "order," which, like the Board's advisory opinions, is a document available to the public. In the case of those orders that the Board determines may be of greater public interest, the Board issues these as a "combined" order and advisory opinion, since advisory opinions are more widely distributed.

In Advisory Opinion Number 94-13 and Order Number 45, a prospective public servant was permitted to enter City service notwithstanding her husband's ownership interest—attributed to the prospective public servant by Charter § 2601(16)—in a firm that did business with the City, though not with her City agency. The Board also approved ownership interests in Advisory Opinion Number 97-3, where the spouse's firm had operated for several years before seeking City business, and Advisory Opinion Number 98-2, where the public servants were marketing their product to their own agency.

In Advisory Opinion Number 94-11 and Order Number 44, a recently appointed public servant was permitted to retain his ownership interests in real property because, among other reasons, his official City duties did not concern the kind of property he owned. In Advisory Opinion Number 92-35, a public servant was allowed to retain an ownership interest in a partnership that owned apartments and received housing assistance payments from the City because the public servant had no ability to obtain an advantage for the partnership in its business dealings with the City or procure tenants more easily or on more favorable terms than other owners of rental property.

In issuing an order pursuant to § 2604(a)(4), the Board may require "such other action as it deems appropriate which may mitigate" a conflict. The Board frequently attaches such conditions to

its orders, most often requiring the public servant to recuse himself or herself from acting on matters involving the private firm's business dealings with the City.

In Advisory Opinion Number 92-5, prospective part-time commissioners were permitted to enter City service and retain ownership interests in firms that had business dealings with their commission, but recusal was required. Recusal, as defined in Opinion Number 92-5, means not voting on or participating in any matters that involve the private firm's business dealings with the commission. This includes agency discussions, meetings with City officials, and receiving copies of relevant documents. Similarly, in Advisory Opinion Number 95-12, a public servant was allowed to retain his ownership interest in buildings located in districts subject to the regulatory authority of his City agency, provided that he disclosed these interests to his City agency and recused himself from any matters involving these buildings that might, in the future, come before his agency.

The Board, in Advisory Opinion Number 95-21, allowed public servants to retain their spouses' ownership interests (which were attributed to the public servants) in firms that did business with the City, provided, among other things, that these firms did not seek any new City business and that the public servants had no official contact with these firms. In contrast, in Advisory Opinion Number 95-10, the Board determined that, while a public servant could retain his imputed ownership interest in his spouse's newly formed company, if the company sought to engage in business dealings with the City, the public servant could not remain an employee of the City. The Board found that the close proximity of time between the company's incorporation and its pursuit of City business would create an appearance that the company was formed to take advantage of the public servant's position with the City.

In Advisory Opinion Number 95-29, New York City Human Resources Administration employees were permitted to rent apartments they owned to recipients of public assistance, under certain conditions. Similarly, in Advisory Opinion Number 98-13, employees of the New York City Department of Housing Preservation and Development were permitted to rent apartments they owned to recipients of federal Section 8 funds, again under certain specified conditions.

G. Special Situations

1. Temporary Employment

In Advisory Opinion Number 98-5, the Board discussed the issue of temporary employment. A public servant may register with and work for temporary agencies, provided that the agencies do not engage in business dealings with the City. Moreover, whenever a public servant works during any twelve-month period for more than 30 days for any individual firm that is a client of the temporary agency, whether or not the 30 days are consecutive, the public servant is deemed to have a “position” with that client firm. Thus, before working for more than 30 days within a twelve-month period for the firm, the public servant must determine whether the firm is engaged in business dealings with the City and, if so, must either refrain from further work for the firm or obtain a waiver from the Board.

2. Private Practice of Law and Expert Testimony

As provided for in Charter § 2604(b)(7), no public servant may appear as an attorney or as counsel against the interests of the City in any litigation in which the City is a party, or in any action or proceeding in which the City, or any public servant of the City acting in the course of his or her official duties, is a complainant. If a public servant is not a regular, full-time employee, this prohibition is limited to the public servant's own agency. Special rules exist in Charter § 2604(b)(7) for elected officials and their employees acting in an official capacity as attorneys. In 2001, the Board fined a Board of Education employee $700 for appearing as an attorney on behalf of a private client in litigation in which the New York City Administration for Children's Services was a party.[60] In 2007, a New York City Department of Education ("DOE") teacher was fined $1,000 for appearing as an attorney against the interests of the DOE in a suspension hearing on behalf of two DOE students.[61] In 2014, the Board issued a public warning letter to an Administrative Law Judge ("ALJ") for the Environmental Control Board ("ECB") for representing his landlord before the ECB to contest two sanitation violation fines; the ALJ was compensated by the landlord in the form of reduced rent for taking on certain responsibilities vis-à-vis the apartment building, including dealing with and, if necessary, paying all fines resulting from sanitation violations.[62]

In addition, Charter § 2604(b)(8) prohibits a public servant from giving opinion evidence as a paid expert against the interests of the City in civil litigation brought by or against the City. If a public servant is not a regular, full-time employee, this prohibition is limited to the public servant's own agency.

Six advisory opinions bear on the issue of the private practice of law by City officers and employees. Advisory Opinion Number 91-7 provides that a public servant may engage in the private practice of law, provided that he or she complies with the relevant provisions of Chapter 68, including the requirements that the public servant conduct the practice during off-duty hours; that the public servant not use City office space or equipment for his or her practice; and that the public servant not do private legal work for persons who or firms that have business dealings with the City.

In Advisory Opinion Number 93-23, the Board determined that a public servant who, as part of his official duties, was charged with the enforcement of certain criminal laws could not, in his private law practice, represent defendants who had been charged with criminal offenses in the City. In Advisory Opinion Number 95-17, the Board determined that a public servant who was an aide to a Member of the City Council could not work part-time for a private law firm, where a substantial portion of the firm's business involved the City and the official duties of the public servant involved working in some of the same substantive areas of law in which the firm was active.

In Advisory Opinion Number 2001-3, the Board comprehensively reviewed the restrictions on the outside practice of law, both compensated and uncompensated. While tracking much of Advisory Opinion Number 91-7, the Board also addressed the provision of legal services to superiors or subordinates, finding it prohibited, whether compensated or not.

The Board further stated that it is not a violation of Chapter 68 for a public servant to perform otherwise permitted outside legal work without written approval from his or her City agency, whatever Advisory Opinion Number 91-7 might otherwise have suggested. Finally, the Board noted that the use of City time and resources for outside *pro bono* legal work might be permissible, if the approval set forth in Board Rules § 1-13(c) was obtained.

In Advisory Opinion Number 2008-5, the Board returned to the question of private practice of criminal law and determined that a full-time City employee may not do any compensated criminal defense work in state courts within the City's five boroughs. In addition, a full-time City employee may not accept fees for referring a criminal case pending in any of those courts.

In Advisory Opinion Number 2011-1, the Board considered whether, and if so when, members of City boards and commissions, typically part-time public servants, would be required to recuse themselves from matters at their City agencies involving clients of the private law firms where they were partners. Noting first that the Board had determined in Advisory Opinion Number 94-24 that it would violate Charter § 2604(b)(6) for the public servant's law firm to be involved in any matter before his or her own City agency, the Board in Opinion Number 2011-1 turned to the case where the client, although represented by the public servant's firm on *other* matters, was not represented by the firm in the matter before the public servant's City agency. The Board observed as an initial question that, if the matter before the City agency were of such significance to the client that its outcome would have a material impact on the business *of the law firm*, for example, a matter that might determine whether the client could remain in business, the public servant's recusal would be required, because of the potential impact on his or her firm. In the absence of such a substantial matter, however, the public servant's recusal would still be required if it were determined that he or she was "associated" with the client within the meaning of the conflicts of interest law.[63] The Board determined that the public servant would be deemed to be so associated with, and therefore required to recuse himself or herself from matters at the City board or commission involving, any client of the firm in whose representation the public servant was currently participating or expected to participate in the future *and* any client that accounts for 5% or more of the firm's total annual billings or is among the firm's top ten clients in revenues.

3. Representing Private Interests before the City: Architects, Engineers, Electricians, Plumbers, Planners, and Others

The Board receives many requests for opinions from public servants who are architects, engineers, electricians, plumbers, and others whose work would involve representing private interests before the City. Their outside work typically is subject to the inspection and approval of the New York City Department of Buildings ("DOB") and, on occasion, other City agencies.

In Advisory Opinion Number 92-36, the Board determined that public servants who are also electricians may file applications with the DOB for certificates of electrical inspection and attend inspections of electrical work covered by these applications. These activities are permissible because they are ministerial in nature. However, anything beyond these types of

activities, such as appealing violations, would require discretion on the part of the DOB employees and would be prohibited, absent a waiver from the Board.

In Advisory Opinion Number 95-6, the Board determined that architects and engineers who were City employees could affix their professional seals to architectural plans and, either personally or through an expediter, file the plans with the City, since such appearances would be ministerial. Any greater involvement would constitute a prohibited appearance, though these public servants were advised that they could use expediters to take their plans through the approval process. Thus, the Board in 2014 issued a public warning letter to a Chief Engineer for the New York City Department of Parks and Recreation who communicated with the DOB in his capacity as a private engineering consultant to advise that DOB Construction Code determinations and appeals thereof are not routine and require the DOB to exercise substantial discretion and, therefore, invoke the prohibitions of Charter § 2604(b)(6).[64] For City employees who moonlight as plumbers, the Board adopted the reasoning of Board of Ethics Opinion No. 664 and determined certain filings for smaller jobs to be permissible "ministerial" appearances before the DOB, but found filings for larger jobs to be impermissible. In 2002 the Board fined a New York City Housing Authority employee $800 for seventeen of these prohibited filings in connection with his outside plumbing business.[65]

A special rule exists for City Planning Commissioners, who are high-level public servants with Citywide policy discretion. These Commissioners cannot, in connection with their private professional practices, appear before the City Planning Commission or before any other City agency on matters that could, in the future, require the involvement or approval of the City Planning Commission.[66] They may, however, be involved in ministerial matters, including the filing of plans with the Department of Buildings. In addition, in Advisory Opinion Number 93-32, a member of the City Planning Commission was advised that his private firm could be listed as a qualified contractor for possible City contracts, provided that he and his firm acted in strict accordance with the City Planning Commission rule and other relevant provisions of Chapter 68. Most recently, in Advisory Opinion Number 2007-3, the Board incorporated several unpublished opinions concerning the outside activities of the part-time Planning Commissioners into a formal opinion. The Opinion first reviews and discusses the relationship between the conflicts of interest provisions in Charter Chapter 8 ("City Planning"), especially the provisions of Charter § 192(b), and those in Chapter 68, and concludes that the Board has the authority to interpret and, where appropriate, to waive restrictions of both chapters. The Opinion goes on to examine the application of these provisions to certain activities and interests of Planning Commissioners, including the case of a commissioner who works for a large institution that owns real property that may be the subject of an application to the Commission and the case of a commissioner who works for a quasi-public entity and whose work for that entity requires regular communication and coordination with the staff of the Department of City Planning. In each case, the Board determined, pursuant to its waiver authority in Charter § 2604(e), that the Commissioner's private employment will not, with certain conditions, conflict with the purposes and interest of the City and will therefore be permissible.

The Board has also addressed other appearances before City agencies. In Advisory Opinion Number 94-24, the Board determined that a high-level public servant's law firm could

not appear before the public servant's agency, except with respect to cases where the firm's withdrawal would cause a hardship for the clients. In addition, a public servant who was a City Council Member was advised, in Advisory Opinion Number 94-28, that he could not assist a real estate developer with whom he had a financial relationship by contacting City agencies, elected officials, and others on the developer's behalf. In Advisory Opinion Number 95-15, the Board determined that a public servant could not work part-time for a business improvement district because such work would have required her to make frequent and substantive appearances before other City agencies.[67]

4. Independent Contracting and Other Freelance Work

The Board frequently receives requests for opinions concerning other kinds of part-time work, including work as an independent contractor or freelancer. Such work, if performed on the public servant's own time, without the use of City resources, will generally not violate Chapter 68. If, however, a freelancer has an "ongoing relationship" with a client firm that itself has business dealings with the City, then a Board waiver will be necessary.[68] *See* Section E, above. Absent a waiver, a public servant who moonlights with such a client firm is subject to a Board enforcement action for violating the Charter. Public servants may not use their City position to obtain clients for their private business. The Board and the New York City Department of Education ("DOE") fined a school guidance counselor a total of $6,000 for finding paying clients for his private consulting services among parents of students attending the school at which he worked as a DOE employee.[69]

5. City-Related Outside Employment

In recognition of the City's budget limitations and reduced resources, the Board has issued several opinions allowing public servants to be compensated by private or non-City entities for work done in furtherance of the City's interests. The Board issues these opinions on a case-by-case basis after consideration of all the relevant facts and circumstances.

In Advisory Opinion Number 95-16, a New York City Police Department ("NYPD") employee was allowed to accept compensation from the police union for his work assisting the NYPD in calculating retirement benefits for other NYPD employees. In Advisory Opinion Number 95-19, employees of the City's Department of Mental Health, Mental Retardation and Alcoholism Services were allowed to accept private Family Court appointments to conduct custody and visitation evaluations for which the Department could no longer afford to pay, with certain restrictions.

In Advisory Opinion Number 95-26, the Board determined that, when a City employee performs part-time services for another City agency, or additional part-time work for his or her own agency, beyond his or her regular City duties, the specific factual situation determines whether the employee needs a waiver from the Board. For example, the Board ruled that no waivers were required to permit City employees from one agency to administer and rate examinations for candidates for City positions at another City agency and for other City employees to teach a certification course at a City training institute administered by their own agency. Generally, this part-time work would be considered dual employment with the City

rather than "business dealings with the City." The Board addresses these kinds of situations on a case-by-case basis and requires that the City employee obtain the approval of the City agencies involved.

The factors the Board outlined in Advisory Opinion Number 95-26 to determine whether a position is in the nature of a second City job or an independent contractor include: the extent to which the City controls and finances the program in which the employee would work part-time; whether the City employee negotiates for the second City position as part of an ongoing commercial enterprise; whether the employee's part-time work would be subject to the City agency's control; the degree to which the employee would have autonomy to determine the manner in which the part-time work would be performed; whether the City or the employee provides work space, materials, and equipment for the part-time work; and whether the employee is paid on an hourly basis or on a per-job basis.

6. Working for a Firm that is a City Subcontractor

In Advisory Opinion Number 99-2, the Board determined that a public servant may work part-time for a firm that subcontracts to perform City business, where the Board determined that the subcontractor itself is not engaged in business dealings with the City. The Board will look to several factors to determine whether the subcontractor is engaged in business dealings with the City. Those factors include: whether the subcontractor receives any payment directly from the City; whether the subcontractor reports to the City on any matters; and whether the subcontractor's work on the City contracts is being done at a City site or off-site. If these factors lead to a conclusion that the subcontractor is in fact engaged in business dealings with the City, then a full-time City employee may not moonlight at the firm, absent a waiver from the Board, even if the employee's work for that firm has nothing to do with its City subcontract. The Board fined a New York City Department of Probation probation officer $750 for owning and operating a private security firm that contracted with private construction firms to provide security guard services at New York City School Construction Authority ("SCA") work sites, pursuant to those firms' contracts with the SCA.[70]

7. Paid Positions with Not-for-Profits

The Board also receives requests concerning paid positions with not-for-profit organizations that have business dealings with the City. When a public servant has a paid position with a not-for-profit, he or she is no longer volunteering for the not-for-profit. Since the public servant would be considered to have a second or part-time job at the not-for-profit, the public servant would be subject to the rules applicable to moonlighting, and the provisions contained in Charter § 2604(c)(6) would not apply.. The moonlighting provisions are discussed above.

The Board has, however, considered an unusual situation involving the New York City Department of Parks and Recreation ("Parks"). In Advisory Opinion Number 92-34, the Board determined, pursuant to Charter § 2604(e), that several Parks employees could work as paid consultants to a not-for-profit organization whose primary function was to provide financial assistance to the City in support of its parks system. The Board granted the waivers based on the

fact that the primary purpose of the organization was to provide such assistance, the proposed consulting work was in furtherance of that purpose and not to secure any private advantage, and the Parks Commissioner, in her approval letter, expressly determined that the consulting work by the employees was in the interest of the City.

8. Fundraising on Behalf of Not-for-Profit Organizations

Fundraising for charitable or not-for-profit organizations is generally permissible, provided that, consistent with the rules regarding any other personal activities, the public servant does this on his or her own time, without the use of City resources, and does not use his or her official position to assist the fundraising efforts.[71] Public servants may therefore raise money for their alma mater, their place of worship, their block association, or other favorite charities. The prohibition against using one's City position to assist such fundraising bars a City employee from seeking contributions to his or her favorite charity from persons or firms with whom the employee deals in his or her City job and from soliciting such funds from his or her City subordinates. The Board fined a Deputy Chief Engineer at the New York City Department of Transportation ("DOT") $1,000 for asking several DOT contractors to place advertisements in a fundraising journal for his sons' hockey club.[72] Similarly, the Board, in a joint disposition with the New York City Department of Education, fined a principal, who also served as the president of a not-for-profit, $2,250 for approaching his subordinates to personally ask each of them to attend a fundraising dinner of the not-for-profit and by sending invitations to fundraising events of the not-for-profit to his subordinates at their homes or in their mailboxes at the school.[73]

In contrast with these rules governing fundraising for a public servant's own personal charities, the Board has issued a number of opinions over the years about fundraising, typically by elected and high-level appointed public servants, for entities with which the official has no personal affiliation. The beneficiaries of this "non-personal" fundraising include such entities as the City itself, not-for-profit organizations closely affiliated with the City, and other not-for-profit organizations.

In Advisory Opinion Number 2003-4, a comprehensive opinion that reviewed not only the Board's prior opinions concerning gifts to the City but also examined precedents from other jurisdictions, the Board determined that, subject to certain safeguards, elected officials, and indeed all public servants, could solicit gifts *to the City and to those not-for-profits organizations closely affiliated with City agencies and offices* that had been "pre-cleared" by the Board. The safeguards imposed on such "fundraising for the City" are the following: (1) a City official may not engage in the direct, targeted solicitation of any prospective donor who the official knows or should know has a specific matter either currently pending or about to be pending before the City official or his or her agency and where it is within the legal authority or duties of the soliciting official to make, affect, or direct the outcome of the matter; (2) all solicitations must make clear that the donor will receive no special access to City officials or preferential treatment as a result of a donation; and (3) each City agency or office must twice a year file a public report with the Board setting forth certain information concerning the gifts received by the agency during the reporting period, including the identity of the donor and the nature and approximate value of the gift received. For other beneficiaries, that is, not-for-profits that had not been determined by the Board to be closely

affiliated with the City, the Board stated that the fundraising question would, at least initially, be addressed on a case-by-case basis.

In Advisory Opinion Number 2008-6, the Board considered the question left unanswered in Opinion Number 2003-4, namely, whether, in the absence of a disqualifying personal "association," City elected officials or agency heads might, in their official capacities and using City time and resources, solicit private contributions for not-for-profit organizations *not* affiliated with the City. The Board determined that, where elected officials or agency heads personally determined that the work of a particular not-for-profit organization supported the work of their office or agency, such official fundraising would be permissible, provided that these solicitations include a statement that a decision whether or not to give will not result in official favor or disfavor and are not targeted at any person or firm with a matter pending or about to be pending before the solicitor's City office or agency. Further, on the same twice-yearly reporting cycle provided for in Opinion Number 2003-4, City officials and agency heads are required to report to the Board the identities of the organizations for which they solicited funding or other private support.

9. Teaching and Writing

There is a special rule for those public servants who seek to teach courses and write books or articles for compensation, whether the entity for which they seek to teach or write engages in business dealings with the City or not.

In Advisory Opinion Number 99-4, the Board determined that it would be a violation of Chapter 68 for an agency head to teach a course for compensation about the workings of his agency and in particular about recent new initiatives at the agency. The first factor to be considered in making determinations regarding teaching for private compensation is whether the public servant could reasonably have been assigned to teach that course as part of his or her official duties. Under this test, a public servant who wishes to teach a course for compensation about new initiatives at his or her agency may not do so where he or she could reasonably have been assigned to teach that course as part of his or her official duties. Other factors the Board will look to are: (1) in teaching the course, the public servant does not divulge any confidential City information; (2) the public servant does not utilize City time, resources, personnel, or equipment for the teaching or the preparation of any materials to be used for the course; (3) the public servant does not use his or her position as a public servant to obtain a disproportionate rate of pay for teaching a course or to obtain compensation except from the City for performing his or her official duties; and (4) the public servant does not use his or her official title or position in any marketing of the course, although such information may be listed as part of biographical information about the public servant.

In Advisory Opinion Number 99-5, a companion to Opinion Number 99-4, the Board used a similar test to determine that it would be a violation of Chapter 68 for a public servant to write a book for compensation the subject matter of which is related to his official duties where this writing is something he might reasonably have been assigned to perform as part of his City job.

10. Outside Work for or with One's Superior or Subordinate

The Charter prohibits superior and subordinate public servants from entering into a business or financial relationship with each other.[74] This means, for example, that a City employee and his or her subordinate may not become partners in a business; that one may not work for the other in an outside business; and that one may not borrow money from the other. The Board fined a City employee $2,800 for preparing, for compensation, the income tax returns of several of his subordinates.[75] Conversely, the Board fined a City employee $1,250 for preparing the tax returns of her superior for four years, for which the superior paid her approximately $250 per year.[76] In its comprehensive opinion on the outside practice of law, Advisory Opinion Number 2001-3, the Board stated that it would violate the Charter for a public servant to provide legal services to his or her superior or subordinate, whether compensated or uncompensated. The Board fined a Deputy Chief Administrative Law Judge ("ALJ") at the Parking Violations Bureau for the New York City Department of Finance $1,450 for accepting from his subordinate ALJ in the Parking Violations Bureau free legal representation in connection with his divorce. The subordinate ALJ was fined $750.[77]

The prohibition, while serving, among other purposes, to protect subordinates from coercion from superiors, will thus in the appropriate case result in penalties for the subordinate as well as the superior. In 2006, the Board fined both a supervising mechanic *and* his subordinate mechanic ($750 for the former and $460 for the latter) for engaging in a prohibited superior-subordinate financial relationship. The subordinate sold a vintage Corvette to his superior for $14,000 and also performed a brake repair, for $400, on another car owned by the superior.[78]

In 2007, the Board fined a former supervisor of roofers at the New York City Department of Education $2,000 for recommending three of his subordinate roofers for private roofing work and then accepting commissions for his referrals.[79] In 2008, the Board fined a former Captain of the New York City Police Department ("NYPD") $5,000 for using six subordinates to perform work on his private residence. The former NYPD Captain acknowledged that, from in or around 2002 through 2003, he asked six NYPD subordinates to perform remodeling and landscaping work around his home and compensated some of those subordinates for their work. In setting the amount of the fine, the Board took into consideration that the former NYPD Captain forfeited terminal leave valued at approximately $37,000 as a result of departmental charges pending against him at the time of his retirement, which charges arose, in part, out of the same facts recited above.[80]

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[1] *COIB v. Camarata*, COIB Case No. 1999-121 (2001).

[2] *COIB v. J. Romeo*, COIB Case No. 2012-808 (2013).

[3] Advisory Opinion Nos. 2009-3, 2009-4, and 2009-6, respectively.

[4] Charter § 2604(b)(2).

[5] *See* Rules of the Conflicts of Interest Board ("Board Rules"), Vol. 12, Title 53, RULES OF THE CITY OF NEW YORK § 1-13.

[6] *COIB v. Turner*, COIB Case No. 1999-200 (2000); *COIB v. Hoover*, COIB Case No. 1999-200 (2000).
[7] *COIB v. Russo*, COIB Case No. 2001-494 (2007).
[8] *COIB v. Tarazona*, COIB Case No. 2006-064 (2007).
[9] *COIB v. Bryk*, COIB Case No. 2008-760 (2008).
[10] *COIB v. Lim*, COIB Case No. 2012-364 (2012).
[11] *COIB v. Fischetti*, COIB Case No. 2010-035 (2010).
[12] *COIB v. Vega*, COIB Case No. 2016-090 (2017).
[13] *COIB v. D. Reyes*, COIB Case No. 2012-365 (2013).
[14] *COIB v. Leggett*, COIB Case No. 2015-642 (2016).
[15] Advisory Opinion Number 2012-1, footnote 2, at page 13.
[16] Charter § 2604(b)(3).
[17] *COIB v. Campbell*, COIB Case No. 2003-569 (2004).
[18] *COIB v. Portes*, COIB Case No. 2011-337 (2012).
[19] Charter § 2604(b)(4).
[20] *COIB v. Salazar*, COIB Case No. 2016-444 (2017).
[21] *COIB v. Baksh*, COIB Case No. 2012-021 (2012).
[22] Charter § 2604(b)(6).
[23] Charter § 2601(15).
[24] *COIB v. MD Ali*, COIB Case No. 2015-797 (2016).
[25] *COIB v. Qureshi*, COIB Case No. 2008-760 (2009).
[26] *COIB v. Olsen*, COIB Case No. 2011-189 (2011).
[27] *COIB v. L. Williams*, COIB Case No. 2014-652b (2016).
[28] *COIB v. Burgos*, COIB Case No. 2006-380 (2007).
[29] *COIB v. Stark*, COIB Case No. 2011-480 (2012).
[30] Advisory Opinion Number 2012-1.
[31] Charter § 2604(b)(1)(c).
[32] Charter § 2604(b)(1)(a); *see also* Advisory Opinion Number 2009-2.
[33] Charter § 2601(20).
[34] Board Rules §§ 1-06(a) and (b).
[35] Charter §§ 2601(12), 2604(a)(1)(b), 2604(a)(6).
[36] Charter § 2601(18).
[37] Charter § 2601(11).
[38] Charter § 2601(8).
[39] Charter § 2601(15).
[40] Charter § 2604(a)(6).
[41] *COIB v. Gwiazdzinski*, COIB Case No. 2003-373k (2008); *COIB v. Lee*, COIB Case No. 2003-373a (2008).
[42] *COIB v. McFadzean*, COIB Case No. 2008-941 (2009).
[43] *COIB v. Begel*, COIB Case No. 1996-40 (1996).
[44] *COIB v. Steinhandler*, COIB Case No. 2000-231 (2001); *COIB v. Sender*, COIB Case No. 2001-566b (2008).

[45] Charter § 2604(a)(1)(a).
[46] *COIB v. Ricciardi*, COIB Case No. 2008-648 (2010).
[47] Charter § 2604(a)(6).
[48] Charter § 2601(11).
[49] Charter § 2601(8).
[50] Charter § 2601(16), as amended by Board Rules § 1-11.
[51] Charter § 2601(16) and Board Rules § 1-05 ("Definition of Blind Trust").
[52] *COIB v. Goyol*, COIB Case No. 2004-159 (2006).
[53] *COIB v. Bourbeau*, COIB Case No. 2007-442 (2008).
[54] Charter § 2604(a)(2).
[55] Charter § 2604(a)(1)(a).
[56] Charter §§ 2604(a)(1)(a) and 2604(b)(1)(b).
[57] *COIB v. L. Jones*, COIB Case No. 2008-602 (2010).
[58] *COIB v. Harmon*, COIB Case No. 2007-774 (2008).
[59] *COIB v. Antonetty*, COIB Case No. 2013-462 (2013).
[60] *COIB v. Hill-Grier*, COIB Case No. 2000-581 (2001).
[61] *COIB v. Davis*, COIB Case No. 2005-178 (2007).
[62] *COIB v. McAuliffe*, COIB Case No. 2012-532 (2013). In deciding to issue a public warning letter in *McAuliffe* instead of imposing a fine, the Board took into consideration that, prior to appearing before ECB, the Administrative Law Judge had a conversation with an ECB superior that may have led him to believe that he was permitted to make such appearances before ECB. The Board took the opportunity of the warning letter to remind public servants that the advice of superiors does not absolve public servants from liability under the conflicts of interest law.
[63] Charter § 2601(5).
[64] *COIB v. Natoli*, COIB Case No. 2013-795 (2014).
[65] *COIB v. Loughran*, COIB Case No. 2000-407 (2002).
[66] Board Rules § 1-09
[67] *See also* Advisory Opinion Number 99-5.
[68] *See* Advisory Opinion Number 98-7.
[69] *COIB v. Fleishman*, COIB Case No. 2002-528 (2004).
[70] *COIB v. Saigbovo*, COIB Case No. 2007-058 (2008).
[71] *See* Charter §§ 2604(b)(2) and (b)(3).
[72] *COIB v. King*, COIB Case No. 1998-508 (2001).
[73] *COIB v. Philemy*, COIB Case No. 2007-237 (2008).
[74] Charter § 2604(b)(14).
[75] *COIB v. Guttman*, COIB Case No. 2004-214 (2005).
[76] *COIB v. Ennis*, COIB Case No. 2010-276a (2011).
[77] *COIB v. Keeney*, COIB Case No. 2007-565 (2009); *COIB v. Horowitz*, COIB Case No. 2007-565a (2009).
[78] *COIB v. Marchesi*, COIB Case No. 2005-271 (2006); *COIB v. Parlante*, COIB Case No.2005-271a (2006).
[79] *COIB v. Della Monica*, COIB Case No. 2004-697 (2007).

[80] *COIB v. Byrne*, COIB Case No. 2005-243 (2008).

POLITICAL ACTIVITIES

by

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A. Introduction

All public service is vested with the public's trust, and City employees owe their first duty of loyalty to the public whom they serve. It is of utmost importance, therefore, that City employees do not to permit their personal partisan affiliations to influence the manner in which they discharge their official duties. Since party politics has a certain level of influence over the manner in which the public is governed, the political activities provisions of the conflicts of interest law were enacted in an attempt to ensure that City employees maintain impartiality when dispensing services to the public.

B. Purpose of Restrictions on Political Activities

Restrictions on political activities, found in Charter §§ 2604(b)(9) through 2604(b)(12) and 2604(b)(15), were included in Chapter 68 for several reasons. First, the drafters of the conflicts of interest law endeavored to protect City employees from actual or perceived pressure to respond to a request from a superior to engage in political activity. City employees must not feel that their jobs, their promotions, or even the manner in which they are perceived by their employer are affected by their political affiliation. Fundamentally, a person's politics is a personal and often very private matter.

Furthermore, separating partisan politics from City employment helps to ensure that no political party's agenda becomes confused with an agency's mission and policies. For example, if a New York City Department of Education employee is active in a political party that does not support an increase in education funding, that employee, regardless of his or her own political affiliation, must act in the best interests of the agency and the City. It is critical to the integrity of civil service that the operation of City government remains wholly separate from partisan politics.

Because it was once common practice for politicians, after being elected to office, to dole out government employment as patronage, the political activities provisions of the conflicts of interest law are also designed to prevent the politicization of civil service positions. Under Chapter 68, even if a City employee was hired to fill a position as a result of his or her political activity, he or she cannot be required by a superior at his or her office to continue such political work.

C. General Restrictions on Political Activities

As a general matter, City employees are not prohibited by Chapter 68 from engaging in political activities in their personal capacities, provided that they adhere to those provisions of Chapter 68 that apply to all outside activities of City employees. Those provisions are as follows.

A City employee is absolutely prohibited from allowing his or her political activities to interfere with the discharge of his or her official duties.[1] For example, while at work, a City employee may not make campaign phone calls, stuff envelopes for campaign fundraisers, draft political proposals on behalf of a candidate, or lobby fellow workers for their campaign support. In Advisory Opinion Number 2009-5, having determined that political endorsements were personal, and not official, acts, the Board advised that "public servants, including elected officials, may not issue political endorsements on City letterhead and may not otherwise use City resources or staff in connection with their political endorsements."[2] The Board did note, however, that unlike all other public servants, *elected officials* could use their City titles in connection with their political endorsements. In 2015 the Board reaffirmed this holding when it fined the Bronx Deputy Borough President, an appointed public servant, for using her City title in a robocall message she made for use by the 2013 campaign to re-elect the Bronx Borough President.[3] Consistent with this holding, the Board in Advisory Opinion Number 2017-1 reiterated that the announcement of a public servant's political endorsement or of a campaign fundraiser may never be included on any official City social media account.

Just as the conflicts of interest law prohibits any political activity during City work hours, the law also prohibits City employees from using any City resources, such as their City computers, telephones, or office supplies, for any political activity—which prohibition includes, as the Board held in Advisory Opinion Number 2017-1, a public servant's operation of a campaign's social media account with City resources. In 2007, the Board and the New York City Department of Education ("DOE") fined a DOE principal $5,000 for sending a letter to parents of the students at his school, thanking two elected officials for their support of the school, and asking the parents to support those elected officials in their future election campaigns.[4] In 2013, the Board imposed a $2,500 fine on an Administrative Manager at the New York City Office of the Comptroller who, during hours she was required to be performing work for the Comptroller's Office, used her City computer and e-mail account to perform work for the political campaign of a candidate for the New York State Assembly, such as reviewing and editing campaign and fundraising materials and coordinating attendance at campaign events.[5] In 2014, the Board issued an Order, after a hearing before the Office of Administrative Trials and Hearings, imposing a $7,500 fine on a former Executive Agency Counsel at the New York City Taxi and Limousine Commission ("TLC") for, during times he was required to be working for TLC, making numerous telephone calls from his TLC phone related to his campaign for City Council.[6] In 2016, the Board entered into a joint

disposition with New York City Health + Hospitals ("H+H") and an H+H Supervisor of Stock Workers, who paid a $2,500 fine for using his H+H computer, email account, and printers on at least twelve occasions during his H+H work hours to do, among other things, design and printing jobs for his wife's campaign for a New Jersey county committee position and for the political campaign of another individual.[7]

A City official may not use or attempt to use his or her position as a public servant to benefit himself or herself or another person with whom he or she is associated.[8] A person with whom one is "associated" is defined in Charter § 2601(5) to include the public servant's spouse, domestic partner, child, parent, or sibling; a person with whom the public servant has a business or other financial relationship; and each firm in which the public servant has a present or potential interest. For example, a City official at the New York City Administration for Children's Services whose wife is running for elective office may not declare to members of the public with whom he comes into contact in his City job that his wife's campaign platform is in the best interests of the City's children.

In contrast, in Advisory Opinion Number 2008-3 the Board advised the Public Advocate and Members of the City Council that they would not violate the Charter's prohibition against using one's City position for one's own personal benefit, nor violate any other provision of the conflicts of interest law, by participating in the legislative process in relation to the modification, extension, or abolition of term limits, including but not limited to voting for or against any such changes.

City employees are also prohibited from disclosing confidential City information.[9] For example, an employee of the New York City Department of Transportation may not provide inside information regarding pending contracts to a political candidate on whose campaign he or she is working.

In these examples, as well as in a myriad of others, a public servant who works on a political campaign must tread carefully to avoid any misconduct under the City Charter. Furthermore, public servants should consider whether their activities may suggest to others even an *appearance* of impropriety. Therefore, City employees should be particularly careful in the workplace so as not to create the impression that they are allowing their personal politics to influence the manner in which they perform their official duties.

D. Running for Office

Chapter 68 does not contain provisions that deal specifically with running for a public or political office. Indeed, the conflicts of interest law does not prohibit a City employee from seeking an elective office. However, public servants must comply with Chapter 68 when running for office. City employees may campaign only during their personal time and may not use their official City positions to advance either their own

candidacy or the candidacy of others. This restriction includes refraining from using *any* City resources, letterhead, equipment, personnel, or materials for the campaign or for any other non-City purpose.[10] To this end, the Board in 2007 fined a City Council Member $2,000 for using City resources and personnel in connection with his re-election campaign. The Member acknowledged that on at least one occasion he asked a member of his District Office staff to work on the campaign and that District Office equipment and supplies were also used for that campaign.[11] The Board also fined a former Vice President of Information Technology of the School Construction Authority ("SCA") $1,500 for, among other things, using his SCA photocopier and printer to produce materials for his campaign for his Town Board on Long Island.[12]

Furthermore, Mayoral Directive Number 91-7 requires all exempt, provisional, and non-competitive City employees who are candidates for elective office to use accrued annual leave during their candidacy. If no such time is available, these City employees may take a leave of absence without pay, if available, during their candidacy. In certain circumstances, the Mayor may exempt a particular City employee from Directive Number 91-7.

Moreover, the New York City Police Department and the New York City Fire Department have stricter rules regarding running for political office. If the Police Commissioner or any member of the Police Department is nominated for any elective public office, other than as a member of a community board or to a board of education outside of the City of New York, he or she has ten days to decline the nomination or be "deemed thereby to have resigned his or her commission and to have vacated his or her office." However, a member of the police force may apply for written permission from the Mayor for an unpaid leave of absence to accept the elective office. [13] As a general matter, the Fire Commissioner or any member of the uniformed force of the Fire Department may run for and be elected to public office. However, the Fire Commissioner has discretion to determine whether holding public office will interfere with the employee's performance and may require such member to take a leave of absence without pay during the tenure of his or her office.[14]

Finally, it should be noted that the federal Hatch Act places restrictions on the political activities of certain state and local government employees. [15] For state and local government employees whose salary is *entirely* funded by federal loans or grants, there is an **absolute ban** on running for partisan elective office; even taking an unpaid leave of absence to run for office is prohibited. Because there can be substantial penalties on both the employee and the agency for a Hatch Act violation, employees considering running for partisan elective office should, if their salary is fully federally funded, first consult with their agency counsel.

E. <u>Political Fundraising and Other Political Activities</u>

1. Solicitation of Political Activity

Public servants are prohibited from coercing or attempting to coerce other public servants to engage in political activities and from requesting any subordinate public servant to engage in political activities or participate in a political campaign.[16] For purposes of this Charter section, participation in a political campaign includes managing or aiding in the management of a campaign, soliciting votes or canvassing voters for a particular candidate, or performing any similar acts that are unrelated to the public servant's official duties or responsibilities. In 2007, the Board fined a former Assistant Commissioner at the New York City Department of Sanitation $2,000 for, among other violations, recruiting his subordinates to work on a mayoral campaign.[17]

Nothing in this provision prohibits a public servant from requesting a subordinate to speak on behalf of a candidate or provide information, if such acts are related to the person's duties or responsibilities. For example, a policy analyst may be required by the elected official for whom he or she works to prepare talking points of the highlights of the official's record, notwithstanding that the official is campaigning for re-election and plans to integrate the talking points into a campaign speech or into campaign literature.

In Advisory Opinion Number 95-24, the Board decided that City Council Members may use City employees and resources in conducting non-partisan voter registration drives, provided that the drive is conducted in a manner that makes clear that the drive is not designed to promote private political interests.

2. Buying City Office or Employment

A public servant may not allot a portion of his or her salary, or give or promise to give anything of value, to any person "in consideration of having been or being nominated, appointed, elected or employed as a public servant."[18] This provision prevents public servants from paying to obtain their City employment.

3. Soliciting Political Contributions

Public servants are prohibited from directly or indirectly compelling, inducing, or requesting any person to make political contributions under threat of prejudice, or promise of advantage, to job-related status or function and from even requesting any subordinate public servant to make any political contribution.[19] Nothing, however, prohibits public servants from voluntarily making political contributions.

In a 2000 Board enforcement case, a principal at the Board of Education ("BOE") admitted to violating Charter § 2604(b)(11)(c) by selling, to a subordinate teacher during school hours on school grounds, tickets that were worth a total of $80 for a political fundraiser supporting a community school board candidate and agreed to pay a $2,500 fine to the Board.[20]

In Advisory Opinion Number 2001-2, the Board considered the Chapter 68 implications of several members of the now-abolished community school boards running for City elective office, particularly with respect to their efforts to raise campaign funds from BOE employees. The Board determined that the members' only subordinates, and therefore the only public servants from whom Charter § 2604(b)(11)(c) prohibited the members from soliciting campaign contributions, were their district superintendent and the school board secretary. The Board further determined, however, that it would violate Charter § 2604(b)(3) for the community school board members to "target" BOE personnel *from their community school district* for contributions. Prohibited "targeted" fundraising includes face-to-face requests, requests sent to an employee's BOE workplace, and requests that identify the recipient by BOE title or position. Requests to a general mailing list that happens to contain names of some BOE employees will not violate Chapter 68.

4. <u>Fundraising by High-Level City Officials</u>

High-level public servants, that is, those with "substantial policy discretion" as defined by rule of the Board, are prohibited from requesting *any* person to make any political contribution for any candidate for an elective office of the City or for any elected official of the City who is a candidate for any elective office.[21] Thus, this Charter provision prohibits high-level public servants, with the exception of elected officials, from being involved in certain political fundraising. The reason for this prohibition is to avoid situations where high-level public servants coerce or appear to coerce anyone to make political contributions. This applies to direct, as well as indirect, fundraising, so the high-level public servant may not ask others to make solicitations on his or her behalf. This restriction, however, does not apply to solicitations by the *elected* officials themselves. In Advisory Opinion Number 2009-6, the Board advised that this restriction applies not only to solicitations for the campaigns of the proscribed candidates but also to solicitations for political action committees whose funds may go to support a proscribed candidate.

Section 2604(b)(12) applies to deputy mayors, agency heads, and those with "substantial policy discretion." Public servants charged with substantial policy discretion are those with major responsibilities and who exercise independent judgment when determining important agency matters.[22] This would include, but would not be limited to: agency heads, deputy agency heads, assistant agency heads, members of boards and commissions, and public servants in charge of any major office, division, bureau, or unit of an agency. Agency heads are required to designate, by title or position as well as by name, the public servants in their agencies who have substantial policy discretion. The list must be filed with the Conflicts of Interest Board by February 28 of each year. Agency heads must also notify these public servants in writing of the Charter's restrictions on their political activities. If the Board determines that the title, position, or name of any public servant should be added to or deleted from

the list supplied by an agency, the Board will notify the head of the relevant agency of any additions or deletions. The agency, in turn, must promptly notify the public servant of the change.

In Advisory Opinion Number 91-12, the Board determined that community board chairs and district managers are not public servants with "substantial policy discretion" and hence are not subject to these special prohibitions against political activities by high-ranking City officials.

In 2010 the Board fined a former Deputy Chief of Staff to the City Council Speaker, a person charged with substantial policy discretion, $2,500 for soliciting contributions to the Speaker's re-election campaign in violation of the prohibition against public servants charged with substantial policy discretion from asking *anyone* for a contribution to a candidate to City elective office.[23] Similarly, in 2016 the Board fined a former Member of the New York City Water Board, a public servant charged with substantial policy discretion, $1,000 for sponsoring a political fundraiser for the Mayor's re-election campaign. The invitation to the fundraiser included the Water Board Member's name as a host and requested campaign donations in amounts ranging from $100 to $2,500. In determining the amount of the fine, the Board took into account that the Water Board Member immediately resigned from the Water Board upon learning of his violation of Chapter 68, thus avoiding any continuing violation, as well as the high level of his position at the Water Board.[24]

In Advisory Opinion Number 93-6, the Board determined that the act of listing names of several public servants on an invitation to a fundraising event generally would not be viewed as a request by the named individuals for a contribution. Mere inclusion on a list of contributors, without further evidence of solicitation, does not rise to the level of a direct or indirect request that any person or firm make a political contribution, in violation of Charter § 2604(b)(12).

In Advisory Opinion Number 95-13, the Board determined that the spouse of a high-level public servant may host a political fundraiser, but it must be clear that the spouse, and not the public servant, is hosting the event. In addition, employees of the public servant's agency, and individuals who are engaged in or seek to engage in business dealings with the public servant's agency, should not be invited to the fundraiser. The Board reaffirmed this holding in Advisory Opinion Number 2012-5, noting, as it did previously, that it will look to the totality of the circumstances to ensure that the public servant is not a host of the event and is not otherwise impermissibly soliciting campaign contributions.

In Advisory Opinion Number 2001-1, the Board determined that the restriction against high-ranking public servants soliciting political contributions for City-related elections applies even where the public servant is the candidate. The Board further determined that, because the restriction applies to indirect, as well as direct,

solicitations, solicitations by the public servant's campaign committee, and by others associated with the public servant, also violate Chapter 68. The Board noted that this restriction applies even where the appointed public servant is running against a City elected official, who, by the terms of the Charter provision, is not similarly restricted.

In Advisory Opinion Number 2003-1, the Board determined that the restriction against high-ranking public servants soliciting funds for a candidate for "elective office of the City" does not apply to candidates for the office of district attorney. Thus, these high-ranking public servants *may* raise funds for candidates for district attorney, whether the public servant is the candidate or a supporter of the candidate. The Board cautioned that, as with all political fundraising, the public servant may not use City time, resources, or position for that purpose, and may not solicit contributions from any City subordinate.

5. Political Party Positions

Elected officials, deputy mayors, deputies to Citywide or boroughwide elected officials, agency heads, and any other public servants who have substantial policy discretion may not serve as members of national or state committees of political parties. These public servants are also prohibited from serving as an assembly district leader of a political party or as the chair or officer of the county committee or the county executive committee of a political party. However, a member of the City Council may serve as an assembly district leader or hold any lesser political office.[25] "Lesser political office" than that of an assembly district leader includes membership on a county committee, county executive committee, state committee, or national committee.[26]

In Advisory Opinion Number 93-20, the Board determined that a counsel to an elected City official was a public servant charged with substantial policy discretion and therefore could not continue to serve as an officer of the county committee of a political party and as a member of that party's state executive committee.

In Advisory Opinion Number 2003-5, the Board determined that the prohibition against holding certain political party positions applied to members of the Voter Assistance Commission ("VAC"), so that a member of that body could not also serve as a district leader (one of the prohibited party positions). In that Opinion, the Board rejected a suggestion that the VAC had such a partisan nature that it was, as the New York City Law Department had determined with respect to the Board of Elections, exempt from the prohibition against holding party positions. The Board also determined that the VAC was not an advisory body. The Opinion indeed stands for the general proposition that members of City boards and commissions, other than those that are purely advisory, will be subject to the restrictions on political activities set forth in Charter §§ 2604(b)(12) and 2604(b)(15).

6. Working on a Political Campaign

In Advisory Opinion Numbers 93-24 and 94-8, the Board determined that public servants may, with certain restrictions, serve as paid consultants to campaign organizations, including campaigns for elective City office. In Advisory Opinion Number 2003-6, the Board considered three matters that it had not considered in those earlier opinions: (1) the relationship between many campaign organizations and the City's Campaign Finance Board ("CFB"); (2) communications between public servants moonlighting for a campaign and City agencies; and (3) serving as a campaign consultant for a candidate who is the public servant's City superior. The Board reaffirmed the earlier opinions and further determined that it is not necessary for a City employee who moonlights for a campaign organization, including those receiving CFB funding, to obtain a waiver from the Board in order to do so; that City employees may indeed volunteer to work for political campaigns, including their superiors' election campaigns, and may also accept payment for their work; and that City employees who accept compensation for campaign consulting are prohibited, however, from communicating with City agencies (including the CFB) on behalf of a campaign, absent a waiver from the Board. The Board also cautioned that CFB employees or other City employees who have some authority over, or responsibility for oversight of, the CFB should seek advice from the Board before accepting paid, or even unpaid, positions in campaigns for elective City office. Finally, the Board repeated the prohibitions cited in the earlier opinions, namely, that public servants may not use City time or resources for this outside consulting work; that they may not use their City positions or titles to benefit the campaign; that they may not ask a subordinate to work on a campaign; and, if they are appointed public servants charged with substantial policy discretion, that they may not engage in fundraising for City races.

7. <u>Activity of City Employees Whose Superior is Running for Office</u>

In Advisory Opinion Number 2012-5, the Board answered several questions from public servants, including in particular from current City elected officials who anticipated being candidates for elective office in the near future, as to whether, consistent with the City's conflicts of interest law, they and their subordinate City employees might engage in certain campaign-related activities. A considerable number of the questions implicated the absolute ban, referenced above, on the use of City time or resources for political activities. A second group of questions involved the Charter's restrictions on political or financial relationships between superior and subordinate City employees.

In response the Board advised, first, that City employees whose duties include scheduling for an official in whose office they work may not use City time or resources to arrange campaign events for that official, but that it would be permissible for these City scheduling employees to communicate with the campaign of their principal for the purpose of exchanging scheduling information such as the time and place of campaign and official events. Further, as to the coordination of office and campaign schedules,

the Board advised that public servants seeking elective office may not provide their campaigns with direct electronic access to their City-maintained schedules, but it would not violate the conflicts of interest law for the City and campaign staffs both to have read and write access to an online calendar to which the campaign would post campaign events and the City staff would post official events, provided that this calendar is not accessible to the public. The Board also advised that a City official's daily binder, which contains the daily schedule, the text of remarks, background papers, and the like, may not include the text of a campaign speech or other materials prepared by the campaign. Rather, separate official and campaign binders must be kept by the official's City and campaign staffs.

In response to questions about campaign-related inquiries received at City offices, the Board advised that, if the City office of a candidate for elective office receives communications about campaign matters, such as inquiries about how to contribute time or money to the official's campaign, the City employees who receive these inquiries may respond *only* by providing campaign contact information to the caller or writer; the City employees may not forward the inquiry to the candidate, the campaign, or anyone else in the City office. Similarly, City press officers, whose City responsibilities include arranging for press attendance at their superiors' official events, may not use City time or resources to arrange for press attendance at campaign events. But a City press officer may respond to press inquiries prompted by remarks made at campaign events when the press inquiry concerns matters within the current official City portfolio of the press officer's principal.

City employees whose duties typically require them to attend official events with the elected official who is their superior, including employees sometimes described as "advance persons" and "body persons," may attend campaign events on City time only if it can reasonably be anticipated that the City employee will be required to perform *official City* duties at the event and further provided that the only duties they in fact perform at the event are official duties. Because of the different City duties of body persons and advance persons, it ordinarily will not violate the conflicts of interest law for a body person to accompany the elected official to campaign events on City time, while it normally would violate the law for the advance person to attend campaign events on City time.

Official City photographs may be provided to a campaign, if at all, only on the same terms as such photos are made available to the general public. Furthermore, if official photographs are in fact provided to the general public, they must be provided to the campaign pursuant to the same process by which a member of the general public would obtain them. The campaign may not "jump the queue."

In response to questions touching on restrictions on certain political and financial relationships between City superiors and subordinates, the Board advised that,

just as a City superior may not request his or her subordinates to work for or contribute to a political campaign, including the superior's own campaign, the superior's campaign staff may not request the candidate's City subordinates to work for or contribute to the campaign. Similarly, while a City official may request his or her subordinates to gather information for use in that official's political campaign where the work requested is related to the subordinate's City duties or responsibilities,[27] campaign staff may not make such a request directly to City staff. The City official may, however, direct his or her City staff to gather such information and provide it directly to campaign staff. The Board also advised that, if a superior and subordinate public servant independently volunteer for a political campaign, including the campaign of the City official who is the superior of both, the City superior may supervise, and assign campaign tasks to, the City subordinate (and vice versa), whether they are paid or unpaid campaign workers.

In Advisory Opinion Number 2017-1, the Board reaffirmed that a City employee may, on his or her own time and without the use of City resources, operate the *campaign* social media account of his or her City superior, or of any other candidate for elective office. However, the Board further cautioned in that Opinion that a City employee may *not* manage, or contribute content to, the *personal* social media account of his or her City superior, even if done entirely without the use of City time or City resources and even if the City superior is engaged in a campaign for elective office. The Board reasoned that, "[i]f done without compensation, the superior who accepted this gift would be misusing his or her City position, in violation of Charter Section 2604(b)(3)," while "[i]f done for compensation, both the superior and subordinate would be violating Charter Section 2604(b)(14)," prohibiting financial relationships between superior and subordinate public servants.[28]

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[1] Charter § 2604(b)(2).
[2] Advisory Opinion Number 2009-5 at 3.
[3] *COIB v. Greene*, COIB Case No. 2013-594 (2015).
[4] *COIB v. Cooper*, COIB Case No. 2006-684 (2007).
[5] *COIB v. Mosley*, COIB Case No. 2013-044 (2013).
[6] *COIB v. Oberman*, OATH Index No. 1657/14, COIB Case No. 2013-609 (Order Nov. 6, 2014). At this writing an Article 78 proceeding is pending in the Appellate Division challenging, among other things, whether there was "substantial evidence" for the Board's Order.
[7] *COIB v. A. Santana*, COIB Case No. 2015-778 (2016).
[8] Charter § 2604(b)(3).
[9] Charter § 2604(b)(4).
[10] Charter § 2604(b)(2); Board Rules §§ 1-13(a) and (b). *See also* Charter § 2604(b)(3).
[11] *COIB v. Gennaro*, COIB Case No. 2003-785 (2007).
[12] *COIB v. Cantwell*, COIB Case No. 2005-690 (2007).
[13] City Charter Chapter 49, § 1129.

[14] City Charter Chapter 49, § 1130.
[15] 5 U.S.C. §§ 1501-1508.
[16] Charter § 2604(b)(9).
[17] *COIB v. Russo*, COIB Case No. 2001-494 (2007).
[18] Charter § 2604(b)(10).
[19] Charter § 2604(b)(11).
[20] *COIB v. Rene*, COIB Case No. 1997-237 (2000).
[21] Charter § 2604(b)(12).
[22] Board Rules § 1-02.
[23] *COIB v. Keaney*, COIB Case No. 2009-600 (2010).
[24] *COIB v. Finnerty*, COIB Case No. 2016-337 (2016).
[25] Charter § 2604(b)(15).
[26] Board Rules § 1-03.
[27] Charter § 2604(b)(9)(b).
[28] Advisory Opinion Number 2017-1 at 5-6.

POST-EMPLOYMENT RESTRICTIONS

By

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A. Introduction

The post-employment restrictions of Chapter 68 of the Charter, contained in Charter § 2604(d), are applicable to all City employees who leave their City jobs for the private sector, without regard to level of responsibility, scope of discretion, or length of time in City service. As stated by the Board in Advisory Opinion Number 95-1, citing Advisory Opinion Number 94-15, the primary reasons for these restrictions are "to prevent former public servants from exploiting public office for personal gain, subordinating the interests of the City to those of a prospective employer, or exerting undue influence on government decision-making."

There are four post-employment restrictions on City employees. These restrictions address: (1) negotiating for a job with a private employer who is involved with a particular matter the City employee is working on in his or her City job; (2) appearing before one's former City agency within one year after leaving City service; (3) working on a particular matter that one worked on personally and substantially as a City employee; and (4) using or disclosing confidential information gained in City service. Each of these restrictions is discussed below.

It should be emphasized that the post-employment restrictions regulate the conduct of present and former City officers and employees, not the conduct of private firms. Therefore, even though a former City employee may not appear before that employee's former City agency for one year after leaving City service and may not work on a particular matter the employee worked on while in City service, the employee's new firm may appear before the employee's former City agency and may work on such a particular matter.

B. Applying For Private Sector Employment

Charter § 2604(d)(1) prohibits public servants from soliciting, negotiating for, or accepting a position with any person or firm who or which is involved in a *particular matter* with the City while the public servants are actively considering, directly concerned, or personally participating in such *particular matter* on behalf of the City. The term "public servant" is defined as "all officials, officers and employees of the city, including members of community boards and members of advisory committees, except unpaid members of advisory committees shall not be public servants."[1]

Understanding what constitutes a "particular matter" is critical to interpreting the Charter's provisions on post-employment restrictions. Charter § 2601(17) defines "particular matter" as "any case, proceeding, application, request for a ruling or benefit, determination, contract limited to the duration of the contract as specified therein, investigation, charge, accusation, arrest or other similar action which involves a specific party or parties, including actions leading up to the particular matter; provided that a particular matter shall not be construed to include the proposal, consideration, or enactment of local laws or resolutions by the council, or any action on the budget or text of the zoning resolution."

As the legislative history to Chapter 68 makes clear, the drafters of Chapter 68 intended that the term "particular matter" be construed narrowly. The Charter Revision Commission wrote:

> The term particular matter, used in the post-employment prohibitions contained in 2604(d), defines those matters engaged in by public servants during their public employment in relation to which they may not make appearances before city agencies, or accept employment or remuneration for services, after leaving city service. The definition excludes work performed in relation to general subject matters or policy issues where the results apply to categories of individuals rather than a specific party or parties. Moreover, the prohibition which is found in section 2604(d) applies only when the same specific party or parties continue to be involved in the particular matter. Given the permanent nature of the post-employment prohibition, the definition of "particular matter" is intended to be construed narrowly.[2]

In keeping with this definition of "particular matter," the Board determined, in Advisory Opinion Number 93-8, that, where a public servant's work consisted of research and analysis on a public policy issue affecting a large number of City residents and was neither directed at, nor geared to, any individual party or contract, and did not require recommending, or negotiating for, any services to be rendered to the City, his or her work related to a general subject matter or policy issue with broad impact on a class or category of individuals and was thus excluded from the scope of a particular matter. Accordingly, it was permissible for this public servant—whose limited contact with a specific corporation was only to gather data for this research— to solicit, negotiate for, and (if offered) accept a position with that corporation.

Before discussing job opportunities with a private firm, a public servant must be sure that he or she does not currently have any dealings with that firm in his or her City job. For example, if a public servant is reviewing a grant application that ABC Corp. has submitted to the public

servant's agency, the public servant cannot discuss any future employment with ABC Corp. until the public servant's responsibilities with respect to the grant application are completed, or until the public servant's supervisor has, at the public servant's request, assigned the official duties concerning ABC Corp. to another public servant in the agency.

The case of *COIB v. Matos*[3] is illustrative of this point. In *Matos*, the Board fined a former City employee $1,000 for sending his resume to a City contractor while, as a City employee, he was directly concerned with that contractor's $10 million contract with the City. The $1,000 fine took into account the former City employee's financial hardship. The former City employee admitted his conflict of interest as part of the disposition and resigned his City job in the face of departmental charges at his agency. Similarly, in 2008, the Board fined a former Assistant Director of Information Services for the Division of Tenant Resources at the New York City Department of Housing Preservation and Development ("HPD") $2,000 for interviewing for and accepting a position with a firm with which he was involved, in his HPD capacity, in the firm's project to convert a housing project from a Mitchell-Lama-regulated housing complex to a privately-run rental housing complex and also for communicating with HPD on behalf of the firm in his first post-employment year in violation of the one-year appearance ban, discussed in Section C below.[4]

The prohibition against soliciting a position with a firm whose matter a City employee is handling, while perhaps more often referenced for employees who are looking to leave City service, applies equally to a City employee who is looking for a part-time private sector position. In 2013, in a joint resolution with the Board and the New York City School Construction Authority ("SCA"), an SCA Project Officer agreed to serve a six-week suspension, valued at approximately $10,400, for soliciting and accepting a part-time position with a firm whose work he supervised for SCA, as well as for soliciting a $15,000 loan from an SCA contractor.[5]

Job searches, like any other private activity conducted by a City employee, must be conducted on the public servant's own time and the public servant may not use his or her official City position or City resources, letterhead, equipment, personnel, or materials in connection with his or her job search.[6] Thus, the Board issued a public warning letter to the Chief of the Division of Engineering for the New York City Department of Environmental Protection ("DEP") Bureau of Wastewater Treatment for using his DEP e-mail account to send his resume to nine employers—including one government entity—while he played an oversight role in managing the DEP projects of several of those employers.[7] In 2015 the Board reaffirmed this holding in finding that a high-ranking official of the New York City Health and Hospitals Corporation ("HHC") had misused his HHC e-mail account by using it to solicit private employment. The official further violated the conflicts of interest law because he addressed his solicitation to executives of a private firm whose contract with HHC the official was responsible for overseeing. For these job-seeking violations the Board imposed a fine of $3,000.[8]

C. One-Year Appearance Ban

Chapter 68 contains two provisions regarding the one-year appearance ban. The first provision, Charter § 2604(d)(2), applies to most public servants. This provision prohibits public servants from appearing before the City agency served by the public servant within a period of one year after termination of his or her service with the City. The second provision, Charter § 2604(d)(3), applies to a small number of individuals holding specified positions in City government, including elected officials, Deputy Mayors, Director of the Office of Management and Budget, Commissioner of the Department of Citywide Administrative Services, Corporation Counsel, Commissioner of Finance, Commissioner of Investigation, and Chair of the City Planning Commission. The holders of these positions are prohibited from appearing before the branch of City government in which they served within a period of one year after termination of their service with the City. For purposes of this provision, the legislative branch of City government consists of the City Council and the offices of the Council, and the executive branch consists of all other agencies of the City, including the office of Public Advocate.

Consistent with Charter § 2604(d)(3), the Board, in Advisory Opinion Number 92-13, prohibited a former high-level public servant, who held one of the positions listed in Charter § 2604(d)(3), from communicating, on behalf of his private employer, with City agencies in the branch of government he served until one year from the date of his termination from City service.

For purposes of the one-year ban on a public servant's appearances before his or her former agency, the date of termination from City government (and thus the date on which the one-year appearance ban begins to run) is the date on which a public servant effectively stops working for the City. In Advisory Opinion Number 98-11, the Board noted that receiving lagged paychecks or payment for unused leave does not alter or extend the date of termination from City service. The Board also stated that public servants who are "on leave" from their positions—even unpaid leave—are still public servants, subject to all of the restrictions on current public servants contained in Chapter 68. In 2013, for example, the Board fined a former Elevator Mechanic Helper for the New York City Housing Authority ("NYCHA") $1,000 who, while on leave from NYCHA, worked as an Elevator Mechanic Helper for a firm having business dealings with NYCHA.[9]

In the context of the Charter's post-employment restrictions, "'[a]ppear' means to make any communication, for compensation, other than those involving ministerial matters."[10] This includes attending meetings, making telephone calls, sending e-mails, writing letters, and engaging in similar types of activities. The Board accordingly fined a former Administrative Engineer at the New York City Department of Buildings ("DOB") $2,000 for attending, during the first year after he left DOB and on behalf of his private employer, meetings at the Lower Manhattan Construction Command Center at which employees of DOB were present. The former Administrative Engineer admitted that his conduct violated the prohibition against appearing before one's former City agency within one year of terminating employment with the agency.[11] Similarly, in 2015, the Board fined a former First Deputy Press Secretary for the New

York City Mayor's Office $2,000 for communicating with her former City agency on two occasions on behalf of her new private sector employer—once by attending a meeting hosted by a Deputy Mayor at City Hall—within her first year of leaving City service.[12] In 2012, the Board fined a former attorney for the New York City Police Department ("NYPD") $1,000 for, during his first post-employment year, writing a letter on behalf of a client of his private law practice to the New York City Office of Payroll Administration, which letter he copied and sent to the NYPD Payroll Section, seeking correction of alleged excessive payroll deductions. As the former employee admitted, by sending this letter to NYPD during his first post-employment year, he violated the one-year appearance ban.[13]

In Advisory Opinion Number 2008-1, the Board stated that the ban on appearances before the "agency served" by the former public servant prohibits communications, other than on ministerial matters, with any officer or employee of the City agency in question, where that officer or employee is acting in his or her official capacity as a representative of that agency. Ministerial matter "means an administrative act, including the issuance of a license, permit or other permission by the city, which is carried out in a prescribed manner and which does not involve substantial personal discretion."[14] The Board in 2009 thus fined a former high-level public servant, one of whose agencies served was the Hudson Yards Development Corporation ("HYDC"), for making a presentation during his first post-employment year to a panel on which the HYDC President sat in her official capacity.[15] In contrast, as the Board stated in Advisory Opinion Number 2009-5, where the public servant in question is approached in his or her *personal* capacity, communicating with that current public servant in the former public servant's first post-employment year will not implicate the one-year ban. For example, an attorney who has left City service may in her first post-employment year contact a former colleague to seek the colleague's personal legal business and may likewise approach a former colleague to seek his or her endorsement of a candidate for elective office, since such political endorsements are, the Board observed, personal rather than official acts. Purely social interactions, such as meeting for lunch, or other non-work-related contact with former colleagues are permissible both because they are communications with one's former colleagues in their personal, not their official, capacities and because they are not compensated communications. If, however, the conversation on such an occasion turns to business that the former employee's new private sector employer has with his or her former City agency, a violation of the one-year appearance ban may well occur.

In order to enforce these provisions, the Board can and, as noted above, does impose fines against former public servants for actions taken after leaving City service. In 2007 the Board fined a former New York City Department of Transportation ("DOT") employee $2,000 for appearing regularly before DOT during his first post-employment year on behalf of his private employer to coordinate which streets should be milled and resurfaced.[16] In 2008 the Board and the New York City Department of Education ("DOE") concluded three-way settlements with five former DOE technology staff developers in which three agreed to fines of $1,500, one a fine of $2,500, and the fifth a fine of $5,000. These employees admitted that, when they left the DOE, they formed and jointly owned a firm to market and sell products to the

DOE and that, during their first post-employment year, they organized a conference for DOE employees at which they made technology presentations.[17] Also in 2008 the Board fined the former Director of the Mayor's Office of State Legislative Affairs $12,000 for making compensated appearances, in the form of numerous e-mails, to various public servants in the Mayor's Office concerning a number of items of pending or prospective legislation of interest to several clients of his law firm, at which he was a partner.[18] In 2016, the Board entered into a joint disposition with DOT and a former DOT Executive Deputy Agency Chief Contracting Officer ("ACCO"), who paid a $5,000 fine for, within one year of leaving City service, twice appearing before DOT on behalf of his new private-sector employer. In each of those prohibited appearances, the former Executive Deputy ACCO contacted former DOT subordinates seeking confidential City information.[19]

The meaning of "agency served by such public servant," a phrase used in Charter § 2406(d)(2), depends on the particular facts at issue. Therefore, in the case of a *paid* public servant, this phrase means the agency employing the public servant. However, in the case of an *unpaid* public servant, it means the agency employing the official who appointed the unpaid public servant, with certain exceptions.[20]

An issue may arise under Charter § 2604(d)(2) when a former public servant has served more than one agency within one year prior to the termination of his or her service with the City. In such a case, the former public servant "shall not appear before each such City agency for a period of one year after the termination of service from each such agency."[21] This rule requires calculation of the period of the one-year ban for each agency served by the former public servant within one year prior to termination of his or her service, resulting in two or more different dates on which the one-year ban expires. For example, in Advisory Opinion Number 93-30, a former public servant worked at a City agency ("Agency A") from September 19, 1991, until December 30, 1992, and a different City agency ("Agency B") from December 31, 1992, to September 3, 1993, at which time the public servant left his City position for private sector employment. The former public servant sought Board permission to appear before Agency A within one year of his termination of City employment. The Board, applying Board Rules § 1-07, determined that the one-year ban on the public servant appearing before Agency A would not expire before December 30, 1993, one year after the public servant left that agency. Since the Board did not grant the former public servant a waiver, he could not appear before Agency A until after that date. Had the former public servant in this case sought to appear before Agency B, under Board Rules § 1-07, he could not have done so until the one-year ban with respect to that agency expired on September 3, 1994.

The Board, in Advisory Opinion Number 93-11, made it clear that when a former public servant was employed by a unit or department within an agency, the "agency served by such former public servant" is the entire agency, and not just the unit in which the former public servant was employed. Although the former public servant worked only for an agency's Enforcement Unit, he served the entire agency, including the agency's Hearings Unit, and it

would be a violation of Chapter 68 for the former public servant to appear before the agency's Hearing Unit less than one year after the termination of his service at the agency.

In Advisory Opinion Number 2007-1, the Board noted that, while for former members of the Community Education Councils of the DOE their "agency served" is the entire DOE, it would, in light of their limited powers, evaluate applications for waivers of the one-year appearance ban as if their agency served was the *DOE district* they served and would therefore typically grant such waivers on the condition that former members not appear during that year before that district.

Advisory Opinion Number 93-11 also made clear that the one-year ban is personal to the former public servant himself or herself and for that reason does not prohibit appearances by other employees of the former public servant's new firm: "With respect to other attorneys at the former public servant's law firm, it is the opinion of the Board that it would not be a violation of Chapter 68 for such other attorneys to appear before the Agency within one year after the former public servant's termination from City service, and to use the firm's stationery which lists the former public servant's name on the letterhead."[22]

The Charter carves out an exception to the one-year ban for appearances by a former public servant in an adjudicative proceeding. Charter § 2604(d)(2) does not prohibit a former public servant from making communications with the agency formerly served by the former public servant when the communications are incidental to an otherwise permitted appearance in an adjudicative proceeding before another agency or body, or a court, unless the proceeding was pending in the agency served during the period of the former public servant's service with that agency.

While this exception applies most often to lawyers, the Board, in Advisory Opinion Number 96-6, determined that a former public servant who was not an attorney may, within one year after leaving City service, serve as a paid expert witness in cases involving his former agency that are before other adjudicative bodies or courts and incidental thereto communicate with his former agency, provided that (1) the cases were not pending in the agency while he was employed there; and (2) he never serves as a paid expert witness concerning any particular matter on which he had worked personally and substantially during his tenure with the agency. In 2013, the Board fined a former HPD attorney $1,000 because the litigation attendant to which he communicated in his first post-employment year with HPD had in fact been pending at HPD during his tenure at the agency, thus he failed to satisfy all the conditions of this "litigation exception" to the one-year appearance ban.[23]

D. Lifetime Particular Matter Bar

Former public servants are permanently barred from appearing, whether in a paid or unpaid capacity, "before the city, or receiv[ing] compensation for any services rendered, in

relation to any particular matter involving the same party or parties with respect to which particular matter such person had participated personally and substantially as a public servant through decision, approval, recommendation, investigation or other similar activities."[24]

The lifetime bar differs from the one-year ban not only because it is a permanent prohibition but also because it involves work on a "particular matter." Thus, the lifetime bar provides that a former public servant may not appear before *any* City agency on the *particular matter* involving the same party or parties that he or she worked on personally and substantially while a public servant, *whether or not the former public servant receives any compensation* for the appearance. Further, a former public servant may not receive compensation for any services rendered in relation to the particular matter he or she worked on personally and substantially while a public servant, *even if the services do not involve an appearance* before the City.

In view of the permanent nature of this prohibition, a public servant's degree of involvement with a particular matter must have been personal and substantial in order for this provision to apply. Activities that make only insignificant contributions to the final disposition of a matter, "such as typing a contract or performing other ministerial matters, do not constitute a sufficient level of involvement for the lifetime ban to apply."[25]

The Board has had several opportunities to consider the question of what constitutes "personal and substantial" involvement in a particular matter. In Advisory Opinion Number 96-7, the Board determined that a former public servant who was the hearing officer in the early stages of a matter may not become involved as private counsel on the same matter. As a hearing officer, her involvement had been personal and substantial in that she had conducted pretrial conferences, scheduled the case for trial, granted various adjournment requests, and performed other tasks that could have affected the outcome of the proceeding. In addition, the possibility that as a hearing officer she had access to confidential information concerning the party that would now be her adversary could create the appearance of impropriety.

In 2010 the Board addressed the case where a former public servant might not recall participating as a public servant in a given matter, a possibility that might arise because of such factors as the passage of time or the volume of matters that a former public servant had handled while in City service. The Board issued a public warning letter to a former Commanding Officer at the NYPD Office of Labor Relations who, after retiring from the NYPD, was retained as an expert witness in a lawsuit against the City, in which lawsuit he had personally and substantially participated while at the NYPD. While the former Commanding Officer represented to the Board that he did not recall participating in the matter while at the NYPD, the Board took the opportunity of the public letter to make clear that public servants have a *duty to conduct a reasonable inquiry* to determine whether they have ever personally and substantially participated in a particular matter on which they are considering working after leaving City service. With respect to the former Commanding Officer, that reasonable inquiry required that he ask the NYPD *and* the New York City Law Department Labor and Employment Division, which participated in the City's defense, whether he had participated in the lawsuit in any way.[26]

In 1998, the Board fined a former Resident Engineer of the New York City Department of Citywide Administrative Services $3,000 for consulting for pay for a private firm on the same City project on which he had worked personally and substantially as a City employee.[27] As a public servant, the Resident Engineer had been in charge of the project and approved contract changes, signed documents, and approved payment requests, change orders, and estimates involving the private firm for which he worked as a consultant after leaving City service. The Board reached a similar result in 2005 when it fined a former Agency Chief Contracting Officer for the New York City Human Resources Administration ("HRA") $3,000 for working on behalf of his new private employer on issues related to two contracts in each stage of whose award he had been involved while at HRA, as well as for calling a high-ranking HRA official within one year of leaving HRA to discuss one of these contracts.[28] The former public servant's involvement in those contracts while he was a City employee included signing documents related to the recommendation for the award of the contracts and signing of the contracts on behalf of HRA. In 2009 the Board fined a former Director of Environmental Review and Watershed Management at the New York City Department of Environmental Protection ("DEP") $2,000 for violating the "lifetime particular matter ban." The former Director admitted that, while a DEP employee, he was in charge of a DEP program into which a specific development was seeking admission and that he met with the development's representatives on multiple occasions to discuss the requirements for participation in the program. The former Director then left DEP and took a job in the private sector where he worked on part of the development's application for the same DEP program in which he had, as a DEP employee, participated personally and substantially through decision, approval, recommendation, and other similar activities.[29]

On the other hand, the Board, in Advisory Opinion Number 92-38, determined that a former public servant could work on a contract between her present employer, a private consulting firm, and a subsidiary of a state public authority, for a demand study for certain services required by persons with disabilities (the "State Study"). The Board reasoned that, although the former public servant, in her capacity as a City employee, had attended a preliminary meeting where the State Study was discussed, her involvement in the project had not been substantial. The Board determined that her participation in the State Study, and her receipt of compensation for work performed on the Study for the private consulting firm, would not violate Charter § 2604(d)(4).

Under certain circumstances the definition of "particular matter" requires further clarification. For example, in Advisory Opinion Number 95-23, the Board determined that with respect to bills before the State Legislature, the "particular matter" would be limited to a particular bill that was introduced, or re-introduced, during a particular legislative session. If the bill were introduced in a subsequent legislative session, with whatever amendments or modifications it might include, this new bill would be considered a different matter.

In Advisory Opinion Number 96-6, the Board determined that specifications drafted by a public servant and used by his former agency for purchasing vehicles did not constitute a particular matter on which the former public servant worked. Therefore, the public servant could

serve as a paid expert witness in cases in which he would be asked to testify about the specifications, subject to the other post-employment restrictions. The Board reasoned that, since the guidelines were general and were not drafted in connection with any specific party or parties, they were not a particular matter. The Board noted, however, if the former public servant had direct involvement with specific parties in such cases, while he was a public servant, he would not have been permitted to serve as a paid expert witness in cases involving those specific parties.

For some public servants, the definition of "particular matter" requires greater specificity than is found in Charter § 2601(17). For this reason, a special rule, Board Rules § 1-12, was devised to define "particular matter" as it applies to public servants involved in real estate tax assessment. Former public servants who, as public servants, were involved in certain activities relating to real estate tax assessments may not appear, whether paid or unpaid, before the City, or receive compensation for any services rendered, in relation to a proceeding involving a tax year or the immediately subsequent tax year for a given parcel of property with respect to which the public servant engaged in the activity. The Rule covers those former public servants who, as public servants, served on or were employed by the Tax Commission, the Department of Finance, the Comptroller's Office, or the Law Department. The activities that trigger the ban on appearing before the City or receiving compensation for services rendered are: (1) the hearing of an application for correction of assessment for taxation ("protest") from any real estate tax assessment; (2) the review of any proposal to settle or offer to reduce the assessment with respect to any such protest; or (3) participation personally and substantially in (i) the preparation or review of an appraisal, (ii) the review, analysis, or recommendation of a real estate tax assessment, or (iii) the conducting of a tax certiorari proceeding, which shall include but not be limited to its negotiation, settlement, trial, or review.

E. Ministerial Matters

While the Charter imposes certain limitations on post-employment activities, it makes clear that none of the provisions contained in Charter § 2604(d) "shall prohibit a former public servant from being associated with or having a position in a firm which appears before a city agency or from acting in a ministerial matter regarding business dealings with the city."[30] Accordingly, the Board ruled in Advisory Opinion Number 91-19 that a former City employee may make a Freedom of Information Law ("FOIL") request on behalf of a private entity to his former agency within a year after the termination of his City service, inasmuch as the request constitutes a ministerial matter. However, the former City employee must not bypass FOIL procedures at his former agency by going directly to the party having the records he seeks or otherwise request or receive treatment that is in any way different from anyone else who makes a FOIL request to the agency.

F. Working for a Firm that Does Business with the Former Public Servant's Former City Agency

It is important to note that nothing in the post-employment restrictions of Chapter 68 prohibits a former public servant from accepting a position (1) with a firm with which the former public servant had prior contact as a public servant; (2) with a firm that has business dealings with the former public servant's former City agency; or even (3) with a firm that is involved in a particular matter with which the former public servant was previously involved, provided that in all such instances the former public servant acts in accordance with the restrictions discussed in this chapter.

G. Government-to-Government Exception

The Charter expressly exempts negotiations for positions with other governmental agencies from the post-employment restrictions. Charter § 2604(d)(6) provides that the "prohibitions on negotiating for and having certain positions after leaving city service, shall not apply to positions with or representation on behalf of any local, state or federal agency."

In Advisory Opinion Number 99-3, the Board determined that the government-to-government exception applied to a public servant's communications with his former City agency in his role as a consultant to the State of New York during the first year after his departure from City service. The public servant wanted to resign from his agency to take a position with a private firm. As part of his duties at the firm, the public servant would manage a project on which the firm worked pursuant to a contract with a State agency and that would entail communication with his former City agency. The Board, relying on the "representation on behalf of any local, state or federal agency" language in Charter § 2604(d)(6), determined that the public servant would be acting as a consultant to and a representative of the State in his communications with his former City agency and thus those communications were not prohibited by Charter § 2604(d)(2).[31]

1. Hiring Former Agency Employees as Consultants

In certain situations, a City agency may contract with former employees to perform identified tasks. The Board, in Advisory Opinion Number 93-12, analyzed this type of situation under the provisions of Charter § 2604(d)(6) and permitted a City agency to contract, under certain circumstances, with former employees as consultants. Such a consulting arrangement allows the former employee to appear before his or her former City agency before the expiration of the one-year appearance ban and to work on particular matters. This consultancy would not violate the Charter, provided that the consulting relationship was not intended to circumvent other prohibitions contained in Chapter 68 and would not otherwise result in a conflict of interest under Chapter 68. The consulting arrangement must be for legitimate City reasons and may not be offered as a reward to a favored co-worker, to engage a former employee at a higher income

level, to avoid budget limitations, or to otherwise engage in an actual or potential conflict of interest. In the case before the Board in Opinion Number 93-12, the City agency could enter into a consulting contract with the former public servant within one year of his resignation because of his unique expertise on a critical issue facing City government and because there was no evidence that the consulting relationship was intended to circumvent the prohibitions contained in Chapter 68.

A former public servant, however, may not perform services for his or her former City agency pursuant to a contract between the former public servant's agency and his or her current private employer. Such services may be performed only pursuant to a personal contract between the former public servant and his or her former City agency. In Advisory Opinion Number 95-1, the Board refused to grant a waiver of the post-employment restrictions to a former public servant who sought permission to have his former agency retain his current employer, a private consulting firm. The head of the City agency wanted to obtain the former public servant's personal services because of his unique qualifications and because the agency was experiencing staffing problems, but the former public servant was now employed by the private firm. The Board, in denying the request for a waiver, reasoned that, if it granted the waiver, the private firm would benefit by obtaining a contract with the City because of the former public servant's experience and relationship with the City and the firm would have a competitive advantage over similarly situated companies only because it had retained the former public servant. The Board noted that the former public servant could contract directly with the agency in his personal capacity for his services.

2. Treating Quasi-Governmental Entities as Arms of Government

In certain situations, a public servant's prospective private employer may, for purposes of Chapter 68, be considered an arm of government. If the Board determines that the prospective employer is an arm of government, then, pursuant to Charter § 2604(d)(6), the public servant may appear before his or her former City agency before the expiration of the one-year appearance ban and work on particular matters. The Board has not adopted a blanket rule regarding its treatment of quasi-governmental entities as arms of government. Instead, it considers these entities on a case-by-case basis.

The Board has had several opportunities to determine whether a prospective employer was an arm of government. For example, in Advisory Opinion Number 94-7, the Board held that a local development corporation might in some circumstances be considered an arm of government for purposes of Chapter 68. To make this determination, the Board considered: (1) the manner in which the corporation was formed; (2) the degree to which the corporation is controlled by government officials or government agencies; and (3) the purpose of the corporation. Similar treatment is found in Advisory Opinion Number 93-13.

The Board applied these factors in concluding in Advisory Opinion Number 94-21 that a business improvement district ("BID") may, under certain circumstances, be considered an arm

of government under Charter § 2604(d)(6). The Board reached the same conclusion with respect to the Brooklyn Public Library in Advisory Opinion Number 97-1.

H. Waivers

A public servant or former public servant may hold or negotiate for a position otherwise prohibited by the post-employment restrictions where the holding of the position would not be in conflict with the purposes and interests of the City. However, to do so, the public servant must obtain written approval by the head of the agency or agencies involved, and the Board must determine that the position involves no conflict with the purposes and interests of the City. Under Charter § 2604(e), such findings shall be in writing and made public by the Board. However, the Board has consistently stated that such waivers will be granted sparingly and only when justified by compelling circumstances in a particular case. Thus, in Advisory Opinion Number 93-30, the Board denied a public servant's request for a waiver where he presented no compelling circumstances that would justify permitting him to appear before his former agency within one year of termination of his City service.

In determining whether to issue a waiver of the post-employment restrictions, the Board considers a number of factors, including, but not limited to: (1) the relationship of the City to the public servant's prospective employer; (2) the benefits to the City (as opposed to the public servant) if the waiver were to be granted; and (3) the likelihood of harm to other organizations or companies similar to, or in competition with, the public servant's prospective employer if the waiver were to be granted. In Advisory Opinion Number 94-15, the Board granted a former public servant's request for a waiver after reviewing these factors and determining that government decision-making would not be compromised by the waiver.

In addition to these factors, the Board considers the public servant's particular skills and qualifications that make him or her uniquely suited for the position with the prospective employer. For example, in Advisory Opinion Number 91-8, the Board granted a waiver of the one-year appearance ban in the case of a former public servant who was offered a position with a firm that had a contract to manage certain sites operated by his former agency, where the agency head represented to the Board that the availability of the former public servant's expertise as an employee of the firm would materially help the agency's efforts to meet certain court-imposed deadlines.

In Advisory Opinion Number 96-1, the Board granted a waiver of the one-year appearance ban and the lifetime bar to a former public servant who had accepted employment with the same municipal union for which he had worked full-time on release time with pay while in City service. The Board also determined that the "agency served" by the public servant for purposes of Chapter 68 was, in reality, the New York City Office of Labor Relations ("OLR"), not the agency from which he was on release time. Public servants on release time whose situations are similar to that of the former public servant in this case and who wish a waiver of

the post-employment restrictions must (1) apply to the Board for that waiver and (2) obtain the written approval of the head of OLR in support of the waiver request. The Board will consider such waiver requests on a case-by-case basis.

The Board has issued waivers of the one-year appearance ban to retired DOE employees to provide special education services as independent providers. Generally, such waivers are not issued unless there is a shortage of individuals qualified to provide the special education services.

In Advisory Opinion Number 2000-2, the Board recognized that City agencies increasingly have been developing partnerships with not-for-profit organizations that are performing services deemed to be in the City's interest, so that, in considering whether to waive the post-employment restrictions for a City employee going to work at such an organization, the Board will not require that its historic criteria for evaluating such requests all be satisfied. Rather, depending on the specific circumstances of a case, the Board may grant a waiver when one or more of these factors are particularly compelling.

In Advisory Opinion Number 2008-4, the Board reviewed its experience with applications for post-employment waivers in the wake of Opinion Number 2000-2 and noted that it had not treated all applications on behalf of City employees leaving City service to work for worthy not-for-profit organizations as falling within the more permissive "public-private partnership" standard of that Opinion. Instead, when an organization's relationship with the City would be more accurately described as that of a compensated provider of goods or services—that is, as a vendor—the application would be judged under the historic, more stringent "exigent circumstances" standard. The Board has denied waiver applications as failing to meet this historic standard when a primary argument made by the former public servant is that it would be extremely difficult to perform the duties of his or her new position without a waiver of the post-employment restrictions, a hardship that the Board has viewed as self-created and thus an unconvincing attempt to bootstrap oneself into a favorable outcome. On the other hand, when the prospective employer is a City-affiliated not-for-profit, or at least one that contributes private resources to the City in a joint venture with a City agency, the entity will be more likely deemed a "partner," and the application for a post-employment waiver will accordingly be evaluated under the less stringent standard of Opinion Number 2000-2.

In Advisory Opinion Number 2012-2, the Board noted that, in its experience, potential employers of departing City employees were more likely to be judged vendors to, rather than partners of, the City, so that the historic "exigent circumstances" test was the more likely test to be applied to applications for post-employment waivers. Furthermore, because under that standard waivers would be granted sparingly, the Board cautioned that departing public servants would be well advised to seek a waiver *before* leaving City service to accept a private sector job in which otherwise prohibited conduct is critical to the performance of the position's duties.

I. Confidential Information

Section 2604(d)(5) of the Charter prohibits a former public servant from using for private advantage or disclosing any confidential information gained from public service that is not otherwise made available to the public. However, to encourage former public servants to reveal malfeasance or waste in City government, the Charter does not "prohibit any public servant from disclosing any information concerning conduct which the public servant knows or reasonably believes to involve waste, inefficiency, corruption, criminal activity or conflict of interest."[32] The Board fined the former General Counsel to the New York City Taxi and Limousine Commission ("TLC") $2,000 for disclosing, after he left City service, confidential information he gained while at TLC. The former General Counsel admitted that, after he left City service, he prepared and executed an affidavit in which he revealed that he had expressed disagreement with and to TLC's First Deputy Commissioner concerning application of the rules regarding alternative fuel medallions that were bid on at a TLC auction, a disagreement that was not public at the time the affidavit was prepared.[33]

J. Agency Advice to Departing Employees

To ensure that public servants are aware of their obligations regarding post-employment activities, agencies should take certain steps with respect to their employees. First, prior to becoming a public servant, candidates for City employment should be advised of the post-employment restrictions. In fact, it may be appropriate to discuss this topic during the initial job interview. Second, agencies should periodically remind their employees of the post-employment restrictions, whether by posting the applicable Charter provisions on agency bulletin boards, by e-mail notifications, or by some other method. Third, the Board recommends that each departing employee's post-employment plans be reviewed by an agency attorney, or by someone in Human Resources who is versed in the conflicts of interest law, to ensure that the public servant is adhering to the post-employment prohibitions and to encourage the public servant to request an opinion from the Board if he or she has specific questions concerning the proposed job offer.

It is imperative for the public servant to raise post-employment issues with the Board before negotiating for or accepting a position with a prospective private employer so that the Board can properly evaluate the request and provide guidance in a timely manner. Supervisors in each agency should be advised that employees may request the reassignment of work to other staff so that the employees may submit a resume to, interview with, or otherwise solicit, negotiate for, or accept a position from a company with which they are involved in their City job.

Public servants have a duty to comply with the Charter's post-employment provisions and may be sanctioned for their failure to do so. Charter § 2606 provides that if the Board determines that a violation of the Charter has occurred, the Board, after consultation with the appropriate agency head, may impose fines of up to $25,000 per violation and may order payment to the City of any gain or benefit obtained by the violator as a result of his or her

violation. A violator of the conflicts of interest law may also be subject to criminal prosecution by a District Attorney's Office.

It might be useful for a public servant to consider the following questions when leaving City employment:

1. Have you reviewed the post-employment restrictions in Charter § 2604(d)?

2. Does your new employer conduct business with your City agency, appear before your City agency, or intend to conduct business with your City agency? If the answer to any of these questions is yes, are you aware that you are prohibited in your private sector job from appearing before your former agency for one year?

3. Does your new position involve working on any particular matter, involving the same party or parties, on which you worked personally and substantially as a public servant, either through decision, approval, recommendation, investigation, or other similar activities? If yes, are you aware that:

a. You are prohibited from appearing (with or without pay) before any City agency in relation to that particular matter; and

b. You are prohibited from receiving compensation (with or without an appearance before the City) for any services rendered in relation to that particular matter?

Careful consideration of these questions could help a soon-to-be-former public servant to determine whether he or she is in danger of violating the Charter's post-employment restrictions.

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[1] Charter § 2601(19).
[2] Volume II, REPORT OF THE NEW YORK CITY CHARTER REVISION COMMISSION, DECEMBER 1986 – NOVEMBER 1988, at 152-153.
[3] *COIB v. Matos*, COIB Case No. 1994-368 (1996).
[4] *COIB v. Mizrahi*, COIB Case No. 2005-236 (2008).
[5] *COIB v. Giwa*, COIB Case No. 2013-306 (2013).

[6] Charter § 2604(b)(2); Rules of the Conflicts of Interest Board ("Board Rules"), Vol. 12, Title 53, RULES OF THE CITY OF NEW YORK §§ 1-13(a) and (b). *See also* Charter § 2604(b)(3).
[7] *COIB v. Maracic*, COIB Case No. 2006-756 (2008).
[8] *COIB v. Hagler,* COIB Case No. 2013-866 (Order Dec. 2, 2015), *adopting* OATH Index. No. 581/15 (June 17, 2015).
[9] *COIB v. Romeo*, COIB Case No. 2012-808 (2013).
[10] Charter § 2601(4).
[11] *COIB v. Reid*, COIB Case No. 2008-547 (2010).
[12] *COIB v. Wood*, COIB Case No. 2014-495 (2015).
[13] *COIB v. Pawar*, COIB Case No. 2011-765 (2012).
[14] Charter § 2601(15).
[15] *COIB v. Sirefman*, COIB Case No. 2008-847 (2009).
[16] *COIB v. McHugh*, COIB Case No. 2004-712 (2007).
[17] *COIB v. 5 Former DOE Employees*, COIB Case Nos. 2001-566 through 2001-566d (2008).
[18] *COIB v. Piscitelli*, COIB Case No. 2007-745 (2009).
[19] *COIB v. Syed*, COIB Case No. 2015-740 (2016).
[20] Charter § 2601(3).
[21] Board Rules § 1-07.
[22] Advisory Opinion Number 93-11 at 5.
[23] *COIB v. Compton*, COIB Case No. 2013-380 (2013).
[24] Charter § 2604(d)(4).
[25] Volume II, REPORT OF THE NEW YORK CITY CHARTER REVISION COMMISSION, DECEMBER 1986 – NOVEMBER 1988, at 183.
[26] *COIB v. McCabe*, COIB Case No. 2008-129 (2010).
[27] *COIB v. Fodera*, COIB Case No. 1996-404 (1998).
[28] *COIB v. Bonamarte*, COIB Case No. 2002-782 (2005).
[29] *COIB v. Benson*, COIB Case No. 2007-297 (2009).
[30] Charter § 2604(d)(7).
[31] The Board drew a distinction between this case and Advisory Opinion Numbers 93-12 and 95-1, discussed in Section G of this chapter. In those opinions, the Board permitted former public servants to consult for their former agencies personally, but not through their private employers. The Board declined to read the "personal contracting" requirement into the "representation" language found in Charter § 2604(d)(6).
[32] Charter § 2604(d)(5).
[33] *COIB v. Mazer*, COIB Case No. 2005-467 (2007).

ANNUAL DISCLOSURE LAW

by

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A. Introduction

Since 1975 the City has required, currently in section 12-110 of the Administrative Code,[1] that certain of its public servants file reports of their financial assets, liabilities and outside activities as well as those of their immediate families. Section 12-110, as well as Chapter 68 of the City Charter, empowers the Board to administer and enforce the annual disclosure law,[2] the constitutionality of which has been upheld by the federal court.[3]

B. Purpose

The purpose of the annual disclosure law is to provide accountability by public servants and to help ensure that no prohibited conflicts exist between the public servant's official duties and private interests. Thus, the annual disclosure law encourages open and honest government and promotes public confidence in public servants. Specifically, annual disclosure reports reveal potential conflicts of interest before they arise. The reports focus the attention of the filer, the media, and the public on the conflicts of interest law and on potential violations of that law and provide a means by which to ensure that the filer recuses himself or herself when a conflict of interest actually arises.

C. Who Must File an Annual Disclosure Report

The annual disclosure law applies to all agencies of the City, including, agencies such as the Health and Hospitals Corporation, the New York City Housing Authority, Public Administrators, New York City Industrial Development Agency, offices of the District Attorneys and Special Narcotics Prosecutor, and the Department of Education.[4] Generally, high-level officials and certain other employees at a significant risk for conflicts of interest must file annual disclosure reports pursuant to section 12-110(b). These officials and employees include:

1. Elected City officials and candidates for elective City office (Mayor, Comptroller, Public Advocate, Borough Presidents, District Attorneys, and Council Members);[5]

2. Agency Heads, Deputy Agency Heads, and Assistant Agency Heads;[6]

3. Members of City policymaking boards and commissions, both compensated and uncompensated;[7]

4. City employees who hold a policymaking position;[8]

5. City employees who are paid in accordance with the Mayor's Management Pay Plan at level M4 or higher;[9]

6. Employees of the City Council, the Mayor's Office, District Attorneys' offices, and Special Narcotics Prosecutor's Office, or of any agency that does not use M-Level Mayor's Management Pay Plan indicators, whose responsibilities involve the independent exercise of managerial or policymaking functions;[10] and

7. City employees who during the preceding calendar year negotiated, authorized, or approved contracts, leases, franchises, revocable consents, concessions, or applications for zoning changes, variances, or special permits (the Board refers to such filers as "contract filers").[11]

Section 12-110 also requires filing by "local political party officials" (essentially defined as county leaders receiving annual compensation and/or reimbursement of $30,000 or more).[12]

A City employee is deemed to hold a "policymaking position" for purposes of the annual disclosure law if the employee is charged with substantial policy discretion within the Board's definition of that term for purposes of the City Charter provisions restricting such public servants from holding certain political party offices and engaging in certain political fundraising.[13] The Board has also promulgated a rule defining those employees who are deemed to have duties that involve the negotiation, authorization, or approval of contracts, leases, and so forth, that is, who are "contract filers."[14]

In addition, by amendment to New York State law, tax assessors are required to file annual disclosure reports with the Board, even if they do not fall into any other filing category.[15] Also by amendment to New York State law, members (both compensated and uncompensated), officers, and employees of the New York City Housing Development Corporation must file annual disclosure reports with the Board.[16] The City's annual disclosure law requires all persons to file with the Board who are mandated to do so by state law.[17] New York State law, specifically the Public Authorities Accountability Act ("PAAA"), requires filing by board members, officers, and employees of local public authorities, such as City-affiliated not-for-profit corporations, industrial development agencies, and public benefit corporations.[18] A 2012 amendment to section 12-110 permits the filing of a shorter report by PAAA filers.[19]

D. <u>Department of Investigation Filers</u>

Mayoral Executive Order 91 of 1986 ("EO91") requires additional disclosure by approximately half of the public servants who file with the Board. These reports are filed with the City's Department of Investigation, and since 2007, they are accessed by filers through the COIB electronic filing application. COIB does not have access to view a filer's EO91 report.

E. Procedures for Filing Annual Disclosure Reports

1. Where the Reports are Filed and How Long They are Kept

By law, annual disclosure reports are filed with the Conflicts of Interest Board.[20] The Annual Disclosure Unit of the Conflicts of Interest Board interprets, administers, and enforces the annual disclosure law. Specifically, the Unit is responsible for collecting and maintaining the annual disclosure reports, reviewing them for completeness and compliance, notifying non-filers and late filers of their non-compliance, and initiating enforcement actions if a required filer fails to file or fails to pay a late filing fine. (*See* Section I below.) The Annual Disclosure Unit is also charged with reviewing annual disclosure reports for possible conflicts of interest.[21]

Annual disclosure reports are maintained on file by the Board for a period of six years from December 31 of the calendar year to which the report relates. If, however, a report is filed late, it is maintained on file for at least one year after filing. The reports are then destroyed, unless an investigation of the filer or a request for public inspection of the report is pending.[22]

2. When the Reports are Filed

Each City agency annually submits to the Annual Disclosure Unit a final list of the agency's required filers. Before submitting that list, the head of the agency must determine, subject to Board review, which agency employees hold a policymaking position or are "contract filers." The District Attorneys, Special Narcotics Prosecutor, Mayor's Office, and Council Speaker similarly must determine, subject to Board review, which employees in their agencies have responsibilities involving the independent exercise of managerial or policymaking functions, as well as those agencies' "contract filers." Except in the case of "contract filers" and policymakers, an employee must file an annual disclosure report if he or she fell within any of the categories for filing from January 1 of the preceding calendar year up until the date of filing.[23] An employee must file as a "contract filer" if the employee had any such responsibilities at any time during the preceding calendar year.[24] Thus, for example, an employee who was an Agency Chief Contracting Officer from January 1 to September 15 of the preceding calendar year must file an annual disclosure report as a "contract filer," even though at the time of filing he or she has no contracting responsibilities. An employee who is promoted to a position where he or she is a policymaker or is paid in accordance with the Mayor's Management Pay Plan at level M4 or higher on the date designated for filing must file a report, even if he or she did not fall into any the filing categories during the preceding calendar year.

Except in the case of candidates for elective City office, local political party officials, and tax assessors, annual disclosure reports are due during the annual filing period (with a seven-day grace period after the filing deadline). Pursuant to section 12-110(b)(2), candidates for elective City office must file their annual disclosure reports on or before the last date for filing designating petitions pursuant to the Election Law. Local political party officials required to file an annual disclosure report with the Board must do so by May 15th.[25] Tax assessors are also required to file by May 15th.[26]

If a person who is required to file an annual disclosure report leaves City service, he or she must also file a report for the portion of the last year in which he or she was a public servant. This report is due within 60 days after the employee or official leaves City service or by the date designated for filing, whichever comes first.[27] If the filer leaves City service before the date designated for filing, then he or she files a single report covering the period from January 1 of the preceding calendar year to the last day of his or her City service. For example, an employee who leaves City service on March 15, 2017, would be required to file, by the date designated for filing in 2017, a single report covering the period from January 1, 2016, to March 15, 2017. A City employee who leaves City service on November 29, 2017, will be required to file an annual disclosure report covering the period from January 1, 2017, to November 29, 2017, within 60 days after the last day the employee worked, that is, by January 28, 2018.

Filing an annual disclosure report more than one week after the due date subjects the late filer to a late fine ranging from a minimum of $250 to a maximum of $10,000. Factors to be considered by the Board in determining the amount of the late fine include, but are not limited to, the person's failure in prior years to file a report in a timely manner and the length of the delay in filing.[28] In addition, within two months after the filing due date, the Board must inform the filer's agency and the Commissioner of Investigation of the failure to file.[29] A public servant required to file an annual disclosure report who leaves City service may not receive his or her final paycheck and/or any lump sum payments until he or she has filed all required annual disclosure reports – including any past due reports – and paid any required annual disclosure fines.[30] Similarly, a candidate for elective City office may not receive his or her matching funds from the Campaign Finance Board until the candidate has complied with the annual disclosure law by filing all required annual disclosure reports with the Board, including any past due reports, and paying any required annual disclosure fines.[31]

3. Extensions

Pursuant to section 12-110(c)(4), an extension of time to file an annual disclosure report may be obtained if the filer can show justifiable cause or undue hardship. Justifiable cause would include serious illness of the public servant, death of a close family member, absence from the office because of military service, or an extension that has been granted to the individual for

filing his or her personal income tax return. Vacations, attendance at conferences or meetings, and scheduled or voluntary absences from work are not grounds for an extension.[32]

Pursuant to Board Rules § 1-08, a request for an extension of time within which to file an annual disclosure report must be submitted in writing to the Board no later than 15 days before the filing due date.[33] The Board will not grant an extension of time to file an annual disclosure report due to justifiable cause or undue hardship for a period greater than four months from the original date the report was due.[34]

4. Appeals

Employees may file an appeal contesting their agency head's determination that they must file an annual disclosure report.[35] Pursuant to an agreement among the City, the Board, and DC 37,[36] an employee whom an agency has designated as a required filer of an annual disclosure report may contest that designation by appealing first to the agency and, if that appeal results in an unfavorable decision, then to the Board. If granted on default for the agency's failure to abide by the required procedures, the employee does not file for that calendar year and the agency may place the employee on the list of required filers for the following calendar year. If the appeal is granted on the merits, the employee is excused from the filing requirements "until or unless the employee's title, position duties, or responsibilities change such that he or she should be a required filer."[37] If the Board denies the appeal, the employee is required to file an annual disclosure report.[38] An employee's failure to abide by the required procedures waives the right to appeal absent a showing of good cause for the failure.[39]

5. Amendments

A filer may electronically amend his or her annual disclosure report at any time. Only the person filing the report may amend it.[40]

6. Electronic Filing of Annual Disclosure Reports

Section 12-110(b) of the New York City Administrative Code mandates that annual disclosure reports be filed electronically,[41] which nearly all required filers do.[42] The filers can choose to access the program from any computer with internet access and can complete the filing at a place and time of their choosing. The process has been streamlined so that filers only have to answer questions that pertain to them, merely update information from the previous year's report, and electronically submit the reports directly to the Board.

F. What Information is Requested

Annual disclosure reports generally include financial information from the *previous* calendar year (*e.g.*, a report filed in 2017 covers information from calendar year 2016; reports

filed in 2016 cover information from calendar year 2015). Filers are required to list certain basic information about their assets and liabilities so that the public and the Board may determine where the filer's potential conflicts of interest lie. For example, if an official's husband is a builder, that information must be disclosed on the official's annual disclosure report because the official may have a conflict of interest if the City deals with the husband's firm.

Specifically, filers must disclose: City and non-City income; City and non-City employment and businesses; regulated professions; positions held; deferred income; payments of expenses; gifts received (both gifts between $50 and $1,000 from donors with business dealings with the City and gifts of $1,000 or more regardless whether the donor had City business dealings); assignments of income and transfers of interests; agreements with former and future employers; interests in government contracts; interests in trusts and estates and other beneficial interests; investments in businesses; interests in securities and real estate; and money owed by and to the public servant. Some of the requested information applies to the public servant's spouse, or domestic partner, and unemancipated children.

For these filers, whenever a question requires a value or amount to be reported, the filer lists only a category of value or amount (e.g., ranging from $1,000 to under $5,000), not the actual value or amount.[43]

PAAA filers and uncompensated members of City policymaking boards and commissions[44] file a shorter paper form consisting of only five questions requiring the following information:

(1) Any paid or unpaid positions with any City agency;

(2) Outside employers and businesses, *but only if* the employer or business does business with the filer's entity or City agency, if any;

(3) Investments of 5% or $10,000, *but only if* the company does business with the filer's entity or City agency, if any;

(4) Gifts, *but only if* the donor does business with the filer's entity or City agency, if any; and

(5) Real property the filer owns or rents in the City, *excluding* property where the filer or a relative lives.[45]

G. Public Access to Annual Disclosure Reports

The Board is required, pursuant to section 12-110(e), to make certain portions of annual disclosure reports available for public inspection. Inspection is free, while a copy of the public

portions of the report may be obtained for a minimal fee. Requests to inspect reports must be made in writing and must include the filer's name, the filing years, and the name and address of the requester; procedures for requesting reports and the request form are posted on the Annual Disclosure page of the Board's website at http://on.nyc.gov/1jKsuba and at http://on.nyc.gov/1mIJYoi. The requester must pick up the report at the Board's offices after completing the request form and presenting photo identification. Lists of the public questions on an annual disclosure report are posted on the Board's website at: http://on.nyc.gov/1shkTVC (reports filed before 2014) and http://on.nyc.gov/1lFRZgi (reports filed in or after 2014).

The Board is required to notify the filer of the name of the requester each time his or her report is viewed. In early 2016, the City Council enacted legislation that eliminated this notice requirement for elected officials by requiring the Board, starting in 2017, to post the 2016 annual disclosure reports of elected officials on its website[46]

However, notification of the identity of the requester of an annual disclosure report is not required if the request to examine the report is made by a law enforcement agency.[47] The Board will produce a full copy of a report (including the confidential portions) to a criminal law enforcement agency for use in connection with a law enforcement function upon receipt of a court-ordered subpoena.[48] The Board does not produce the confidential portions of reports for use in civil proceedings but instead moves (thus far always successfully) to quash any subpoena seeking those portions of an annual disclosure report for such purposes. The intentional and willful unlawful disclosure of confidential information contained in an annual disclosure report is a misdemeanor.[49]

H. Confidentiality

1. What Information is Deemed Confidential

The filer's home address is always withheld from public inspection. The filer's home telephone number, marital status, and the names of the filer's spouse, or domestic partner, and children are also withheld from public inspection.[50] However, responses to the question concerning relatives in City service will be public. Financial information pertaining solely to the filer's spouse or domestic partner or unemancipated children is also withheld, except information about assets that are jointly held with the filer or unless the Board determines that the information involves an actual or potential conflict of interest on the part of the person filing.[51] As discussed above, law enforcement agencies, such as a police department or a district attorney's office, are given access to the entire report upon presentation of a court-ordered subpoena.

2. Requests for Privacy

Pursuant to section 12-110(e), at the time the report is filed or at any time thereafter, except when a request to inspect the report is pending, a filer may request, in writing, that the Board withhold certain items in the report from public inspection.[52] The request for privacy must show that public inspection of the item would result in an unwarranted invasion of the filer's privacy or a risk to a person's safety or security.[53] The Board will then review the request, in view of the factors set forth in the law. It should be noted, however, that the Board rarely grants privacy requests.[54] Also, the Board does not rule on a privacy request until a request to inspect the filer's report is made. A filer may seek judicial review of the denial or partial denial of any privacy request pursuant to Article 78 of the New York State Civil Practice Law and Rules. The Board may also, *sua sponte*, redact information in any requested report where public inspection of the item would be an unwarranted invasion of personal privacy or a risk to the safety or security of any person, such as a filer's inadvertent reporting of a home address in response to a question contained in the public portion of the report.[55]

I. Penalties for Failure to File, for Failure to Pay a Late Fine, or for Filing a Report Containing False Statements

Pursuant to section 12-110(g)(2), any intentional violation of the annual disclosure law, including a failure to file, a failure to include assets or liabilities, or a misstatement of assets or liabilities, is a misdemeanor punishable by imprisonment for not more than one year or by a fine of up to $1,000, or both. The intentional and willful unlawful disclosure of confidential information contained in an annual disclosure report is also a misdemeanor.[56] An intentional violation is also grounds for disciplinary penalties, including removal from office. In addition, any intentional violation of the annual disclosure law, including a failure to pay a late fine, can subject the person required to file the report to assessment by the Conflicts of Interest Board of a civil penalty of up to $10,000.[57]

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[1] The text of the City's Annual Disclosure Law, contained in section 12-110 of the City's Administrative Code, appears on the Board's website at: http://www.nyc.gov/html/conflicts/downloads/pdf2/books/grn_bk.pdf. The legislative history of Ad. Code § 12-110 appears on the Board's website at: http://on.nyc.gov/1dYcd2h.

[2] Ad. Code §§ 12-110(a)(5), (b)-(g); NYC Charter § 2603(d).

[3] *See Barry v. City of New York*, 712 F.2d 1554 (2d Cir. 1983) (upholding the constitutionality of Local Law 48 of 1979, the predecessor to Ad. Code § 12-110).

[4] Ad. Code § 12-110(a)(2).

[5] Ad. Code §§ 12-110(b)(1)(a), (b)(2).

[6] Ad. Code § 12-110(b)(3)(a)(1).

[7] Ad. Code § 12-110(b)(3)(a)(1), as amended by Local Law 58 of 2012 to include uncompensated members of City policymaking boards and commissions to comply with state law mandates.

[8] Ad. Code § 12-110(b)(3)(a)(3).

[9] Ad. Code § 12-110(b)(3)(a)(3).
[10] Ad. Code § 12-110(b)(3)(a)(2).
[11] Ad. Code § 12-110 (b)(3)(a)(4).
[12] Ad. Code §§ 12-110(a)(11), (b)(1)(b).
[13] *See* Rules of the Conflicts of Interest Board ("Board Rules"), Vol. 12, Title 53, RULES OF THE CITY OF NEW YORK §§ 1-02 and 1-14; Charter §§ 2604(b)(12) and (b)(15).
[14] Board Rules § 1-15.
[15] NYS Real Prop. Tax Law §§ 334(3), 336, as added by 2003 N.Y. Laws ch. 548
[16] NYS Priv. Hous. Fin. Law § 653(2)(b), as amended by 2003 N.Y. Laws ch. 494.
[17] Ad. Code § 12-110(b)(3)(a)(7), as added by Local Law 14 of 2006 and amended by Local Law 58 of 2012.
[18] Public Authorities Law § 2825(3), as amended by the Public Authorities Accountability Act of 2005, 2005 N.Y. Laws ch. 766, § 19. *See also* Ad. Code § 12-110(b)(3)(a)(6).
[19] Ad. Code § 12-110(d)(3). This is the same form uncompensated members of City policymaking boards and commissions now file.
[20] Charter § 2603(d)(1); Ad. Code § 12-110(b).
[21] Charter § 2603(d)(2).
[22] Ad. Code § 12-110(f); Board Rules § 1-10(b).
[23] Ad. Code § 12-110(b)(3)(a). Public servants who are policymakers "on the date designated by the board for filing" are required to file an annual disclosure report. Ad. Code § 12-110(b)(3)(a)(1). Public servants who had contracting duties "at any time during the preceding calendar year" must also file. Ad. Code § 12-110(b)(3)(a)(1).
[24] Ad. Code §§ 12-110(b)(3)(a), (c)(1)-(c)(3).
[25] Ad. Code § 12-110(b)(1)(b). *See also* NYS Pub. Off. Law §§ 73(1)(k), 73-a(2)(a).
[26] Real Prop. Tax Law §§ 336(3), as added by 2003 N.Y. Laws ch. 548.
[27] Ad. Code §§ 12-110(b)(3)(b)(1), (b)(3)(b)(3).
[28] Ad. Code § 12-110(g)(1).
[29] Ad. Code § 12-110(g)(1).
[30] Ad. Code § 12-110(b)(3)(b)(2).
[31] Ad. Code § 3-703(1)(m), as added by Local Law 43 of 2003.
[32] Board Rules § 1-08(a)(2).
[33] Board Rules § 1-08(b)(1).
[34] Board Rules § 1-08(c)(1).
[35] Ad. Code § 12-110(c)(2).
[36] *See* Financial Disclosure Appeals Process.
[37] Id. at §§ D14; 8A. *See also* Id. at § E4.
[38] Id. at § D15.
[39] Id. at §§ B4, B6.
[40] Ad. Code § 12-110(c)(5).
[41] Ad. Code § 12-110(b).
[42] Tax assessors and candidates for public office file paper reports.

[43] Ad. Code § 12-110(d). To enable the Board to determine whether a filer's ownership interest violates the Charter, the 2003 amendments to section 12-110 tied the current categories of $5,000 to under $40,000 and $40,000 to under $60,000 to the definition of "ownership interest" in Chapter 68; those categories are thus automatically changed to reflect changes in that definition. Ad. Code § 12-110(d)(16). *See also* Charter § 2601(16), as amended by Board Rules § 1-11; Charter § 2604(a)(1).

[44] Members of City policymaking boards and commissions who are entitled to compensation but refuse it are still required to file the longer electronic annual disclosure report.

[45] Ad. Code §§ 12-110(d)(2), (3).

[46] Local Law 21 of 2016.

[47] Ad. Code § 12-110(e)(2). *See also* Report of the Committee on Standards and Ethics on Intro. No. 711-A of 1979, Minutes, at 1870, 1871 (stating that the filer must be provided with the identity of the requester).

[48] As the Board's statutory investigator, the Department of Investigation is provided with the full confidential report without a subpoena. *See* Charter §2603(f).

[49] Ad. Code § 12-110(g)(3).

[50] Social security numbers have now been replaced, on both electronic and paper forms, with the filer's employee identification number ("EIN") or other similar identifier.

[51] Ad. Code § 12-110(e)(1)(d).

[52] The request must be in writing and set forth the reasons why the information should not be disclosed. Ad. Code § 12-110(e)(1)(a).

[53] Ad. Code § 12-110(e)(1)(a).

[54] Ad. Code § 12-110(e)(1)(b).

[55] Ad. Code § 12-110(e)(1)(e).

[56] Ad. Code § 12-110(g)(3).

[57] *See* Ad. Code § 12-110(g)(2); *COIB v. Sixty-Two City Employees*, OATH Index Nos. 593/94, et al. (April 8, 1994).

ENFORCEMENT

by
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A. Introduction

Conflicts of interest between New York City employees' private interests and public duties, allowed to go unchecked, can impose significant costs on the City. Conflicts of interest can deprive the City of its resources, as office supplies, money, or staff time are diverted from their intended purposes to the personal benefit of a particular public servant. In an era of tight budgets, even the smallest loss of resources can result in a reduction in services provided to the citizens of the City. Nepotism in hiring, promotion, and retention in City agencies can prevent the most talented individuals from working and advancing in City service. Public servants who take second jobs with private companies doing business with the City can have their objectivity and loyalty challenged and may appear to favor—or even actually favor—their private employer over the City.

Most significantly, unchecked conflicts of interest in New York City government can erode the confidence of the citizens of the City of New York in their government and its elected officials and employees. They can erode a citizen's belief that his or her hard-earned tax dollars are being used for the City services and programs for which they were designated.

While there are certain breaches of the public trust that are appropriately handled criminally—such as the acceptance of bribes by high-level public officials—most breaches are better addressed by local government ethics agencies equipped to enforce civil penalties. A good local government ethics enforcement program has the following features: (1) fairness; (2) effective penalties; (3) a degree of confidentiality prior to final decision; (4) a means of making final findings of conflicts of interest public so that the particular cases can be used for educational purposes; and (5) appellate review.

This chapter reviews the ethics enforcement program of the City of New York's Conflicts of Interest Board, which is committed to combating the conflicts of interest prohibited by the City's conflicts of interest law.

B. The New York City Enforcement Program

The Conflicts of Interest Board is the body charged with enforcing the ethics laws in New York City, which laws are contained in Chapter 68 of the New York City Charter ("Chapter 68") and the Rules of the Conflicts of Interest Board (the "Board Rules"), the City's annual

disclosure law, set forth in Section 12-110 of the New York City Administrative Code, and the lobbyist gift law, found in Sections 3-224 through 3-228 of the Administrative Code and Section 1-16 of the Board Rules. The Board's enforcement function must be distinguished from its *advisory* function. The Board's advisory function pertains only to *prospective* conduct. In this counseling role, the Board dispenses advice to City officials who want to comply with the law and seek approval for proposed future conduct. By contrast, the Board's enforcement function applies to *past* conduct.

The New York City ethics enforcement model ensures certain fundamental indicia of fairness in the legal process: due process of law—including a full and fair opportunity to be heard in an administrative tribunal—and confidentiality of the proceedings until the Board makes a final finding of a conflict of interest. The City's enforcement program also allows for effective monetary and other penalties that serve to deter misconduct in the future, both for the specific respondent and for all other public servants.

Examples of Chapter 68 Violations

The following are some examples of violations of New York City's conflicts of interest law (each of which is discussed in more detail in its respective chapter):

- Holding a prohibited interest or position in a firm that does business with the City.
- Taking an official action to benefit oneself or a person with whom, or a firm with which, one is associated.
- Engaging in conduct that conflicts with one's official duties, such as using City resources for private purposes.
- Taking a gift worth $50 or more from an individual or firm doing business or seeking to do business with the City.
- Using confidential City information to benefit oneself or an associated person or firm or revealing such information for any or no reason.
- Coercing other City employees to work on or contribute to a political campaign.
- Negotiating with City contractors for private jobs when working with those contractors on City matters.
- Entering into a business or financial relationship with a superior or subordinate (*e.g.*, asking one's subordinate for a $1,000 loan or hiring a subordinate to do work on one's home).
- For former public servants, appearing before one's former City agency for pay on a non-ministerial matter within a year of termination of service or working on the same particular matter in the private sector on which one previously worked personally and substantially for the City, or using or revealing confidential City information.

C. Enforcement Procedures

1. Confidentiality

All Board enforcement proceedings and records are confidential, except for the final Board order finding a violation, and then only the Board's findings, conclusions and orders are made public.[1] Confidentiality provisions in enforcement proceedings recognize the tension between, on the one hand, the interest of the party charged with, but not yet convicted of, unethical conduct in preserving his or her reputation and, on the other hand, the right of the public to know when government officials act improperly and that the ethics rules are in fact being enforced. Particular cases can be used for educational purposes as well. For these reasons, in negotiated settlements, the Board requires the violator waive confidentiality so that it is clear that he or she understands that the disposition will be made public.

Chapter 68 makes other limited exceptions to the confidentiality provisions, such as when the Board refers complaints to the New York City Department of Investigation ("DOI") for investigation—although Chapter 68 mandates that referral be confidential between DOI and the Board—or when an alleged violator is subject to related disciplinary proceedings at his or her City agency.

2. Complaints

The Board accepts complaints of conflicts of interest law violations. Complaints do not have to be verified and, in fact, can be made anonymously. Pursuant to Charter § 2607, complaints of violations of the City's lobbyist gift law, found in Sections 3-224 through 3-228 of the Administrative Code, "shall be made, received, investigated and adjudicated in a matter consistent with the investigation and adjudication" of violations of the City's conflicts of interest law. *See* Section C.

The news media also provides an important source of complaints. An article in the newspaper alleging instances of conflicted conduct can trigger an investigation that will determine whether the facts and evidence support the public account. For example, *The New York Times* published an article on April 26, 1993, reporting that the City's former Comptroller had recommended Fleet Securities as a co-manager on a bond issue seven months after the Comptroller's United States Senate campaign had obtained a $450,000 loan from Fleet's affiliate, Fleet Bank. An investigation and eventual Board fine followed.

When the Board receives a complaint, it has five choices as to how to treat that complaint:[2]

(1) Dismiss the complaint if it requires no Board enforcement action;

(2) Refer the complaint to the New York City Department of Investigation for investigation;

(3) Commence an enforcement action against the alleged violator if the complaint provides sufficient facts to support an initial determination that there is probable cause to believe that the public servant violated the City's conflicts of interest law and;

(4) Refer the complaint to the head of the City agency employing the public servant if the violation is minor or if related disciplinary charges are pending at the agency;[3] or

(5) Issue a private warning letter to the public servant. In cases of minor Chapter 68 violations, a private (*i.e.*, non-public and confidential) warning letter may be the best disposition of the case. The letter informs the alleged violator that the reported conduct violated the conflicts of interest law. These letters sometimes prove useful in the enforcement process if a public servant who has been so warned commits another offense.

3. Investigations and Referrals to the Department of Investigation

The Board has no independent investigative authority and must rely on the New York City Department of Investigation ("DOI") to confidentially investigate matters on the Board's behalf.[4] In addition, DOI must report to the Board confidentially on any investigation that involves or may involve violations of the conflicts of interest law, whether the Board referred the matter to DOI or DOI initiated the investigation.[5] Once DOI makes a *confidential* report to the Board,[6] the Board may have additional questions and ask DOI to continue or expand its investigation.

4. Referring Matters to Agencies

Chapter 68 requires the Board to refer an alleged violation of the conflicts of interest law to the head of the City agency employing the alleged violator if related disciplinary charges are pending against the public servant.[7] When the Board refers a matter to an agency, it retains the authority, under City Charter § 2603(h)(6), to pursue a separate enforcement action at the conclusion of the agency disciplinary proceedings, regardless of the outcome of those proceedings. In the interest of conserving resources, saving time, and achieving an equitable result for all parties involved, when the Board makes such referrals, it seeks to resolve the Chapter 68 violations together with the agency disciplinary charges.

If the Board makes a referral to another City agency because related disciplinary charges have been or will be filed against the public servant, the agency head is required to consult with the Board prior to final disposition of the conflicts of interest law violations.[8] This consultation allows the Board to provide guidance on the interpretation of Chapter 68 and fosters consistency and fairness Citywide in the administration of the conflicts of interest law.[9] City agencies also have an obligation to refer complaints of Chapter 68 violations to the Board.[10] The Board, however, retains ultimate jurisdiction to enforce the City's conflicts of interest law, whether the agency elects to take action against its employee or declines to do so.[11] The Board encourages, when appropriate, "three-way" settlements in cases where a City employee, the employee's agency, and the Board can reach a public resolution of the conflicts of interest law charges.[12]

In 2011, the New York State Supreme Court, Appellate Division, First Department, handed down an important decision affirming the ability of agencies to bring disciplinary cases based on Chapter 68 violations beyond the eighteen-month statute of limitations contained in New York Civil Service Law § 75.[13] In *James v. Doherty*, the First Department held that agency disciplinary charges alleging that three Sanitation Workers had used Sanitation trucks to collect commercial garbage—*i.e.*, a non-City purpose in violation of Charter § 2604(b)(2), pursuant to Board Rules § 1-13(b)—satisfied the "crime" exception to the statute of limitations in the Civil Service Law since violations of § 2604 constitute a misdemeanor pursuant to Charter § 2606(c).[14] As a result of this decision, the three Sanitation workers were forced to address the disciplinary charges they had been fighting for nearly seven years and settle their matters with the New York City Department of Sanitation and the Board, resulting in suspensions of sixty or ninety days, valued between $16,697 and $25,046.[15]

In *Rosenblum v. New York City Conflicts of Interest Board*, the New York Court of Appeals held on February 9, 2012, after four years of litigation, that the Board has the authority to independently prosecute a violation of the City's conflicts of interest law.[16] The Court also ruled that the Board can pursue its own enforcement action regardless of any disciplinary action taken or not taken by an employee's agency.[17] In *Rosenblum*, the principals' union brought an Article 78 proceeding, arguing that the New York State Education Law permitted only the New York City Department of Education ("DOE") to impose fines on tenured DOE staff for a violation of the conflicts of interest law. A decision against the Board had the potential to insulate all unionized City workers—roughly 90% of the City workforce—from ethics enforcement, except for discipline by their agencies. Reversing two lower court decisions, the Court of Appeals, made clear that the Board is "an independent enforcement agency" and not an "advisory arm of other City agencies."[18]

D. A Full and Fair Opportunity to Be Heard

1. Notice of Initial Determination of Probable Cause & Response

If the Board finds that there is probable cause to believe that a current or former City employee has violated the conflicts of interest law, the Board will serve the alleged violator with written charges—a "Notice of Initial Determination of Probable Cause."[19] Since the Board has jurisdiction over former public servants,[20] public servants cannot insulate themselves from enforcement action simply by resigning from City service. When warranted, the Board will prosecute a Chapter 68 violation committed by a public servant while in City service even after that public servant has left City service.

The Notice will contain a statement of the facts on which the Board relied in reaching its probable cause finding and a statement of the sections of the Charter the Board believes the current or former City employee has violated.[21] The individual charged with conflicts of interest law violations—the "respondent"—then has fifteen days (twenty days if service of the Notice was by mail) to answer the Notice—the "Response."[22] Respondents have the right to be

represented by counsel or any other person in the Board's enforcement proceedings; the representative is required to submit a written Notice of Appearance to serve in that role.[23]

The purpose of the Response is to provide those charged with violating the law an opportunity to explain, rebut, or provide information concerning the allegations against them.[24] The Board reviews each Response and will either dismiss the case or sustain its initial finding of probable cause.[25] The Board seriously considers the defenses offered by respondents and has dismissed cases at this stage. This means that the process is not *pro forma*, and respondents have a real opportunity to obtain dismissal of a case that should not go forward for reasons—either factual or legal—that might not have been previously considered by the Board. If the Board decides to dismiss a case, the respondent receives a confidential written notice of dismissal.[26]

At any time after the service of a Notice of Probable Cause, the respondent and the Board may agree to dispose of the case by agreement.[27] Most respondents elect to negotiate a settlement instead of going to trial. The Board Rules require all settlements be reduced to writing and signed by the public servant or his or her representative and the Board. The Board also requires that all dispositions contain an acknowledgment that a public servant's conduct has violated a provision of Chapter 68 and that the disposition be made public by the Board. *See* Section D.

If the Board sustains its finding of probable cause *and* the respondent is a current City employee who is subject to any state law or collective bargaining agreement providing for the conduct of disciplinary proceedings, the Board is required to refer the matter to the appropriate City agency and the agency must consult with the Board prior to a final decision.[28] *See* Section C(1)(4).

2. Commencing Formal Proceedings at OATH

Enforcement actions that are not resolved after the Notice of Probable Cause will proceed to the New York City Office of Administrative Trials and Hearings ("OATH"). If the Board sustains its finding of probable cause, after any agency-referral process has been completed, the Board will direct a hearing to be held at OATH.[29] OATH is New York City's central administrative tribunal and hears cases originating from a wide variety of City agencies.[30] Although the Board has the authority to hear cases itself, it delegates its hearing function to OATH, which employs professional administrative law judges and has courtrooms equipped with recording capabilities. The use of such a central tribunal creates great efficiencies, eliminates the need for the Board to have its own hearing facilities, and adds another layer of professionalism, independence, and formality to the proceedings. To prevail at OATH, the Board's enforcement counsel must produce admissible evidence, including witnesses and documents, proving the alleged violations by a preponderance of the evidence.[31]

To commence a proceeding at OATH, the Board's enforcement counsel serves a written Petition on the Respondent and files that Petition at OATH.[32] The Respondent may serve and file an Answer (eight days after service of Petition, thirteen days if service was by mail).[33] The failure to answer means that all the allegations of the Petition are deemed admitted.[34] Pleadings may be amended within twenty-five days prior to hearing. If a party wishes to amend the

pleadings fewer than twenty-five days prior to trial, there must be consent or leave of the Board or of the assigned OATH administrative law judge.[35] After the service of the Petition, enforcement counsel is prohibited from communicating *ex parte* with any member of the Board about that case, except with the consent of respondent or respondent's counsel or regarding a ministerial matter.[36] During this time, the Board's Legal Advice Unit serves as counsel to the Board, and, as a result, enforcement counsel and advice counsel do not discuss the merits of, or share documents about, the case.

3. Procedural Rules for Hearings at OATH

The Board Rules set forth the procedural rules for all Board proceedings. Once the Board petitions OATH to hear a case, the OATH Rules of Practice apply, but the Board Rules govern in case of a conflict between the two sets of procedural rules.[37] The New York Civil Practice Law and Rules ("CPLR"), which contain the procedural rules governing civil cases brought in the state courts of New York, do not govern in administrative proceedings such as the Board's hearings, except as provided in particular Board or OATH rules that expressly incorporate provisions of the CPLR.[38]

There is no right to take depositions of witnesses prior to the hearing; depositions may be taken only upon motion before the OATH administrative law judge for "good cause shown."[39] Parties can request and exchange documentary discovery, which must be completed reasonably in advance of the hearing to allow for the parties to prepare for the hearing.[40]

Only an administrative law judge at OATH or a Board member may issue subpoenas for witnesses and documents.[41] An OATH rule adopted in 1998 removes attorneys' ability to issue subpoenas in OATH cases and requires the parties to have subpoenas signed by an administrative law judge.[42] Subpoenas can be used to compel production of documents or attendance of witnesses at or prior to a hearing. Under OATH's subpoena rule, the party seeking the subpoena is deemed to be making a motion, which can be made on twenty-four hours' notice to the opposing party, including by e-mail.[43] OATH continues to encourage the making and scheduling of requests for subpoenas by conference call to the assigned administrative law judge.

At OATH, each case is assigned two different administrative law judges: a settlement judge and a trial judge. Unless the parties' views of the necessary outcome are so divergent that settlement seems impossible, the parties must be prepared to engage in serious settlement discussions at a conference scheduled prior to the commencement of trial.[44] If the settlement judge cannot resolve the matter at the conference, the trial judge presides at the hearing. This two-judge approach promotes settlements and allows the parties to speak freely with a neutral third party about the strengths and weaknesses of the case without fear of prejudicing the trier of fact.

Hearings in Board enforcement actions are not public unless requested by the respondent. At trial, each side may present an opening statement summarizing the case and the proof. The Board's enforcement counsel makes the first presentation; the prosecuting attorney has the burden to prove the case by a preponderance of the evidence and must initiate the presentation of

the evidence.[45] The respondent, either on his or her own or by counsel or other representative, then presents his or her case. Enforcement counsel may present rebuttal evidence.[46]

Witnesses testify under oath and on the record. The parties or their counsel (or other representative, since non-lawyers may appear at OATH[47]) conduct direct and cross-examination. The rules of evidence are relaxed, and hearsay is admissible,[48] although generally hearings are conducted much like trials in state supreme court. After the close of the evidence, each side may present a closing statement.[49] This time, the respondent goes first. OATH makes an audio recording of the proceedings, which OATH has transcribed into a verbatim transcript and provides to the parties at no cost.

4. Post-Hearing Procedure

After the close of the trial, the OATH administrative law judge considers the full record of the case, including the witness testimony and exhibits, and issues a confidential, non-binding written report and recommendation to the Board with a copy to the respondent or the respondent's representative.[50] This report and recommendation includes findings of fact, conclusions of law, and a proposed penalty, if applicable.

The parties (*i.e.,* the respondent or the respondent's representative and enforcement counsel) have ten calendar days from service of the OATH administrative law judge's report and recommendation to submit comments to the Board.[51] The Board gives deference to the administrative law judge's findings, but the Board reaches its own decision and is free to accept, reject, or modify the recommendations of the administrative law judge. The Board considers the administrative law judge's report and all of the evidence in the record, as well as any comments submitted by the parties before issuing its final determination, the Final Findings of Fact, Conclusions of Law, and Order (herein, an "Order").[52] If the Board finds a violation, the Order is made public. If no violation is found, the Order is not made public by the Board (although the respondent may make the Order public, if he or she chooses).

If the Board finds a violation, it may impose an appropriate penalty. *See* Section F(1) (Penalties for Violations of the Conflicts of Interest Law). However, before imposing a penalty, the Board must first consult with the head of the agency employing the respondent regarding the penalty.[53]

The exception to this practice involves respondents who are Members of the City Council and Council staff. For these public servants, the Board does not impose a penalty as part of its final order, but rather sends a public recommendation to the Council of the penalty the Board deems appropriate. The Council is then required to report to the Board as to what action the Council takes on the Board's recommendation.[54]

Examples of Board Decisions Following OATH Hearings

In April 1996, in the case of former City Comptroller Elizabeth Holtzman, after a full trial on the merits, the Board fined Holtzman $7,500 (of a maximum $10,000) for violating

Charter § 2604(b)(3) (prohibiting use of public office for private gain). The Board also found that she had violated Charter § 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.[55] The New York Court of Appeals upheld the Board's $7,500 fine and Decision and Order that Holtzman's use of her City office to obtain a three-month delay in the debt collection process was the type of impermissible advantage that Charter § 2604(b)(3) prohibited.[56]

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, and it was collected in full. Katsorhis habitually used City letterhead, supplies, equipment, and personnel to conduct his outside law practice. He had correspondence to private clients typed by City personnel on City letterhead during City time and then mailed or faxed using City postage meters and fax machines. Katsorhis 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's private clients at a court appearance. In 2000, the New York State Supreme Court, Appellate Division, First Department, twice dismissed as untimely 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 were exhausted, and the Board decision stands.[57]

5. Appeals to the State Courts: Supreme Court, Appellate Division, and Court of Appeals

The prerequisite to appeal to the courts is *final* action by the Board. Prior to a final Board order, an appeal would be premature. The familiar legal principle in administrative law of "exhaustion of administrative remedies" requires that the person aggrieved by a government agency's decision complete the administrative process (where he or she may find redress) before challenging the final agency action in the courts.

In *Katsorhis*, pursuant to CPLR 7804(g), the parties bypassed the court of first instance (the New York State Supreme Court) and proceeded directly to the Appellate Division. Similarly, in *Holtzman*, the parties proceeded directly to the Appellate Division. In both cases, the principal issue was whether there was "substantial evidence" to support the Board's decision. The Appellate Division upheld the Board's ruling in *Holtzman* and dismissed *Katsorhis* for failure to timely perfect the appeal (by filing the record and a legal brief within the nine months allowed under that court's rules).

On April 30, 1998, the New York Court of Appeals unanimously affirmed the Appellate Division, First Department, decision confirming the Board's decision in *COIB v. Holtzman*.[58] In that decision, the Court of Appeals, New York State's highest court, upheld the Board's reading of the standard of care applicable to public officials: "A City official is chargeable with knowledge of those business dealings that create a conflict of interest about which the official

'should have known.'"[59] (Imputed knowledge is discussed in greater detail in Section E(4) below.) The Court also found that 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."[60] Finally, the Court held that the Federal Election Campaign Act does not preempt local ethics laws.

E. Dispositions by Agreement

It is possible to reach a "disposition by agreement" at any point in the course of any enforcement proceeding.[61] Any such disposition must contain a statement that the respondent violated Chapter 68 or the Administrative Code and must be made public.[62] This publication requirement has a salutary effect. It apprises the public of the Board's work and its application of the conflicts of interest law; it also reassures the public that the City's ethics laws are being enforced and taken seriously. Moreover, publication puts enforcement to work as a part of the Board's education program: teaching by example. Publication helps hold public servants accountable for their misconduct, as well as showing other public servants that their colleagues who violate the conflicts of interest law do not escape redress.

Dispositions by agreement afford those charged with violating the conflicts of interest law the opportunity to accept responsibility for their misconduct. Often, a negotiated settlement, in which the respondent can have input into the penalty and the description of his or her conduct in the public disposition and where only the disposition itself is public, will be more palatable to the respondent than a full trial, which carries the risk of an administrative or even judicial finding, on a fully developed public record, that his or her conduct was improper. Early settlements spare both the City and the individual charged with conflicts of interest violations a great deal of time and resources.

All of the Board's public dispositions, as well as summaries of those dispositions, are available through the Board's website, http://www.nyc.gov/ethics.

1. Dispositions Imposing Fines & Penalty Payment

A disposition by agreement that contains an admission by the respondent of the violation is referred to as a "Public Disposition." Such settlements require a meaningful statement of facts, an admission by the respondent that by those facts he or she violated the conflicts of interest law, and an agreement that the disposition is public. The Board may also impose an appropriate penalty for the violation. The Board obtained disgorgement authority by an amendment to Chapter 68 authorized by the voters of the City of New York in the November 2010 election. With that amendment, in addition to the ability to impose an increased maximum fine of $25,000 per violation, the Board can order payment to the City of the value of any gain or benefit obtained

by the respondent as a result of his or her violation of Chapter 68.[63] *See* Section F(1) (Penalties for Violations of the Conflicts of Interest Law).

Financial Hardship Applications

Many City employees do not have the resources to pay large fines, so the Board takes into account demonstrated financial hardship in setting the amount of the fine. For example, in *COIB v. Matos*, COIB Case No. 1994-368 (1996), the respondent admitted to a conflicts of interest law violation and agreed to pay a $1,000 fine for sending a resume to a City contractor while the official was directly concerned with that contractor's particular matter with the City. However, in *Matos*, the Board agreed to forgive a portion of the fine in recognition of the respondent's unemployment and actual financial hardship, as shown by sworn affidavit. Any respondent who seeks a reduction in the amount of a Board fine based on a claim of financial hardship is required to complete a form showing monthly income and expenses and overall assets and liabilities, both for the respondent and his or her spouse or domestic partner, accompanied by documents (such as tax returns, bank statements, loan documents, utility bills, and the like) substantiating each of the claimed amounts.

Penalty Payment Plans

If the respondent is unable to pay the fine in full at the time of the settlement, the Board has on occasion entered into settlements that extend payments over a period of time. Such payment plans are, however, the exception. The Board requires a confession of judgment in such cases, to avoid protracted collection problems if the respondent defaults on the settlement payment schedule. A respondent who wishes to settle but lacks funds to pay the requisite fine may agree to disgorge ill-gotten gains by signing over to the City, for example, payments he will receive from unauthorized moonlighting with a company that does business with the City and resign the outside employment that offends the conflicts of interest law. In one such case, the Board fined a firefighter $7,500 for unauthorized moonlighting with a distributor of fire trucks and spare parts to the New York City 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 out of payments due the firefighter.[64]

2. Public Warning Letters

The Board can also, at its discretion, resolve an enforcement action with a "public warning letter." A public warning letter contains a meaningful statement of facts, an explanation of how those facts constitute a violation of the conflicts of interest law, and an agreement that the disposition is public. However, unlike a disposition imposing a fine, a public warning letter does not require any admission of a violation of the law by the respondent or a monetary fine. Rather, the public warning letter serves as a public statement by the Board, directed to the respondent in particular but to all public servants in general, advising that the conducted described in the letter constitutes a violation of the conflicts of interest law. As with a disposition imposing a fine, the respondent has the opportunity to have input into the description of his or her conduct contained in the public warning letter.

Generally speaking, the Board will agree to resolve an enforcement action with a public warning letter in certain circumstances, such as matters where (1) the violation is serious but limited in frequency or unlikely to reoccur (because the respondent is no longer a public servant or no longer in the City position that gave rise to the violation); (2) the respondent was already the subject of a serious penalty as a consequence of agency disciplinary action; or (3) the charged violation was of such a nature that the respondent might not have been aware that his or her conduct violated the conflicts of interest law.

An example of the first two instances can be found in *COIB v. Chapman*, in which the Board issued a public warning letter to a former Associate Director at Coney Island Hospital—a NYC Health + Hospitals ("HHC") facility—who disclosed a confidential bid provided to him by one vendor to a second vendor, for which disclosure the Associate Director had no legitimate City purpose.[65] In *Chapman*, the Board determined that no further enforcement action was warranted in the case because the former Associate Director had resigned from HHC in the face of pending HHC disciplinary action related to this and other misconduct.

An example of the third type can be found in *COIB v. McCabe*, in which the Board issued a public warning letter to a former Commanding Officer at the New York City Police Department ("NYPD") Office of Labor Relations who, after retiring from the NYPD, was retained as an expert witness in a lawsuit against the City, in which lawsuit he had personally and substantially participated while at the NYPD.[66] Since the former Commanding Officer represented to the Board that he did not recall participating in the matter while at the NYPD—and his involvement consisted of attending one meeting at which he was consulted by the City's attorneys concerning the lawsuit's allegations—the Board took the opportunity of the public letter in *McCabe* to make clear that public servants have a duty to conduct a reasonable inquiry to determine whether they have ever personally and substantially participated in a particular matter on which they are considering working after leaving City service.

An example of an isolated infraction resulting from the public servant's lack of awareness that her conduct violated the conflicts of interest law can be found in *COIB v. Brandt.* In *Brandt*, the Board issued a public warning letter to a Member of Manhattan Community Board No. 2 ("CB 2") who self-reported to the Board that she had appeared in her private capacity as an architect on behalf of a paying client during a meeting of CB 2's Landmarks Committee.[67] In deciding to issue a public warning letter instead of imposing a fine, the Board took into consideration that the Member self-reported her conduct to the Board and, prior to appearing before CB 2, received advice from the CB2 Chair that she was permitted to appear so as long as she recused herself from voting on the matter, which she did. The Board took the opportunity of the public warning letter in *Brandt* to remind community board members that the City's conflicts of interest law prohibits them from making compensated appearances before their own community boards on behalf of private interests.

F. Penalties

1. Penalties for Violations of the Conflicts of Interest Law

Under Chapter 68, the Board may impose the following penalties for violations of the City's conflicts of interest law:

(1) A civil monetary fine of up to $25,000 per violation.[68]

(2) Payment to the City of the value of any gain or benefit obtained by the current or former public servant as a result of his or her violation of the conflicts of interest law.[69]

2012 was the first year that the Board utilized this power, granted, as noted above, by the City's voters by referendum on November 2, 2010. In *COIB v. S. Taylor*, the first case of its kind in the City, in addition to imposing a $7,500 fine for the multiple violations of Chapter 68 committed by a former Assistant to the Chief Engineer in the Bureau of Engineering at the New York City Department of Sanitation ("DSNY"), the Board also ordered him to pay the value of the benefit he received as a result of his prohibited superior-subordinate financial relationship (Charter § 2604(b)(14)), namely, the referral fee of $1,696.82 he received for referring a DSNY subordinate to an attorney to represent her in a personal injury lawsuit.[70] In *COIB v. Namnum*, a former Director of Central Budget for the New York City Department of Education ("DOE") paid a $15,000 fine for using his DOE position to obtain a DOE job for his wife (Charter § 2604(b)(3)); in addition to the fine, he also paid the value of the benefit he received as a result of his violations, namely, the total of his wife's net earnings from her employment at DOE, in the amount of $32,929.29, for a total financial penalty of $49,929.29.[71]

(3) Recommend suspension or removal from office after consultation with the relevant agency head.[72]

(4) Void a contract or transaction (after consultation with the agency head).[73]

In *Holtzman*, former Mayor David Dinkins removed Fleet Securities as a co-manager of bonds under his own powers on May 13, 1993, almost immediately after the press reported the story. The Mayor's action preceded the Board's enforcement proceedings.

(5) A violation of Chapter 68 is a misdemeanor if prosecuted in a separate criminal proceeding, generally by one of the City's District Attorneys. Upon conviction, the City official must forfeit public office or employment.[74]

In *People v. Basil Randolph Jones*—the first criminal jury trial and conviction of a Chapter 68 violation since the 1990 Charter revisions strengthened the enforcement provisions of Charter 68—a New York City Department of Finance Deputy Tax Collector was convicted of two felonies (offering a false instrument for filing) and of a misdemeanor violation of the Charter for holding an interest in a firm engaged in business dealings with the City while he was employed by the City.[75] Jones had denied that he worked for the Department of Finance when he applied, in his private sector

capacity, to the New York City Department of Housing Preservation and Development for a $1 million contract to manage and rehabilitate City buildings. He was sentenced to five years' probation, fined $5,000, and ordered to perform 100 hours of community service relating to housing. He also cooperated with the government in a separate case that involved allegations of systemic corruption.

In 2006, Bernard Kerik, former New York City Police Commissioner, pled guilty to misdemeanor charges that, when he was Commissioner of the New York City Department of Correction, he accepted a gift of renovation work on his apartment, valued at approximately $165,000, from a firm that was seeking to do business with the City, in violation of Charter § 2604(b)(5), and also failed to list indebtedness in excess of $5,000 on his annual financial disclosure report filed with the Board in 2002, in violation of the City's financial disclosure law. Pursuant to a plea agreement, Kerik paid a criminal fine of $206,000 and a civil fine to the Board in the amount of $15,000.[76]

Conviction for buying public office leads to lifetime disqualification from election, appointment, or employment in City service.[77]

Imputed Knowledge

Actual knowledge of a business dealing with the City is required for criminal conviction based on holding a prohibited interest.[78] However, for purposes of all cases involving civil penalties, Chapter 68 imputes knowledge of business dealings with the City under a "should have known" standard.

The concept of imputed knowledge is a central concept in Chapter 68. For example, public servants may not accept gifts from donors they know or should know engage in, or even *intend* to engage in, business dealings with the City. The burden is on public servants to inquire about the business dealings and intended business dealings of those who try to bestow gifts upon them.

In 2000, the Board defined for the first time the duty of high-level public servants to inquire about the City business dealings of the donor. In *In re Safir*, the Board rebuked then former New York City Police Commissioner for accepting a free trip, valued at over $7,000, to the 1999 Academy Awards festivities in Los Angeles from a firm (Revlon) doing business with the City.[79] Because this was the first public announcement of this duty, and Revlon's business dealings with the City were small and difficult to discover, the Board declined to charge the Police Commissioner 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.[80] The Police Commissioner repaid the cost of the trip.

2. Penalties for Violations of the Annual Disclosure Law

Penalties for violating the City's annual disclosure law—about which more information can be found in the chapter devoted to that subject—are similar to penalties for violating the City's conflicts of interest law:

(1) Monetary fines up to $10,000 for each intentional violation (failure to file, failure to pay a late fine, failure to include assets or liabilities, or misstatements of assets or liabilities).[81]

In 2009, the former Executive Director of the Bellevue Hospital Center, a facility of NYC Health + Hospitals, acknowledged that, in the annual financial disclosure reports he was required to file with the Board for calendar years 2000, 2001, and 2002, he failed to disclose certain assets, loans, and gifts. For these violations of the City's financial disclosure law, along with other violations of the City's conflicts of interest law, the former Executive Director was fined $12,500 by the Board.

(2) An intentional violation is a misdemeanor punishable by imprisonment up to a year, a fine of up to $1,000, or both, and is grounds for disciplinary penalties, including removal from office.[82] Criminal proceedings are brought by other law enforcement agencies.

(3) Disclosure of confidential information contained in an annual disclosure report filed with the Board is a misdemeanor punishable by imprisonment up to a year, a fine of up to $1,000, or both, and is grounds for disciplinary penalties, including removal from office.[83]

3. Penalties for Violations of the Lobbyist Gift Law

Penalties for violations of the lobbyist gift law are prescribed by statute.[84] Any person who "knowingly and willfully violates" the lobbyist gift law is subject to a civil penalty. For the first offense, the fine must be between $2,500 and $5,000 dollars; for the second offense, between $5,000 and $15,000; and for the third and subsequent offenses, between $15,000 and $30,000. In addition to such civil penalties, for the second and subsequent offenses, the violator will also "be guilty of a class A misdemeanor."[85]

In *COIB v. Levenson,* a case of first impression, the Board fined a lobbyist $4,000 for expending corporate resources and providing free consulting services, valued at $3,796.44, to aid a Council Member's bid to become Speaker of the City Council.[86] The Speaker is a leadership position within the City Council, not an independent public office; the process by which the Council chooses a Speaker is not an "election" under the Election Law. Therefore, the lobbyist's volunteer efforts to assist with a Council Member's campaign for Speaker constituted a gift subject to the lobbyist gift law, which prohibits lobbyists from offering or giving a gift of any value to a public servant.

G. Conclusion

The primary purpose of enforcement lies not in punishing public servants but in preventing future conflicts of interest violations. The Board views its enforcement mandate as both educational and preventative.

A successful enforcement program can reduce waste, encourage compliance by officials who might otherwise err, promote integrity in government decision-making, and increase public confidence in its officials who are elected or appointed to serve the people. Fair, swift, and sensible enforcement fosters good government by ensuring that scarce public resources are properly allocated and deployed for the right reasons. The Board aspires to this ideal in its enforcement program and to educating City employees through its enforcement dispositions so that future violations of Chapter 68 are avoided.

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[1] Charter §§ 2603(h)(4), 2603(k); Board Rules §§ 2-05(f), 2-05(h).
[2] *See generally* Charter § 2603(e).
[3] Charter § 2603(e)(2)(d).
[4] Charter § 2603(f).
[5] Charter § 2603(f)(2).
[6] Charter § 2603(f)(1).
[7] *See* City Charter § 2603(e)(2)(d)
[8] *See* Board Rules § 2-04(c).
[9] *See generally* Report of the New York City Charter Revision Commission, December 1986-November 1988, Vol. II, at 165.
[10] Charter § 2603(g)(2).
[11] *See* Charter § 2603(h)(6). *See also Rosenblum v. New York City Conflicts of Interest Board,* 18 N.Y.3d 422, 964 N.E.2d 1010, 941 N.Y.S. 2d 543 (2012).
[12] In 2016, the Board entered into 33 dispositions with public servants and their agencies, out of 54 public dispositions imposing financial penalties during that year.
[13] Civil Service Law § 75(4) states: "Notwithstanding any other provision of law, no removal or disciplinary proceeding shall be commenced more than eighteen months after the occurrence of the alleged incompetency or misconduct complained of and described in the charges or, in the case of a state employee who is designated managerial or confidential under article fourteen of this chapter, more than one year after the occurrence of the alleged incompetency or misconduct complained of and described in the charges, provided, however, that such limitations shall not apply where the incompetency or misconduct complained of and described in the charges would, if proved in a court of appropriate jurisdiction, constitute a crime."

[14] *James v. Doherty*, 85 A.D.3d 640, 925 N.Y.S.2d 818 (1st Dep't 2011).
[15] *COIB v. M. James*, COIB Case No. 2007-269 (2012); *COIB v. Gilbert*, COIB Case No. 2007-269a (2012); *COIB v. Maurice*, COIB Case No. 2007-269b (2012).
[16] 18 N.Y.3d 422, 964 N.E.2d 1010, 941 N.Y.S. 2d 543 (2012).
[17] *See* City Charter § 2603(h)(6).
[18] 18 N.Y.3d at 432, 964 N.E.2d at 1016, 941 N.Y.S. 2d at 549.
[19] Board Rules §§ 2-01(a), 2-05(e).
[20] *See* Charter § 2603(e)(3), (g)(3), (h)(7).
[21] Board Rules § 2-01(a).
[22] Board Rules §§ 2-01(a), 2-05(e).
[23] Board Rules § 2-05(a)(1).
[24] Board Rules § 2-01(a).
[25] Board Rules § 2-02(a).
[26] Board Rules § 2-01(d).
[27] Board Rules § 2-05(h).
[28] Charter § 2603(h)(2). *See generally* Report of the New York City Charter Revision Commission, December 1986-November 1988, Vol. II, at 165.
[29] Charter § 2603(h)(2); Board Rules § 2-02.
[30] *See* Chapter 45-A of the Charter.
[31] Charter § 2603(h)(2); Board Rules §§ 2-01(d), 2-02.
[32] Board Rules § 2-02(b).
[33] Board Rules §§ 2-02(c), 2-05(e).
[34] Board Rules § 2-02(c)(3).
[35] Charter § 2603(h)(4); Board Rules § 2-05(f).
[36] Board Rules § 2-05(g).
[37] Board Rules § 2-05(i).
[38] *See* CPLR 101 (CPLR applies to "civil judicial proceedings"); *U. S. Power Squadrons v. State Human Rights Appeal Bd*. 84 A.D.2d 318, 445 N.Y.S.2d 565 (2d Dep't 1981), *aff'd*, 59 N.Y.2d 401, 465 N.Y.S.2d 871, 452 N.E.2d 1199 (1983) ("the CPLR is applicable to 'civil judicial proceedings' and not to administrative proceedings").
[39] OATH Rules of Practice §1-33.
[40] OATH Rules of Practice §1-33.
[41] Board Rules § 2-03(b). *See also* CPLR 2302(a).
[42] OATH Rules of Practice § 1-43.
[43] OATH Rules of Practice § 1-43(b).
[44] OATH Rules of Practice § 1-31(a).
[45] Board Rules § 2-03(d)(3).
[46] Board Rules § 2-03(d)(3).
[47] *See* OATH Rules of Practice § 1-11(a).
[48] OATH Rules of Practice § 1-46(a).
[49] Board Rules § 2-03(d)(3).
[50] Board Rules §§ 2-04(a), (b).
[51] Board Rules § 2-04(a).
[52] Board Rules § 2-04(b).
[53] Charter § 2603(h)(3).

[54] Charter § 2603(h)(3); Board Rules § 2-04(b).
[55] *COIB v. Holtzman*, COIB Case No. 93-121 (1996).
[56] *Holtzman v. Oliensis*, 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).
[57] *COIB v. Katsorhis*, COIB Case No. 94-351 (1998), *appeal dismissed, Katsorhis v. Oliensis*, M-1723/M-1904 (1st Dep't Apr. 13, 2000), *appeal dismissed*, 95 N.Y.2d 918, 719 N.Y.S.2d 645 (Nov. 21, 2000).
[58] *Holtzman v. Oliensis*, 91 N.Y.2d 488, 673 N.Y.S.2d 23, 695 N.E.2d 1104 (1998).
[59] 91 N.Y.2d at 497.
[60] 91 N.Y.2d at 498.
[61] Board Rules § 2-05(h).
[62] Board Rules § 2-05(h).
[63] Charter § 2606(b-1).
[64] *COIB v. Ludewig*, COIB Case No. 1997-247 (1999).
[65] COIB Case No. 2011-428 (2014).
[66] COIB Case No. 2008-129 (2010).
[67] COIB Case No. 2015-551 (2016).
[68] Charter § 2606(b).
[69] Charter § 2606(b-1).
[70] *COIB v. S. Taylor*, COIB Case No. 2011-193 (2012).
[71] *COIB v. Namnum*, COIB Case No. 2011-860 (2012).
[72] Charter § 2606(b).
[73] Charter § 2606(a).
[74] Charter § 2606(c).
[75] People v. Basil Randolph Jones, No. 94N088188 (Sup. Ct. N.Y. County 1996),
[76] William K. Rashbaum & John Holusha, "Kerik Pleads Guilty for Gifts and a Loan," N.Y. TIMES, June 30, 2006, at http://nyti.ms/1how7OI.
[77] Charter § 2606(c).
[78] *Id*.
[79] *In re Safir*, COIB Case No. 1999-115 (2000).
[80] *See* Charter § 2604(b)(5).
[81] Administrative Code § 12-110(g)(2).
[82] *Id.*.
[83] Administrative Code § 12-110(g)(3).
[84] Admin. Code § 3-227.
[85] *Id*.
[86] COIB Case No. 2013-903a (2016). *See also COIB v. Mark-Viverito*, COIB Case No. 2013-903 (2016).

Conflicts of Interest

Chapter 68
of the
New York City Charter

Revised: November 2010

COIB | Conflicts of Interest Board of The City of New York

NEW YORK CITY CHARTER
CHAPTER 68

Conflicts of Interest

§2600. Preamble. Public service is a public trust. These prohibitions on the conduct of public servants are enacted to preserve the trust placed in the public servants of the city, to promote public confidence in government, to protect the integrity of government decision-making and to enhance government efficiency.

§2601. Definitions. As used in this chapter,

1. "Advisory committee" means a committee, council, board or similar entity constituted to provide advice or recommendations to the city and having no authority to take a final action on behalf of the city or take any action which would have the effect of conditioning, limiting or requiring any final action by any other agency, or to take any action which is authorized by law.

2. "Agency" means a city, county, borough or other office, position, administration, department, division, bureau, board, commission, authority, corporation, advisory committee or other agency of government, the expenses of which are paid in whole or in part from the city treasury, and shall include but not be limited to, the council, the offices of each elected official, the board of education, community school boards, community boards, the financial services corporation, the health and hospitals corporation, the public development corporation, and the New York city housing authority, but shall not include any court or any corporation or institution maintaining or operating a public library, museum, botanical garden, arboretum, tomb, memorial building, aquarium, zoological

garden or similar facility.

3. "Agency served by a public servant" means (a) in the case of a paid public servant, the agency employing such public servant or (b) in the case of an unpaid public servant, the agency employing the official who has appointed such unpaid public servant unless the body to which the unpaid public servant has been appointed does not report to, or is not under the control of, the official or the agency of the official that has appointed the unpaid public servant, in which case the agency served by the unpaid public servant is the body to which the unpaid public servant has been appointed.

4. "Appear" means to make any communication, for compensation, other than those involving ministerial matters.

5. A person or firm "associated" with a public servant includes a spouse, domestic partner, child, parent or sibling; a person with whom the public servant has a business or other financial relationship; and each firm in which the public servant has a present or potential interest.

6. "Blind trust" means a trust in which a public servant, or the public servant's spouse, domestic partner, or unemancipated child, has a beneficial interest, the holdings and sources of income of which the public servant, the public servant's spouse, domestic partner, and unemancipated child have no knowledge, and which meets requirements established by rules of the board, which shall include provisions regarding the independent authority and discretion of the trustee, and the trustee's confidential treatment of information regarding the holdings and sources of income of the trust.

7. "Board" means the conflicts of interest board established by this chapter.

8. "Business dealings with the city" means any transaction with the city involving the sale, purchase, rental, disposition or exchange of any goods, services, or property, any license, permit, grant or benefit, and any performance of or litigation with respect to any of the foregoing, but shall not include any transaction involving a public servant's residence or any ministerial matter.

9. "City" means the city of New York and includes an agency of the city.

10. "Elected official" means a person holding office as mayor, comptroller, public advocate, borough president or member of the council.

11. "Firm" means sole proprietorship, joint venture, partnership, corporation and any other form of enterprise, but shall not include a public benefit corporation, local development corporation or other similar entity as defined by rule of the board.

12. "Interest" means an ownership interest in a firm or a position with a firm.

13. "Law" means state and local law, this charter, and rules issued pursuant thereto.

14. "Member" means a member of the board.

15. "Ministerial matter" means an administrative act, including the issuance of a license, permit or other permission by the city, which is carried out in a prescribed manner and which does not involve substantial personal discretion.

16. "Ownership interest" means an interest in a firm held by a public servant, or the public servant's spouse, domestic partner, or unemancipated child, which exceeds five percent of the firm or an investment of twenty-five thousand dollars in cash or other form of commitment, whichever is less, or five percent or twenty-five thousand dollars of the firm's indebtedness, whichever is less, and any lesser interest in a firm when the public servant, or the public servant's spouse, domestic partner, or unemancipated child exercises managerial control or responsibility regarding any such firm, but shall not include interests held in any pension plan, deferred compensation plan or mutual fund, the investments of which are not controlled by the public servant, the public servant's spouse, domestic partner, or unemancipated child, or in any blind trust which holds or acquires an ownership interest. The amount of twenty-five thousand dollars specified herein shall be modified by the board pursuant to subdivision a of section twenty-six hundred three.

17. "Particular matter" means any case, proceeding, application, request for a ruling or benefit, determination, contract limited to the duration of the contract as specified therein, investigation, charge, accusation, arrest, or other similar action which involves a specific party or parties, including actions leading up to the particular matter; provided that a particular matter shall not be construed to include the proposal, consideration, or enactment of local laws or resolutions by the council, or any action on the budget or text of the zoning resolution.

18. "Position" means a position in a firm, such as an officer, director, trustee, employee, or any management position, or as an attorney, agent, broker, or consultant to the firm, which does not constitute an ownership interest in the firm.

19. "Public servant" means all officials, officers and employees of the city, including members of community boards and members of advisory committees, except unpaid members of advisory committees shall not be public servants.

20. "Regular employee" means all elected officials and public servants whose primary employment, as defined by rule of the board, is with the city, but shall not include members of advisory committees or community boards.

21. a. "Spouse" means a husband or wife of a public servant who is not legally separated from such public servant.

b. “Domestic partner” means persons who have a registered domestic partnership pursuant to section 3-240 of the administrative code, a domestic partnership registered in accordance with executive order number 123, dated August 7, 1989, or a domestic partnership registered in accordance with executive order number 48, dated January 7, 1993.

22. "Supervisory official" means any person having the authority to control or direct the work of a public servant.

23. "Unemancipated child" means any son, daughter, step-son or step-daughter who is under the age of eighteen, unmarried and living in the household of the public servant.

§2602. Conflicts of interest board.

a. There shall be a conflicts of interest board consisting of five members, appointed by the mayor with the advice and consent of the council. The mayor shall designate a chair.

b. Members shall be chosen for their independence, integrity, civic commitment and high ethical standards. No person while a member shall hold any public office, seek election to any public office, be a public employee in any jurisdiction, hold any political party office, or appear as a lobbyist before the city.

c. Each member shall serve for a term of six years; provided, however, that of the three members first appointed, one shall be appointed for a term to expire on March thirty-first, nineteen hundred ninety, one shall be appointed for a term to expire on March thirty-first, nineteen hundred ninety-two and one shall by appointed for a term to expire on March thirty-first, nineteen hundred ninety-four, and of the remaining members, one shall be appointed for a term to expire on March thirty-first, nineteen hundred ninety-two and one shall be appointed for a term to expire on March thirty-first, nineteen hundred ninety-four. If the mayor has not submitted to the council a nomination for appointment of a successor at least sixty days prior to the expiration of the term of the member whose term is expiring, the term of the member in office shall be extended for an additional year and the term of the successor to such member shall be shortened by an equal amount of time. If the council fails to act within forty-five days of receipt of such nomination from the mayor, the nomination shall be deemed to be confirmed. No member shall serve for more than two consecutive six-year terms. The three initial nominations by the mayor shall be made by the first day of February, nineteen hundred eighty-nine and both later nominations by the mayor shall be made by the first day of March, nineteen hundred ninety.

d. Members shall receive a per diem compensation, no less than the highest amount paid to an official appointed to a board or commission with the advice and consent of the council and compensated on a per diem basis, for each calendar day when performing the work of the board.

e. Members of the board shall serve until their successors have been confirmed. Any vacancy occurring other than by expiration of a term shall be filled by nomination by the mayor made to the council within sixty days of the creation of the vacancy, for the unexpired portion of the term of the member succeeded. If the council fails to act within forty-five days of receipt of such nomination from the mayor, the nomination shall be deemed to be confirmed.

f. Members may be removed by the mayor for substantial neglect of duty, gross misconduct in office, inability to discharge the powers or duties of office or violation of this section, after written notice and opportunity for a reply.

g. The board shall appoint a counsel to serve at its pleasure and shall employ or retain such other officers, employees and consultants as are necessary to exercise its powers and fulfill its obligations. The authority of the counsel shall be defined in writing, provided that neither the counsel, nor any other officer, employee or consultant of the board shall be authorized to issue advisory opinions, promulgate rules, issue subpoenas, issue final determinations of violations of this chapter, or make final recommendations of or impose penalties. The board may delegate its authority to issue advisory opinions to the chair.

h. The board shall meet at least once a month and at such other times as the chair may deem necessary. Two members of the board shall constitute a quorum and all acts of the board shall be by the affirmative vote of at least two members of the board.

§2603. Powers and obligations.

a. Rules. The board shall promulgate rules as are necessary to implement and interpret the provisions of this chapter, consistent with the goal of providing clear guidance regarding prohibited conduct. The board, by rule, shall once every four years adjust the dollar amount established in subdivision sixteen of section twenty-six hundred one of this chapter to reflect changes in the consumer price index for the metropolitan New York-New Jersey region published by the United States bureau of labor statistics.

b. Training and education.

1. The board shall have the responsibility of informing public servants and assisting their understanding of the conflicts of interest provisions of this chapter. In fulfilling this responsibility, the board shall develop educational materials regarding the conflicts of interest provisions and related interpretive rules and shall develop and administer an on-going program for the education of public servants regarding the provisions of this chapter.

2. (a) The board shall make information concerning this chapter available and known to all public servants. On or before the tenth day after an individual becomes a public servant, such public servant shall be provided with a copy of this chapter and shall

sign a written statement, which shall be maintained in his or her personnel file, that such public servant has received and read and shall conform with the provisions of this chapter. [Eff. 11/2/2010]

(b) Each public servant shall undergo training provided by the board in the provisions of this chapter on or before the sixtieth day after he or she becomes a public servant, and periodically as appropriate during the course of his or her city service. Every two years, each agency shall develop and implement an appropriate agency training plan in consultation with the board and the mayor's office of operations. Each agency shall cooperate with the board in order to ensure that all public servants in the agency receive the training required by this subdivision and shall maintain records documenting such training and the dates thereof. The training required by this subdivision may be in person, provided either by the board itself or by agency personnel working in conjunction with the board, or through an automated or online training program developed by the board. [Eff. 11/2/2010]

(c) The failure of a public servant to receive the training required by this paragraph, to receive a copy of this chapter, or to sign the statement required by this paragraph, or the failure of the agency to maintain the required statement on file or record of training completed, shall have no effect on the duty of such public servant to comply with this chapter or on the enforcement of the provisions thereof. [Eff. 11/2/2010]

c. Advisory opinions.

1. The board shall render advisory opinions with respect to all matters covered by this chapter. An advisory opinion shall be rendered on the request of a public servant or a supervisory official of a public servant and shall apply only to such public servant. The request shall be in such form as the board may require and shall be signed by the person making the request. The opinion of the board shall be based on such facts as are presented in the request or subsequently submitted in a written, signed document.

2. Advisory opinions shall be issued only with respect to proposed future conduct or action by a public servant. A public servant whose conduct or action is the subject of an advisory opinion shall not be subject to penalties or sanctions by virtue of acting or failing to act due to a reasonable reliance on the opinion, unless material facts were omitted or misstated in the request for an opinion. The board may amend a previously issued advisory opinion after giving reasonable notice to the public servant that it is reconsidering its opinion; provided that such amended advisory opinion shall apply only to future conduct or action of the public servant.

3. The board shall make public its advisory opinions with such deletions as may be necessary to prevent disclosure of the identity of any public servant or other involved party.

The advisory opinions of the board shall be indexed by subject matter and cross-indexed by charter section and rule number and such index shall be maintained on an annual and cumulative basis.

4. Not later than the first day of September, nineteen hundred ninety the board shall initiate a rulemaking to adopt, as interpretive of the provisions of this chapter, any advisory opinions of the board of ethics constituted pursuant to chapter sixty-eight of the charter heretofore in effect, which the board determines to be consistent with and to have interpretive value in construing the provisions of this chapter.

5. For the purposes of this subdivision, public servant includes a prospective and former public servant, and a supervisory official includes a supervisory official who shall supervise a prospective public servant and a supervisory official who supervised a former public servant.

d. Financial disclosure.

1. All financial disclosure statements required to be completed and filed by public servants pursuant to state or local law shall be filed by such public servants with the board.

2. The board shall cause each statement filed with it to be examined to determine if there has been compliance with the applicable law concerning financial disclosure and to determine if there has been compliance with or violations of the provisions of this chapter.

3. The board shall issue rules concerning the filing of financial disclosure statements for the purpose of ensuring compliance by the city and all public servants with the applicable provisions of financial disclosure law.

e. Complaints.

1. The board shall receive complaints alleging violations of this chapter.

2. Whenever a written complaint is received by the board, it shall:

(a) dismiss the complaint if it determines that no further action is required by the board; or

(b) refer the complaint to the commissioner of investigation if further investigation is required for the board to determine what action is appropriate; or

(c) make an initial determination that there is probable cause to believe that a public servant has violated a provision of this chapter; or

(d) refer an alleged violation of this chapter to the head of the agency served

by the public servant, if the board deems the violation to be minor or if related disciplinary charges are pending against the public servant.

3. For the purposes of this subdivision, a public servant includes a former public servant.

f. Investigations.

1. The board shall have the power to direct the department of investigation to conduct an investigation of any matter related to the board's responsibilities under this chapter. The commissioner of investigation shall, within a reasonable time, investigate any such matter and submit a confidential written report of factual findings to the board.

2. The commissioner of investigation shall make a confidential report to the board concerning the results of all investigations which involve or may involve violations of the provisions of this chapter, whether or not such investigations were made at the request of the board.

g. Referral of matters within the board's jurisdiction.

1. A public servant or supervisory official of such public servant may request the board to review and make a determination regarding a past or ongoing action of such public servant. Such request shall be reviewed and acted upon by the board in the same manner as a complaint received by the board under subdivision e of this section.

2. Whenever an agency receives a complaint alleging a violation of this chapter or determines that a violation of this chapter may have occurred, it shall refer such matter to the board. Such referral shall be reviewed and acted upon by the board in the same manner as a complaint received by the board under subdivision e of this section.

3. For the purposes of this subdivision, public servant includes a former public servant, and a supervisory official includes a supervisory official who supervised a former public servant.

h. Hearings.

1. If the board makes an initial determination, based on a complaint, investigation or other information available to the board, that there is probable cause to believe that the public servant has violated a provision of this chapter, the board shall notify the public servant of its determination in writing. The notice shall contain a statement of the facts upon which the board relied for its determination of probable cause and a statement of the provisions of law allegedly violated. The board shall also inform the public servant of the board's procedural rules. Such public servant shall have a reasonable time to respond, either orally or in writing, and shall have the right to be represented by counsel or any

other person.

2. If, after receipt of the public servant's response, the board determines that there is no probable cause to believe that a violation has occurred, the board shall dismiss the matter and inform the public servant in writing of its decision. If, after the consideration of the response by the public servant, the board determines there remains probable cause to believe that a violation of the provisions of this chapter has occurred, the board shall hold or direct a hearing to be held on the record to determine whether such violation has occurred, or shall refer the matter to the appropriate agency if the public servant is subject to the jurisdiction of any state law or collective bargaining agreement which provides for the conduct of disciplinary proceedings, provided that when such a matter is referred to an agency, the agency shall consult with the board before issuing a final decision.

3. If the board determines, after a hearing or the opportunity for a hearing, that a public servant has violated provisions of this chapter, it shall, after consultation with the head of the agency served or formerly served by the public servant, or in the case of an agency head, with the mayor, issue an order either imposing such penalties provided for by this chapter as it deems appropriate, or recommending such penalties to the head of the agency served or formerly served by the public servant, or in the case of an agency head, to the mayor; provided, however, that the board shall not impose penalties against members of the council, or public servants employed by the council or by members of the council, but may recommend to the council such penalties as it deems appropriate. The order shall include findings of fact and conclusions of law. When a penalty is recommended, the head of the agency or the council shall report to the board what action was taken.

4. Hearings of the board shall not be public unless requested by the public servant. The order and the board's findings and conclusions shall be made public.

5. The board shall maintain an index of all persons found to be in violation of this chapter, by name, office and date of order. The index and the determinations of probable cause and orders in such cases shall be made available for public inspection and copying.

6. Nothing contained in this section shall prohibit the appointing officer of a public servant from terminating or otherwise disciplining such public servant, where such appointing officer is otherwise authorized to do so; provided, however, that such action by the appointing officer shall not preclude the board from exercising its powers and duties under this chapter with respect to the actions of any such public servant.

7. For the purposes of this subdivision, the term public servant shall include a former public servant.

i. Annual report.

The board shall submit an annual report to the mayor and the council in

accordance with section eleven hundred and six of this charter. The report shall include a summary of the proceedings and activities of the board, a description of the education and training conducted pursuant to the requirements of this chapter, a statistical summary and evaluation of complaints and referrals received and their disposition, such legislative and administrative recommendations as the board deems appropriate, the rules of the board, and the index of opinions and orders of that year. The report, which shall be made available to the public, shall not contain information, which, if disclosed, would constitute an unwarranted invasion of the privacy of a public servant.

j. Revision.

The board shall review the provisions of this chapter and shall recommend to the council from time to time such changes or additions as it may consider appropriate or desirable. Such review and recommendation shall be made at least once every five years.

k.

Except as otherwise provided in this chapter, the records, reports, memoranda and files of the board shall be confidential and shall not be subject to public scrutiny.

§2604. Prohibited interests and conduct.

a. Prohibited interests in firms engaged in business dealings with the city.

1. Except as provided in paragraph three below,

(a) no public servant shall have an interest in a firm which such public servant knows is engaged in business dealings with the agency served by such public servant; provided, however, that, subject to paragraph one of subdivision b of this section, an appointed member of a community board shall not be prohibited from having an interest in a firm which may be affected by an action on a matter before the community or borough board, and

(b) no regular employee shall have an interest in a firm which such regular employee knows is engaged in business dealings with the city, except if such interest is in a firm whose shares are publicly traded, as defined by rule of the board.

2. Prior to acquiring or accepting an interest in a firm whose shares are publicly traded, a public servant may submit a written request to the head of the agency served by the public servant for a determination of whether such firm is engaged in business dealings with such agency. Such determination shall be in writing, shall be rendered expeditiously and shall be binding on the city and the public servant with respect to the prohibition of subparagraph a of paragraph one of this subdivision.

3. An individual who, prior to becoming a public servant, has an ownership interest which would be prohibited by paragraph one above; or a public servant who has an ownership interest and did not know of a business dealing which would cause the interest to be one prohibited by paragraph one above, but has subsequently gained knowledge of such business dealing; or a public servant who holds an ownership interest which, subsequent to the public servant's acquisition of the interest, enters into a business dealing which would cause the ownership interest to be one prohibited by paragraph one above; or a public servant who, by operation of law, obtains an ownership interest which would be prohibited by paragraph one above shall, prior to becoming a public servant or, if already a public servant, within ten days of knowing of the business dealing, either:

(a) divest the ownership interest; or

(b) disclose to the board such ownership interest and comply with its order.

4. When an individual or public servant discloses an interest to the board pursuant to paragraph three of this subdivision, the board shall issue an order setting forth its determination as to whether or not such interest, if maintained, would be in conflict with the proper discharge of the public servant's official duties. In making such determination, the board shall take into account the nature of the public servant's official duties, the manner in which the interest may be affected by any action of the city, and the appearance of conflict to the public. If the board determines a conflict exists, the board's order shall require divestiture or such other action as it deems appropriate which may mitigate such a conflict, taking into account the financial burden of any decision on the public servant.

5. For the purposes of this subdivision, the agency served by

(a) an elected official, other than a member of the council, shall be the executive branch of the city government,

(b) a public servant who is a deputy mayor, the director to the office of management and budget, commissioner of citywide administrative services, corporation counsel, commissioner of finance, commissioner of investigation or chair of the city planning commission, or who serves in the executive branch of city government and is charged with substantial policy discretion involving city-wide policy as determined by the board, shall be the executive branch of the city government,

(c) a public servant designated by a member of the board of estimate to act in the place of such member as a member of the board of estimate, shall include the board of estimate, and

(d) a member of the council shall be the legislative branch of the city government.

6. For the purposes of subdivisions a and b of section twenty-six hundred six, a public servant shall be deemed to know of a business dealing with the city if such public servant should have known of such business dealing with the city.

b. Prohibited conduct.

1. A public servant who has an interest in a firm which is not prohibited by subdivision a of this section, shall not take any action as a public servant particularly affecting that interest, except that

(a) in the case of an elected official, such action shall not be prohibited, but the elected official shall disclose the interest to the conflicts of interest board, and on the official records of the council or the board of estimate in the case of matters before those bodies,

(b) in the case of an appointed community board member, such action shall not be prohibited, but no member may vote on any matter before the community or borough board which may result in a personal and direct economic gain to the member or any person with whom the member is associated, and

(c) in the case of all other public servants, if the interest is less than ten thousand dollars, such action shall not be prohibited, but the public servant shall disclose the interest to the board.

2. 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.

3. No public servant shall use or attempt to use his or her position as a public servant to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant.

4. No public servant shall disclose any confidential information concerning the property, affairs or government of the city which is obtained as a result of the official duties of such public servant and which is not otherwise available to the public, or use any such information to advance any direct or indirect financial or other private interest of the public servant or of any other person or firm associated with the public servant; provided, however, that this shall not prohibit any public servant from disclosing any information concerning conduct which the public servant knows or reasonably believes to involve waste, inefficiency, corruption, criminal activity or conflict of interest.

5. No public servant shall accept any valuable gift, as defined by rule of the board, from any person or firm which such public servant knows is or intends to become engaged

in business dealings with the city, except that nothing contained herein shall prohibit a public servant from accepting a gift which is customary on family and social occasions.

6. No public servant shall, for compensation, represent private interests before any city agency or appear directly or indirectly on behalf of private interests in matters involving the city. For a public servant who is not a regular employee, this prohibition shall apply only to the agency served by the public servant.

7. No public servant shall appear as attorney or counsel against the interests of the city in any litigation to which the city is a party, or in any action or proceeding in which the city, or any public servant of the city, acting in the course of official duties, is a complainant, provided that this paragraph shall not apply to a public servant employed by an elected official who appears as attorney or counsel for that elected official in any litigation, action or proceeding in which the elected official has standing and authority to participate by virtue of his or her capacity as an elected official, including any part of a litigation, action or proceeding prior to or at which standing or authority to participate is determined. This paragraph shall not in any way be construed to expand or limit the standing or authority of any elected official to participate in any litigation, action or proceeding, nor shall it in any way affect the powers and duties of the corporation counsel. For a public servant who is not a regular employee, this prohibition shall apply only to the agency served by the public servant.

8. No public servant shall give opinion evidence as a paid expert against the interests of the city in any civil litigation brought by or against the city. For a public servant who is not a regular employee, this prohibition shall apply only to the agency served by the public servant.

9. No public servant shall,

(a) coerce or attempt to coerce, by intimidation, threats or otherwise, any public servant to engage in political activities, or

(b) request any subordinate public servant to participate in a political campaign. For purposes of this subparagraph, participation in a political campaign shall include managing or aiding in the management of a campaign, soliciting votes or canvassing voters for a particular candidate or performing any similar acts which are unrelated to the public servant's duties or responsibilities. Nothing contained herein shall prohibit a public servant from requesting a subordinate public servant to speak on behalf of a candidate, or provide information or perform other similar acts, if such acts are related to matters within the public servant's duties or responsibilities.

10. No public servant shall give or promise to give any portion of the public servant's compensation, or any money, or valuable thing to any person in consideration of having been or being nominated, appointed, elected or employed as a public servant.

11. No public servant shall, directly or indirectly,

(a) compel, induce or request any person to pay any political assessment, subscription or contribution, under threat of prejudice to or promise of or to secure advantage in rank, compensation or other job-related status or function.

(b) pay or promise to pay any political assessment, subscription or contribution in consideration of having been or being nominated, elected or employed as such public servant or to secure advantage in rank, compensation or other job-related status or function, or

(c) compel, induce or request any subordinate public servant to pay any political assessment, subscription or contribution.

12. No public servant, other than an elected official, who is a deputy mayor, or head of an agency or who is charged with substantial policy discretion as defined by rule of the board, shall directly or indirectly request any person to make or pay any political assessment, subscription or contribution for any candidate for an elective office of the city or for any elected official who is a candidate for any elective office; provided that nothing contained in this paragraph shall be construed to prohibit such public servant from speaking on behalf of any such candidate or elected official at an occasion where a request for a political assessment, subscription or contribution may be made by others.

13. No public servant shall receive compensation except from the city for performing any official duty or accept or receive any gratuity from any person whose interests may be affected by the public servant's official action.

14. No public servant shall enter into any business or financial relationship with another public servant who is a superior or subordinate of such public servant.

15. No elected official, deputy mayor, deputy to a citywide or boroughwide elected official, head of an agency, or other public servant who is charged with substantial policy discretion as defined by rule of the board may be a member of the national or state committee of a political party, serve as an assembly district leader of a political party or serve as the chair or as an officer of the county committee or county executive committee of a political party, except that a member of the council may serve as an assembly district leader or hold any lesser political office as defined by rule of the board.

c. This section shall not prohibit:

1. an elected official from appearing without compensation before any city agency on behalf of constituents or in the performance of public official or civic obligations;

2. a public servant from accepting or receiving any benefit or facility which is provided for or made available to citizens or residents, or classes of citizens or residents, under housing or other general welfare legislation or in the exercise of the police power;

3. a public servant from obtaining a loan from any financial institution upon terms and conditions available to members of the public;

4. any physician, dentist, optometrist, podiatrist, pharmacist, chiropractor or other person who is eligible to provide services or supplies under title eleven of article five of the social services law and is receiving any salary or other compensation from the city treasury, from providing professional services and supplies to persons who are entitled to benefits under such title, provided that, in the case of services or supplies provided by those who perform audit, review or other administrative functions pursuant to the provisions of such title, the New York state department of health reviews and approves payment for such services or supplies and provided further that there is no conflict with their official duties; nothing in this paragraph shall be construed to authorize payment to such persons under such title for services or supplies furnished in the course of their employment by the city;

5. any member of the uniformed force of the police department from being employed in the private security field, provided that such member has received approval from the police commissioner therefor and has complied with all rules and regulations promulgated by the police commissioner relating to such employment;

6. a public servant from acting as attorney, agent, broker, employee, officer, director or consultant for any not-for-profit corporation, or association, or other such entity which operates on a not-for-profit basis, interested in business dealings with the city, provided that:

(a) such public servant takes no direct or indirect part in such business dealings;

(b) such not-for-profit entity has no direct or indirect interest in any business dealings with the city agency in which the public servant is employed and is not subject to supervision, control or regulation by such agency, except where it is determined by the head of an agency, or by the mayor where the public servant is an agency head, that such activity is in furtherance of the purposes and interests of the city;

(c) all such activities by such public servant shall be performed at times during which the public servant is not required to perform services for the city; and

(d) such public servant receives no salary or other compensation in connection with such activities;

7. a public servant, other than elected officials, employees in the office of property

management of the department of housing preservation and development, employees in the department of citywide administrative services who are designated by the commissioner of such department pursuant to this paragraph, and the commissioners, deputy commissioners, assistant commissioners and others of equivalent ranks in such departments, or the successors to such departments, from bidding on and purchasing any city-owned real property at public auction or sealed bid sale, or from purchasing any city-owned residential building containing six or less dwelling units through negotiated sale, provided that such public servant, in the course of city employment, did not participate in decisions or matters affecting the disposition of the city property to be purchased and has no such matters under active consideration. The commissioner of citywide administrative services shall designate all employees of the department of citywide administrative services whose functions relate to citywide real property matters to be subject to this paragraph; or

8. a public servant from participating in collective bargaining or from paying union or shop fees or dues or, if such public servant is a union member, from requesting a subordinate public servant who is a member of such union to contribute to union political action committees or other similar entities.

d. Post-employment restrictions.

1. No public servant shall solicit, negotiate for or accept any position (i) from which, after leaving city service, the public servant would be disqualified under this subdivision, or (ii) with any person or firm who or which is involved in a particular matter with the city, while such public servant is actively considering, or is directly concerned or personally participating in such particular matter on behalf of the city.

2. No former public servant shall, within a period of one year after termination of such person's service with the city, appear before the city agency served by such public servant; provided, however, that nothing contained herein shall be deemed to prohibit a former public servant from making communications with the agency served by the public servant which are incidental to an otherwise permitted appearance in an adjudicative proceeding before another agency or body, or a court, unless the proceeding was pending in the agency served during the period of the public servant's service with that agency. For the purposes of this paragraph, the agency served by a public servant designated by a member of the board of estimate to act in the place of such member as a member of the board of estimate, shall include the board of estimate.

3. No elected official, nor the holder of the position of deputy mayor, director of the office of management and budget, commissioner of citywide administrative services, corporation counsel, commissioner of finance, commissioner of investigation or chair of the city planning commission shall, within a period of one year after termination of such person's employment with the city, appear before any agency in the branch of city government served by such person. For the purposes of this paragraph, the legislative branch of the city consists of the council and the offices of the council, and the executive

branch of the city consists of all other agencies of the city, including the office of the public advocate.

4. No person who has served as a public servant shall appear, whether paid or unpaid, before the city, or receive compensation for any services rendered, in relation to any particular matter involving the same party or parties with respect to which particular matter such person had participated personally and substantially as a public servant through decision, approval, recommendation, investigation or other similar activities.

5. No public servant shall, after leaving city service, disclose or use for private advantage any confidential information gained from public service which is not otherwise made available to the public; provided, however, that this shall not prohibit any public servant from disclosing any information concerning conduct which the public servant knows or reasonably believes to involve waste, inefficiency, corruption, criminal activity or conflict of interest.

6. The prohibitions on negotiating for and having certain positions after leaving city service, shall not apply to positions with or representation on behalf of any local, state or federal agency.

7. Nothing contained in this subdivision shall prohibit a former public servant from being associated with or having a position in a firm which appears before a city agency or from acting in a ministerial matter regarding business dealings with the city.

e. Allowed positions.

A public servant or former public servant may hold or negotiate for a position otherwise prohibited by this section, where the holding of the position would not be in conflict with the purposes and interests of the city, if, after written approval by the head of the agency or agencies involved, the board determines that the position involves no such conflict. Such findings shall be in writing and made public by the board.

§2605. Reporting.

No public servant shall attempt to influence the course of any proposed legislation in the legislative body of the city without publicly disclosing on the official records of the legislative body the nature and extent of any direct or indirect financial or other private interest the public servant may have in such legislation.

§2606. Penalties.

a. Upon a determination by the board that a violation of section twenty-six hundred four or twenty-six hundred five of this chapter, involving a contract work, business, sale or transaction, has occurred, the board shall have the power, after consultation with the head

of the agency involved, or in the case of an agency head, with the mayor, to render forfeit and void the transaction in question.

b. Upon a determination by the board that a violation of section twenty-six hundred four or twenty-six hundred five of this chapter has occurred, the board, after consultation with the head of the agency involved, or in the case of an agency head, with the mayor, shall have the power to impose fines of up to twenty-five thousand dollars, and to recommend to the appointing authority, or person or body charged by law with responsibility for imposing such penalties, suspension or removal from office or employment. [Eff. 11/2/2010]

b-1. In addition to the penalties set forth in subdivisions a and b of this section, the board shall have the power to order payment to the city of the value of any gain or benefit obtained by the respondent as a result of the violation in accordance with rules consistent with subdivision h of section twenty-six hundred three. [Eff. 11/2/2010]

c. Any person who violates section twenty-six hundred four or twenty-six hundred five of this chapter shall be guilty of a misdemeanor and, on conviction thereof, shall forfeit his or her public office or employment. Any person who violates paragraph ten of subdivision b of section twenty-six hundred four, on conviction thereof, shall additionally be forever disqualified from being elected, appointed or employed in the service of the city. A public servant must be found to have had actual knowledge of a business dealing with the city in order to be found guilty under this subdivision, of a violation of subdivision a of section twenty-six hundred four of this chapter.

d. Notwithstanding the provisions of subdivisions a, b and c of this section, no penalties shall be imposed for a violation of paragraph two of subdivision b of section twenty-six hundred four unless such violation involved conduct identified by rule of the board as prohibited by such paragraph.

§2607. Gifts by lobbyists.

Complaints made pursuant to subchapter three of chapter two of title three of the administrative code[1] shall be made, received, investigated and adjudicated in a manner consistent with investigation and adjudication of conflicts of interest pursuant to this chapter and chapter thirty-four.

[1] *This subchapter, § 3-224 through § 3-228 of the Administrative Code, is set forth in Appendix A herein.*

Conflicts of Interest

Rules of The Board

Revised: March 2014

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RULES OF THE BOARD
Conflicts of Interest

RULES OF THE CITY OF NEW YORK
TITLE 53

Chapter 1: *Conflicts of Interest*

§1-01 Valuable Gifts.

(a) For the purposes of Charter §2604(b)(5), a "valuable gift" means any gift to a public servant which has a value of $50.00 or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form. Two or more gifts to a public servant shall be deemed to be a single gift for purposes of this subdivision and Charter §2604(b)(5) if they are given to the public servant within a twelve-month period under one or more of the following circumstances: (1) they are given by the same person; and/or (2) they are given by persons who the public servant knows or should know are (i) relatives or domestic partners of one another; or (ii) are directors, trustees, or employees of the same firm or affiliated firms.

(b) As used in subdivision (a) of this section: (1) "relative" shall mean a spouse, child, grandchild, parent, sibling, and grandparent; a parent, domestic partner, child, or sibling of a spouse or domestic partner; and a spouse or domestic partner of a parent, child, or sibling; (2) firms are "affiliated" if one is a subsidiary of the other or if they have a parent firm in common or if they have a stockholder in common who owns at least 25 percent of the shares of each firm; (3) "firm," "spouse," and "ownership interest" shall have the meaning ascribed to those terms in section 2601 of the Charter; (4) "domestic partner" means a domestic partner as defined in New York City Administrative Code §1-112(21).

(c) For the purposes of Charter §2604(b)(5), a public servant may accept gifts that are customary on family or social occasions from a family member or close personal friend who the public servant knows is or intends to become engaged in business dealings with the City, when:

(1) it can be shown under all relevant circumstances that it is the family or personal relationship rather than the business dealings that is the controlling factor; and

(2) the public servant's receipt of the gift would not result in or create the appearance of:

(i) using his or her office for private gain;

(ii) giving preferential treatment to any person or entity;

(iii) losing independence or impartiality; or

(iv) accepting gifts or favors for performing official duties.

(d) For the purposes of Charter §2604(b)(5), a public servant may accept awards, plaques and other similar items which are publicly presented in recognition of public service, provided that the item or items have no substantial resale value.

(e) For the purposes of Charter §2604(b)(5), a public servant may accept free meals or refreshments in the course of and for the purpose of conducting City business under the following circumstances:

(1) when offered during a meeting which the public servant is attending for official reasons;

(2) when offered at a company cafeteria, club or other setting where there is no public price structure and individual payment is impractical;

(3) when a meeting the public servant is attending for official reasons begins in a business setting but continues through normal meal hours in a restaurant, and a refusal to participate and/or individual payment would be impractical;

(4) when the free meals or refreshments are provided by the host entity at a meeting held at an out-of-the-way location, alternative facilities are not available and individual payment would be impractical; and

(5) when the public servant would not have otherwise purchased food and refreshments had he or she not been placed in such a situation while representing the interests of the City.

(f) For the purposes of Charter §2604(b)(5), a public servant may:

(1) accept meals or refreshments when participating as a panelist or speaker in a professional or educational program and the meals or refreshments are provided to all panelists;

(2) be present at a professional or educational program as a guest of the sponsoring organization;

(3) be a guest at ceremonies or functions sponsored or encouraged by the City as a matter of City policy, such as, for example, those involving housing, education, legislation or government administration;

(4) attend a public affair of an organization composed of representatives of business, labor, professions, news media or organizations of a civic, charitable or community nature, when invited by the sponsoring organization, provided that this exception does not apply when the invitation is from an organization which has business

dealings, as defined in Charter Section 2601(8), with, or a matter before, the public servant's agency;

(5) be a guest at any function or occasion where the attendance of the public servant has been approved in writing as in the interests of the City, in advance where practicable or within a reasonable time thereafter, by the employee's agency head or by a deputy mayor if the public servant is an agency head.

(g) For the purposes of Charter §2604(b)(5), a public servant who is an elected official or a member of the elected official's staff authorized by the elected official may attend a function given by an organization composed of representatives of business, labor, professions, news media or organizations of a civic, charitable or community nature, when invited by the sponsoring organization. For the purpose of this subdivision, the authorizing elected official for the central staff of the council is the speaker of the council.

(h) (1) For the purposes of Charter §2604(b)(5), a public servant's acceptance of travel-related expenses from a private entity can be considered a gift to the City rather than to the public servant, when:

(i) the trip is for a City purpose and therefore could properly be paid for with City funds;

(ii) the travel arrangements are appropriate to that purpose; and

(iii) the trip is no longer than reasonably necessary to accomplish the business which is its purpose.

(2) To avoid an appearance of impropriety, it is recommended that for public servants who are not elected officials, each such trip and the acceptance of payment therefor be approved in advance and in writing by the head of the appropriate agency, or if the public servant is an agency head, by a deputy mayor.

(i) A public servant should not accept a "valuable gift," as defined herein, from any person or entity engaged in business dealings with the City. If the public servant receives such valuable gift, he or she should return the gift to the donor. If that is not practical, the public servant should report the receipt of a valuable gift to the inspector general of the public servant's agency, who shall determine the appropriate disposition of the gift. Nothing in this section shall be deemed to authorize a public servant to act in violation of any applicable laws, including the criminal law, City agency rules, or Mayoral Executive Orders (including, but not limited to, Executive Order No. 16 of 1978 (as amended)), which may impose additional requirements to report gifts and offers of gifts to the agency's inspector general, whether or not a gift is accepted or returned.

(j) City agencies are encouraged to establish rules concerning gifts for their own employees which may not be less restrictive than as set forth in Charter §2604(b)(5) as interpreted by this section.

(k) (1) Nothing in this section shall be deemed to authorize a public servant to accept a gift of any value in violation of any other applicable federal, state or local law, rule or regulation, including but not limited to the New York State Penal Law.

(2) The provisions of this section shall be read in conjunction with the provisions of Charter §2604(b)(2) and §1-13 of the Rules of the Board (prohibiting certain conduct that conflicts with the proper discharge of a public servant's official duties); §2604(b)(3) of the Charter (prohibiting the use or attempted use of one's City position for private gain); and §2604(b)(13) of the Charter (prohibiting receipt by public servants of compensation except from the City for performing any official duty and prohibiting receipt of gratuities).

§ 1-02 Public Servants Charged with Substantial Policy Discretion.

(a) For purposes of Charter § 2604(b)(12) and § 2604(b)(15), a public servant is deemed to have substantial policy discretion if he or she has major responsibilities and exercises independent judgment in connection with determining important agency matters. Public servants with substantial policy discretion include, but are not limited to: agency heads, deputy agency heads, assistant agency heads, members of boards and commissions, and public servants in charge of any major office, division, bureau or unit of an agency. Agency heads shall:

(1) designate by title, or position, and name the public servants in their agencies who have substantial policy discretion as defined by this section;

(2) file annually with the Conflicts of Interest Board, no later than February 28 of each year, a list of such titles or positions and the names of the public servants holding them; and

(3) notify these public servants in writing of the restrictions set forth in Charter § 2604(b)(12) and § 2604(b)(15) to which they are subject.

If the Conflicts of Interest Board determines that the title, position, or name of any public servant should be added to or deleted from the list supplied by an agency, the Board shall notify the head of the agency involved of that addition or deletion; the agency shall in turn promptly notify the affected public servant of the change.

(b) Each agency may make available for public inspection a copy of the most recent list filed by the agency, with any additions or deletions made by the Board pursuant to subdivision (a) of this section.

§1-03 Definition of Lesser Political Office than that of Assembly District Leader which may be Held by Members of the City Council.

For purposes of Charter §2604(b)(15), the definition of a political office which is a "lesser

political office" than that of assembly district leader includes:

(a) membership on a county committee;

(b) membership on a county executive committee;

(c) membership on a state committee; and

(d) membership on a national committee.

§1-04 Definition of a Firm Whose Shares are Publicly Traded.

For purposes of Charter §2604(a)(1)(b), "a firm whose shares are publicly traded" means a firm which offers or sells its shares to the public and is listed and registered with the Securities and Exchange Commission for public trading on national securities exchanges or over-the-counter markets.

§1-05 Definition of Blind Trust.

(a) For purposes of Charter §2601(6), the term "blind trust" means a trust in which a public servant, or the public servant's spouse, domestic partner, as defined in New York City Administrative Code §1-112(21), or unemancipated child, has a beneficial interest, the holdings and sources of income of which the public servant, the public servant's spouse, domestic partner, as defined in New York City Administrative Code §1-112(21), and unemancipated child have no knowledge, and which meets the following requirements:

(1) The trust is under the management and control of a trustee who is a bank or trust company authorized to exercise fiduciary powers, a licensed attorney, a certified public accountant, a broker or an investment advisor who is:

(i) independent of any interested party;

(ii) is not or has not been an employee of any interested party or any firm in which any interested party has a substantial investment, and is not a partner of, or involved in any joint venture or other investment with any interested party; and

(iii) is not a relative of any party.

(2) The trust instrument provides that:

(i) the trustee in the exercise of his or her authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;

(ii) the trust tax return shall be prepared by the trustee or his or her designee and such return and any information relating thereto (except as such information

may be needed by an interested party in order to complete a personal tax return) shall not be disclosed to any interested party;

(iii) no interested party shall receive any report on the holdings and sources of income of the trust, except periodic reports with respect to the total cash value of the trust or the net income or loss of the trust;

(iv) there shall be no communications, direct or indirect, between the trustee and an interested party with respect to the trust unless such communication is in writing. Except as provided elsewhere in this subdivision, such written communications shall be limited to the general financial interest and needs of the interested party, including requests for distribution of cash or other unspecified assets of the trust;

(v) the interested parties shall make no effort to obtain, and shall take appropriate action to avoid, receiving information with respect to the holdings and the sources of income of the trust including obtaining a copy of any trust tax return filed or any information relating thereto except as such information may be needed by an interested party in order to complete a personal tax return.

(3) For purposes of this subdivision, the term "interested party" means a public servant, or the public servant's spouse, domestic partner, as defined in New York City Administrative Code §1-112(21), or unemancipated child.

(b) *Existing trusts.*

(1) Any trust existing as of the effective date of these regulations shall be deemed a blind trust for purposes of these regulations if the trust instrument is amended to comply with the requirements of paragraph 2 of subdivision (a) of this section and the trustee of the trust meets the requirements of paragraph 1 of subdivision (a) of such section, or, in the case of a trust instrument which does not by its terms permit amendment, if the trustee and the trust beneficiary (or, if the trust beneficiary is a dependent child, any other interested party) agree in writing that the trust shall be administered in accordance with the requirements of paragraph 2 of subdivision (a) of this section and the trustee of the trust meets the requirement of paragraph 1 of subdivision (a) of this section.

(c) *Establishment and dissolution of blind trust.*

(1) The preparer of a blind trust instrument, or agreement entered into pursuant to subdivision (a) of this section shall, within thirty days of the establishment of such trust or agreement, file an affidavit with the Conflicts of Interest Board stating that the blind trust instrument or trust as agreed to be administered pursuant to agreement, as the case may be, conforms to the requirements set forth in paragraph 2 of subdivision (a) of this section and that the trustee meets the requirements of paragraph 1 of subdivision

(a) of such section.

(2) Within thirty days of the dissolution of blind trust, the beneficiary of such trust or other interested party shall file an affidavit with the Conflicts of Interest Board stating that such blind trust has been dissolved and identifying the date of such dissolution.

§1-06 Definition of Primary Employment with the City.

(a) For purposes of Charter §2601(20), "primary employment with the City" means the employment of those public servants who receive compensation from the City and are employed on a full-time basis or the equivalent or who are regularly scheduled to work the equivalent of 20 or more hours per week.

(b) "Primary employment with the City" shall not mean employment of:

(i) members of the City Planning Commission, except for the Chair;

(ii) interns employed in connection with a program at an educational institution or full-time students;

(iii) persons employed for a period not to exceed six consecutive months; or

(iv) persons employed on special projects, investigations or programs, in excess of six months but of limited duration, as the Board shall determine.

(c) For purposes of Charter §2601(20), the term "compensation" shall not mean reimbursement for expenses or per diem payments to members of commissions and boards.

§1-07 Definition of Agency Served by a Former Public Servant.

For the purposes of Charter §2604(d)(2), when a former public servant has served more than one agency within one year prior to the termination of such person's service with the City, the former public servant shall not appear before each such City agency for a period of one year after the termination of service from each such agency.

§1-08 Procedures for Obtaining an Extension of Time Within Which to File a Financial Disclosure Report.

(a) *Bases for obtaining an extension of time to file.*

(1) A person required to file a financial disclosure report with the Conflicts of Interest Board (the "Board") pursuant to §12-110 of the Administrative Code of the City of New York (the "Administrative Code") may be granted an extension of time within which to file a report or portion thereof upon a showing of justifiable cause or undue hardship.

(2) A finding of justifiable cause or undue hardship shall not be based on periods of annual leave, attendance at conferences or meetings, or other pre-scheduled or voluntary absences from work.

(b) *General procedures.*

(1) A request for an extension of time within which to file a financial disclosure report or portions thereof which is due by May first shall be postmarked, or delivery made to the Board, no later than April fifteenth of the year in which such report is to be filed. Where Administrative Code §12-110 requires the filing of such report at a time other than on or before May first, a request for extension of time within which to file shall be postmarked, or delivery made to the Board, no later than fifteen days prior to such filing deadline.

(2) The request for an extension of time shall be mailed to the Board by certified mail or shall be delivered by hand and, upon request, a receipt may be issued upon acceptance of such delivery.

(3) The request for an extension of time within which to file a financial disclosure report or portions thereof due to justifiable cause or undue hardship shall contain the following information:

(i) The name of the person making such request and his or her home address and work address;

(ii) The title of the position or job classification and name of the agency by which he or she is employed;

(iii) Explanation of justifiable cause or undue hardship in the form of a written statement with copies of any necessary supporting documents such person wishes the Board to consider;

(iv) Where the filer is seeking an extension to answer a portion of the report on the grounds that certain information is not yet available, the request shall state what information is not available. Documentation, if available, shall be provided in support of such request (for example, a copy of an application to the Internal Revenue Service for an automatic extension of time within which to file one's income tax return); and

(v) The additional time requested and the date by which such person intends to comply with the filing requirements.

(c) *Time limitations upon extensions.*

(1) The Board shall not grant an extension of time to file a financial disclosure

report or portions thereof due to justifiable cause or undue hardship for a period greater than four months from the original date the report was due.

(2) An individual who is seeking an extension of time to answer a portion of the financial disclosure report shall nevertheless file his or her report on or before May first, or at such other time required by Administrative Code §12-110, containing all the information required by such report, except for that information which is not available. A supplemental statement providing information not previously available shall be filed on the date set by the Board. Failure to file such supplemental statement, or the filing of an incomplete or deficient supplemental statement, shall subject the reporting person to the penalties set forth in Administrative Code §12-110(h).

Board action.

(1) Upon receipt of a timely request for an extension of time within which to file a financial disclosure report or portions thereof, the Board shall review the material filed to determine whether an extension is appropriate.

(2) The Board may in its discretion request, in writing, additional information from the person making the request. Such additional information shall be submitted to the Board within ten business days of the date of the Board's request. In the event the Board does not receive the additional information within ten business days, it may make a determination on the basis of the information it has available.

(3) The Board shall give written notice of its determination to the person making the request.

(i) In the event the request for an extension of time within which to file a financial disclosure report or portions thereof is approved, such report shall be filed on or before the date indicated by the Board in its determination.

(ii) In the event the request for an extension of time within which to file a financial disclosure report or portions thereof is denied, such report shall be filed before or on the due date set forth in Administrative Code §12-110 or such date as may thereafter be established by the Board in its determination.

(4) The Board may delegate to its Executive Director the authority to act pursuant to this rule.

§1-09 Prohibited Appearances Before City Agencies by City Planning Commissioners.

(a) *Definitions.*

Appear.

"Appear," in accordance with Charter Section 2601(4), means to make any communication, for compensation, other than those involving ministerial matters.

Indirect Appearance.

A member of the Commission will be deemed to "appear indirectly" before a City agency concerning a particular matter if he or she communicates indirectly with such agency, by, for example, having another person, including but not limited to a member of the Commissioner's firm, represent to the agency orally or in writing what the Commissioner's views are on such matter. An indirect appearance will not include, in and of itself and without more, the presentation of project plans or documents bearing the Commissioner's name or seal.

Ministerial.

A "ministerial" matter, in accordance with Charter Section 2601(15), shall mean an administrative act, including the issuance of a license, permit or other permission by the City which is carried out in a prescribed manner and which does not involve substantial personal discretion.

(b) *Prohibited appearances.*

(1) For the purposes of Charter Section 192(b), no member of the City Planning Commission (the Commission) while serving as a member, shall appear directly or indirectly before: the Mayor and Deputy Mayors and their staffs; the Mayor's Office of Planning and Coordination; the offices of the Borough Presidents; the City Council; community boards; the Art Commission; the Office of Environmental Coordination; the Landmarks Preservation Commission; and the Hardship Appeals Panel to which certain determinations of the Landmarks Preservation Commission may be appealed.

(2) For the purposes of Charter Section 192(b), no member of the Commission, while serving as a member, shall appear directly or indirectly:

(i) before the Department of Buildings on any matter involving zoning or land use, provided that a member of the Commission shall not be barred from filing plans with the Department of Buildings or from making appearances related to the filing of such plans, except that appearances in reconsideration proceedings before a borough supervisor or the Commissioner of the Department of Buildings shall be prohibited;

(ii) before the Board of Standards and Appeals on any matter involving zoning or land use;

(iii) before the Department of Consumer Affairs with respect to licenses and permits which involve land use;

(iv) before the Department of Business Services (DBS), and any local

development corporation that has entered into a contract with the City to perform services on behalf of DBS, on any matter involving zoning or land use;

(v) before any City agency with respect to planning, environmental, financial or other aspects of a project that can reasonably be expected to come before the Commission for a statutory approval or other formal action, including, but not limited to action on major concessions, franchises, the acquisition, use or disposition of City-owned land, an application for a zoning change or special permit, or any action before the Commission pursuant to the Uniform Land Use Review Procedure.

§1-10 Retention of Financial Disclosure Reports.

(a) Definitions.

As used in this Rule, the following terms shall have the respective meanings set forth below:

(1) "Administrative Code" shall mean the Administrative Code of the City of New York.

(2) "Board" shall mean the New York City Conflicts of Interest Board, established pursuant to §2602 of the New York City Charter.

(3) "Financial Disclosure Report" shall mean any financial disclosure report filed or on file with the Board pursuant to §12-110 of the Administrative Code, including reports previously filed with the Office of the City Clerk and transferred to the Board's custody.

(4) "Prior Financial Disclosure Report" shall mean any Financial Disclosure Report which, as of the effective date of this Rule, has been retained by the Board for a period in excess of six years from December 31 of the calendar year to which such Report relates.

(b) Retention of Financial Disclosure Reports.

(1) Whenever a Financial Disclosure Report is filed with the Board, it shall be retained by the Board for a period commencing on the date such Report was filed with the Board and expiring on the sixth anniversary of December 31 of the calendar year to which such Report relates. The period during which the Board is required to retain a Financial Disclosure Report, pursuant to this paragraph (1), is hereinafter referred to as the "Required Retention Period" for such Report.

(2) (i) Except as provided in subparagraphs (ii) and (iii) below, upon expiration of the Required Retention Period for a Financial Disclosure Report, pursuant to paragraph (1) above, the Board shall either (i) destroy such report, or (ii) if requested by the individual

who filed such report, return such report to such individual. Any request that the Board return such report must be made in writing to the Board not later than 10 days prior to the expiration of such period.

(ii) Notwithstanding the provisions of subparagraph (i), if a law enforcement agency requests that the Board retain a Financial Disclosure Report for an additional period of time beyond the expiration of its required retention period, for purposes of an ongoing investigation, the Board shall retain such report for such additional period, provided the request is made in writing and is submitted to the Board not later than 10 days prior to the expiration of such required retention period. Upon expiration of such additional period of time, the Board shall either (i) destroy such report, or (ii) if requested by the individual who filed such report, return such report to such individual. Any such request must be made in accordance with the provision of subparagraph (i) above.

(iii) Notwithstanding the provisions of subparagraph (i), all reports shall be retained by the Board for a period of not less than one year from the date such report was filed with the Board.

(3) In accordance with the provisions of subdivision (e) of Administrative Code §12-110, as amended by Local Law No. 93 of 1992, the retention period established in paragraph (1) is intended to supersede, and shall be observed by the Board in lieu of, the retention periods set forth in such subdivision (e).

(4) Notwithstanding any other provision of this section, the Board shall be entitled, upon the effective date of the Rule, to destroy immediately all Prior Financial Disclosure Reports then in its possession.

§1-11 Adjustment of Dollar Amount in Definition of "Ownership Interest."

Effective as of January 1, 2014, the dollar amount in the definition of "Ownership Interest" in subdivision (16) of § 2601 of the New York City Charter shall be adjusted from $44,000 to $48,000.

§1-12 Definition of "Particular Matter" for Tax Commissioners and Certain Other Public Servants in the Tax Commission, Department of Finance, Comptroller's Office, and Law Department in Relation to Real Estate Tax Assessments.

(a) Pursuant to City Charter §2604(d)(4), no former public servant who has served on or been employed by the Tax Commission, the Department of Finance, the Comptroller's Office, or the Law Department shall appear, whether paid or unpaid, before the City, or receive compensation for any services rendered, in relation to a proceeding involving a tax year or the immediately subsequent tax year for a given parcel of property with respect to which the public servant engaged in one or more of the activities described in subdivision (b).

(b) Subdivision (a) shall apply with respect to a parcel and tax year about which the former public servant: (1) heard an application for correction of assessment for taxation ("protest") from any real estate tax assessment; or (2) reviewed any proposal to settle or offer to reduce the assessment with respect to any such protest; or (3) participated personally and substantially in (i) the preparation or review of an appraisal, (ii) the review, analysis, or recommendation of a real estate tax assessment, or (iii) the conducting of a tax *certiorari* proceeding, which shall include but not be limited to its negotiation, settlement, trial, or review.

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

(a) Except as provided in subdivision (c) of this section, it shall be a violation of City Charter §2604(b)(2) for any public servant to pursue personal and private activities during times when the public servant is required to perform services for the City.

(b) Except as provided in subdivision (c) of this section, it shall be a violation of City Charter §2604(b)(2) for any public servant to use City letterhead, personnel, equipment, resources, or supplies for any non-City purpose.

(c) (1) A public servant may pursue a personal and private activity during normal business hours and may use City equipment, resources, personnel, and supplies, but not City letterhead, if

(i) the type of activity has been previously approved for employees of the public servant's agency by the Conflicts of Interest Board, upon application by the agency head and upon a determination by the Board that the activity furthers the purposes and interests of the City; and

(ii) the public servant shall have received approval to pursue such activity from the head of his or her agency.

(2) In any instance where a particular activity may potentially directly affect another City agency, the employee must obtain approval from his or her agency head to participate in such particular activity. The agency head shall provide written notice to the head of the potentially affected agency at least 10 days prior to approving such activity.

(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.

(e) Nothing contained in this section shall preclude the Conflicts of Interest Board from finding that conduct other than that proscribed by subdivisions (a) through (d) of this section violates City Charter §2604(b)(2), although the Board may impose a fine for a violation of City Charter §2604(b)(2) only if the conduct violates subdivision (a), (b), (c), or (d) of this section. The Board may not impose a fine for violation of subdivision (d) where the public servant induced or caused another public servant to engage in conduct that violates City Charter §2604(b)(2), unless such other public servant violated subdivision (a), (b), or (c) of this section.

§ 1-14 City Employees Holding Policymaking Positions for Purposes of the Financial Disclosure Law.

For purposes of Administrative Code §12-110(b)(3)(a)(3), a City employee shall be deemed to hold a policymaking position, and therefore be required to file a Financial Disclosure Report, if such employee is charged with substantial policy discretion within the meaning of Section 1-02 of Title 53 of the Rules of the City of New York.

§ 1-15 City Employees Whose Duties Involve the Negotiation, Authorization, or Approval of Contracts and of Certain Other Matters.

(a) For purposes of Administrative Code §12-110(b)(3)(a)(4), a City employee shall be deemed to have duties that involve the negotiation, authorization, or approval of contracts, leases, franchises, revocable consents, concessions, and applications for zoning changes, variances, and special permits if the employee performs any of the following duties:

(1) Determines the substantive content of a request for proposals or other bid request or change order;

(2) Makes a determination as to the responsiveness of a bid or the responsibility of a vendor or bidder;

(3) Evaluates a bid;

(4) Negotiates or determines the substantive content of a contract, lease, franchise, revocable consent, concession, or application for a zoning change, variance, or special permit or change order;

(5) Recommends or determines whether or to whom a contract, lease, franchise, revocable consent, concession, or application for a zoning change, variance, or special permit or change order should be awarded or granted;

(6) Approves a contract, lease, franchise, revocable consent, or concession or change order on behalf of the City or any agency subject to Administrative Code §12-110; or

(7) Determines the content of or promulgates City procurement policies, rules, or regulations.

(b) Clerical personnel and other public servants who, in relation to the negotiation, authorization, or approval of contracts, leases, franchises, revocable consents, concessions, and applications for zoning changes, variances, and special permits, perform *only* ministerial tasks shall not be required to file a Financial Disclosure Report pursuant to Administrative Code §12-110(b)(3)(a)(4). For example, public servants who are under the supervision of others and are without substantial personal discretion, and who perform only clerical tasks (such as typing, filing, or distributing contracts, leases, franchises, revocable consents, concessions, or zoning changes, variances, or special permits or calendaring meetings or who identify potential bidders or vendors) shall not, on the basis of such tasks alone, be required to file a financial disclosure report. Similarly, public servants who write a request for proposals, bid request, change order, contract, lease, franchise, revocable consent, concession, or application for a zoning change, variance, or special permit or procurement policy, rule, or regulation under the direction of a superior but who do not determine the substantive content of the document shall not, on the basis of such tasks alone, be required to file a Financial Disclosure Report.

§ 1-16 Prohibited Gifts From Lobbyists and Exceptions Thereto.

(a) Pursuant to Administrative Code § 3-225, no person required to be listed on a statement of registration pursuant to § 3-213(c)(1) of the Administrative Code shall offer or give a gift to any public servant.

(b) For purposes of this section:

(1) the persons required to be listed on a statement of registration pursuant to § 3-213(c)(1) of the Administrative Code include (i) the lobbyist, (ii) the spouse or domestic partner of the lobbyist, (iii) the unemancipated children of the lobbyist, and (iv) if the lobbyist in an organization, the officers or employees of such lobbyist who engage in any lobbying activities or who are employed in such lobbyist's division that engages in lobbying activities and the spouse or domestic partner and unemancipated children of such officers or employees;

(2) the term "lobbyist" shall have the same meaning as used in § 3-211 of the Administrative Code;[1]

[1] *§ 3-211 of the Administrative Code is set forth in Appendix C herein.*

(3) the term "offer" shall include every (i) attempt or offer to give a gift, or (ii) attempt or offer to arrange for the making of a gift;

(4) The term "give" shall include every (i) tender of a gift, or (ii) action as an agent in the making of a gift, or (iii) arrangement for the making of a gift;

(5) the term "gift" shall include any gift which has any value whatsoever, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form.

(c) For purposes of Administrative Code § 3-225 and this section, the following gifts shall not be prohibited:

(1) *de minimis* promotional items having no substantial resale value such as pens, mugs, calendars, hats, and t-shirts which bear an organization's name, logo, or message in a manner which promotes the organization's cause;

(2) gifts that are customary on family or social occasions from a family member or close personal friend, when it can be shown under all relevant circumstances that it is the family or personal relationship rather than the lobbying activity that is the controlling factor and the public servant's receipt of the gift would not result in or create the appearance of:

(i) using his or her office for private gain;

(ii) giving preferential treatment to any person or entity;

(iii) losing independence or impartiality; or

(iv) accepting gifts or favors for performing official duties;

(3) awards, plaques, and other similar items which are publicly presented in recognition of public service, provided that the item or items have no substantial resale value;

(4) free meals or refreshments in the course of and for the purpose of conducting City business under the following circumstances;

(i) when offered during a meeting which the public servant is attending for official reasons;

(ii) when offered at a company cafeteria, club or other setting where there is no public price structure and individual payment is impractical

(iii) when a meeting the public servant is attending for official reasons begins in a business setting but continues through normal meal hours in a restaurant, and refusal to participate and/or individual payment would be impractical;

(iv) when the free meals or refreshments are provided by the host entity at a meeting held at an out-of-the-way location, alternative facilities are not available and individual payment would be impractical; or,

(v) when the public servant would not have otherwise purchased food and refreshments had he or she not been placed in such a situation while representing the interests of the City;

(5) meals or refreshments when participating as a panelist or speaker in a professional or educational program and the meals or refreshments are provided to all panelists;

(6) invitation to attendance at professional or educational programs as a guest of the sponsoring organization;

(7) invitation to attendance at ceremonies or functions sponsored or encouraged by the City as a matter of City policy, such as, for example, those involving housing, education, legislation or government administration;

(8) invitation to attendance at a public affair of an organization composed of representatives of business, labor, professions, news media or organizations of a civic, charitable or community nature, when invited by the sponsoring organization;

(9) invitation to attendance by a public servant who is an elected official, a member of the elected official's staff authorized by the elected official, or a member of the central staff for the council authorized by the speaker of the council at a function given by an organization composed of representatives of business, labor, professions, news media or organizations of a civic, charitable or community nature, when invited by the sponsoring organization;

(10) travel-related expenses from a private entity which is offered or given as a gift to the City rather than to the public servant, so long as: (i) the trip is for a City purpose and therefore could properly be paid for with City funds; (ii) the travel arrangements are appropriate for that purpose; and (iii) the trip is no longer than reasonably necessary to accomplish the business which is its purpose;

(d) Nothing in this section shall be deemed to authorize a person required to be listed on a statement of registration pursuant to § 3-213(c)(1) of the Administrative Code to offer or give a gift to any public servant in violation of any other applicable federal, state

or local law, rule or regulation, including but not limited to the New York State Lobbying Act.

Effective date: January 26, 2007

RULES OF THE CITY OF NEW YORK
VOLUME 12, TITLE 53

Chapter 2: *Procedural Rules for Hearings.*

§2-01 Initial Determination.

(a) *Notice.*

If the Board makes an initial determination, based on a complaint, investigation, or other information available to the Board, that there is probable cause to believe that a public servant (which for purposes of Charter §2603(h) includes a former public servant) has violated a provision of Chapter 68 of the City Charter, the Board shall notify the public servant of its determination in writing. The notice shall contain a statement of the facts upon which the Board relied for its determination of probable cause and a statement of the provisions of law allegedly violated. The notice shall afford the public servant an opportunity, either orally or in writing, to respond to, explain, rebut, or provide information concerning the allegations in such notice within fifteen days of service of the notice. The notice shall also inform the public servant of his or her right to be represented by counsel or any other person, and shall include a copy of the Board's procedural rules. A notice of initial determination shall not be required in a proceeding brought pursuant to Section 12-110 of the Administrative Code.

(b) *Request for a stay.*

In response to the Board's notice, the public servant may apply to the Board for a stay of the proceedings, for good cause shown. The Board may grant or deny such request in its sole discretion.

(c) *Admission of facts.*

If, in response to the Board's notice, the public servant admits to the facts contained therein or to a violation of the provisions of Chapter 68 of the City Charter and elects to forgo a hearing, the Board may, after consulting with the head of the agency served or formerly served by the public servant, or, in the case of an agency head, after consulting with the Mayor, issue an order finding a violation and imposing the penalties it deems appropriate under Chapter 68 of the City Charter, provided, however, that pursuant to Charter §2603(h)(3), the Board shall not impose penalties against members of the City Council, or public servants employed by the City Council or by members of the City Council, but may recommend to the City Council such penalties as the Board deems appropriate. When a penalty is recommended, the City Council shall report to the Board what action was taken.

(d) *No probable cause finding.*

If, after receipt of the public servant's response, the Board determines that there is no probable cause to believe that a violation has occurred, the Board shall dismiss the matter and inform the public servant in writing of its decision.

§2-02 Commencement of Formal Proceedings and Pleadings.

(a) *Determination of probable cause.*

If, after consideration of the public servant's response, the Board determines that there remains probable cause to believe that a violation of the provisions of Chapter 68 of the City Charter has occurred, and the public servant has not elected to forgo the hearing, the Board shall hold or direct a hearing to be held on the record to determine whether such violation has occurred.

If the public servant is subject to the jurisdiction of a state law provision or collective bargaining agreement which provides for the conduct of a disciplinary hearing by another body, the Board shall refer the matter to the appropriate entity. The hearing shall be conducted in accordance with the rules of that entity.

The Board may also refer a matter to the public servant's agency if the Board deems the violation to be minor or if other disciplinary charges are pending there against the public servant.

(b) *Petition.*

The Board shall institute formal proceedings by serving a petition on the public servant. The petition shall set forth the facts which, if proved, would constitute a violation of Chapter 68 of the City Charter or Section 12-110 of the Administrative Code, as well as

the applicable provisions thereof which are alleged to have been violated. The petition shall also advise the public servant of the public servant's rights to file an answer, to a hearing, to be represented at such hearing by counsel or any other person, and to cross-examine witnesses and present evidence.

(c) *Answer.*

(1) *General rule.*

The public servant shall answer the petition by serving an answer on the Board within eight days after service of the petition, unless a different time is fixed by the Board. The public servant shall serve the answer personally or by certified or registered mail, return receipt requested.

(2) *Form and contents of answer.*

The answer shall be in writing and shall contain specific responses, by admission, denial, or otherwise, to each allegation of the petition and shall assert all affirmative defenses, if any. The public servant may include in the answer matters in mitigation. The answer shall be signed and shall contain the full name, address, and telephone number of the public servant. If the public servant is represented, the representative's name, address, and telephone number shall also appear on the answer, which shall be signed by either the public servant or by his or her representative.

(3) *Effect of failure to answer.*

If the public servant fails to serve an answer, all allegations of the petition shall be deemed admitted and the Board shall proceed to hold a hearing in which prosecuting counsel shall submit for the record an offer of proof establishing the factual basis on which the Board may issue an order. If the public servant fails to respond specifically to any allegation or charge in the petition, such allegation or charge shall be deemed admitted.

(d) *Amendment of pleadings.*

Pleadings shall be amended as promptly as possible upon conditions just to all parties. If a pleading is to be amended less than twenty-five days before the commencement of the hearing, the amendment may be made only on consent of the parties or by leave of the Board, if the Board is conducting the hearing, or by leave of a Board member or Administrative Law Judge, if the Board member or Administrative Law Judge is conducting the hearing.

§2-03 Hearing.

(a) *Conduct of hearings generally.*

Hearings shall be conducted by the Board or, upon designation by the Board, by a member of the Board or the Chief Administrative Law Judge of the Office of Administrative Trials and Hearings (OATH), or such administrative law judge (ALJ) as the Chief Administrative Law Judge shall assign.

(b) *Subpoenas.*

Subpoenas requiring the attendance of a witness and subpoenas *duces tecum* requiring the production of books, papers, and other things may be issued only by (i) the Administrative Law Judge, where the hearing has been referred to OATH, or (ii) a member of the Board, where the hearing is conducted by the Board or by a member of the Board, upon application of a party or upon the Administrative Law Judge's or the Board member's own motion. In addition to or in lieu of these subpoenas, the Administrative Law Judge or the Board member may also issue an order directing the party or person under the control of a party to attend or produce.

(c) *Conduct of hearings by OATH.*

If the Board refers a hearing to OATH, a copy of the petition shall also be sent to OATH at the time the public servant is served with the petition. OATH shall conduct the hearing in accordance with its rules, as set forth in Title 48 of the Rules of the City of New York, except as otherwise provided by these Rules.

(d) *Conduct of hearings by the Board or by a Board member.*

(1) *Generally.*

The Board may hear a case or may designate a member of the Board to hear a case, make findings of fact and conclusions of law, preside over pre-hearing matters and adjournments, and make recommendations to the Board for the proposed disposition of the proceeding. When a hearing is conducted by the Board, the hearing shall be presided over by the Board's Chair or by his or her designee. The Board or Board member shall conduct the hearing, including such pre-hearing matters as conferences, discovery, and motion practice, in conformance with the rules and procedures of OATH, as set forth in Title 48 of the Rules of the City of New York, except as otherwise provided by these rules.

(2) *Disposition conferences and agreements.*

If disposition of the proceeding is to be discussed at a conference, the Board shall designate an individual, other than a Board member participating in the hearing, to conduct the conference. During disposition discussions, upon notice to the parties, the person conducting the conference may confer with each party and/or representative separately. Board members shall not be called to testify in any proceeding concerning

statements made at a disposition conference.

(3) *Order of proceedings.*

Prosecuting counsel shall have the burden of proof by the preponderance of the evidence, shall initiate the presentation of evidence, and may present rebuttal evidence. The public servant may introduce evidence after prosecuting counsel has completed his or her case. Opening statements, if any, shall be made first by prosecuting counsel. Closing statements, if any, shall be made first by the public servant. This order of proceedings may be modified at the discretion of the Board or Board member.

§2-04 Decisions and Orders.

(a) *Report to the Board.*

When a hearing has been conducted by either OATH or a member of the Board designated to hear the case, a report of recommended findings of fact and conclusions of law and recommendations for the disposition of the proceeding shall be issued and forwarded, along with the original transcript of the proceeding and all documents introduced into the record, to the Board for review and final action. The report shall not be made public. A copy of the report and recommendation shall be sent to all parties and their counsel or other representative in order to afford them the opportunity to comment before final action is taken by the Board. If prosecuting counsel or the public servant wishes to comment, he or she shall do so within ten days of service of the report and recommendation.

(b) *Finding of violation.*

If after the hearing and upon a consideration of all the evidence in the record of hearing, including comments, the Board finds that a public servant has engaged in conduct prohibited by Chapter 68 of the City Charter, the Board shall consult with the head of the agency served or formerly served by the public servant, or in the case of an agency head, consult with the Mayor. Where the Board finds a violation of Chapter 68 or section 12-110 of the Administrative Code, the Board shall state its final findings of fact and conclusions of law and issue an order imposing any penalties it deems appropriate under either statute. The order shall include notice of the public servant's right to appeal to the New York State Supreme Court. Alternatively, in the case of a violation of Chapter 68, the Board may state its findings and conclusions and recommend a penalty, if any, to the head of the agency served by the public servant or former public servant or, in the case of an agency head or former agency head, to the Mayor. Pursuant to Charter §2603(h)(3), the Board shall not impose penalties against members of the City Council, or public servants employed by the City Council or by members of the City Council, but may state its findings and conclusions and recommend to the City Council such penalties as the Board deems appropriate. When a penalty is recommended, the head of the agency, Mayor, or

City Council shall report to the Board what action was taken.

(c) *Consultation by agency.*

In instances where the Board does not hold a hearing and instead refers a matter to the public servant's agency, that agency shall consult with the Board prior to issuing its final decision.

(d) *Dismissals.*

If, after the hearing and upon consideration of the record, the Board finds that a public servant has not engaged in acts prohibited by Chapter 68 of the City Charter or section 12-110 of the Administrative Code, the Board shall state its findings of facts and conclusions of law and shall issue an order dismissing the petition. The order shall not be made public.

§2-05 General Matters.

(a) *Appearances before the Board.*

(1) A party may appear before the Board in person, by an attorney, or by a duly authorized representative. The person appearing for the party shall file a notice of appearance with the Board. The filing of any papers by an attorney or other representative who has not previously appeared shall constitute the filing of a notice of appearance by that person and shall conform to the requirements of paragraphs (2) and (4) of this subdivision.

(2) The appearance of a member in good standing of the bar of a court of general jurisdiction of any state or territory of the United States shall be indicated by the suffix "Esq." and the designation "Attorney for (person represented)." The appearance of any other person shall be indicated by the designation "Representative for (person represented)."

(3) Absent extraordinary circumstances, no application shall be made or argued by any attorney or other representative who has not filed a notice of appearance.

(4) A person may not file a notice of appearance on behalf of a party unless the person has been retained by that party to represent the party before the Board. Filing a notice of appearance constitutes a representation that the person appearing has been so retained.

(b) *Withdrawal and substitution of counsel.*

(1) An attorney who has filed a notice of appearance shall not withdraw from representation without the permission of the Board, upon application. Withdrawals shall

not be granted unless upon consent of the client or when other cause exists, as delineated in the applicable provisions of the Code of Professional Responsibility.*

(2) Notices of substitution of counsel served and filed more than twenty days prior to a hearing before the Board or before a member of the Board may be filed without leave of the Board or Board member. Notices of substitution of counsel served and filed less than twenty-one days prior to a hearing before the Board or before a member of the Board may be filed only with the permission of the Board or Board member, which permission shall be freely given, absent prejudice or substantial delay of the proceedings.

(c) *Service of petition by Board.*

A petition shall be served on the public servant

(i) in the manner provided in Section 312-a, or subdivisions 1, 2, or 4 of Section 308, of the New York Civil Practice Law and Rules for service of a summons or

(ii) by both certified mail, return receipt requested, and first class mail to the public servant's last known residence or actual place of business or

(iii) in such manner as the Board directs, if service is impracticable under paragraphs (i) and (ii) of this subdivision, or

(iv) in any manner agreed upon by counsel to the Board and the public servant or his or her representative.

Service of other documents by Board.

Notices, orders, and all other documents, except petitions and subpoenas, originating with the Board shall be served on the public servant

by personal delivery to the public servant or

by first class mail to the public servant's last known residence or actual place of business or

by overnight delivery service to the public servant's last known residence or actual place of business or

by telephonic facsimile (FAX) or similar transmission or

by leaving the paper at the public servant's last known residence with a person of suitable age and discretion or

in such manner as the Board directs, if service is impracticable under

* Now the Rules of Professional Conduct

paragraphs (1), (2), (3), (4), or (5) of this subdivision, or

in any manner agreed upon by counsel to the Board and the public servant or his or her representative. Where the public servant has appeared by a representative, all papers served by the Board subsequent to that appearance shall be served upon the representative by one of the methods provided in paragraphs (1)-(7) of this subdivision.

(e) *Computation of time.*

The computation of any time period referred to in these rules shall be calculated in calendar days, except that when the last day of the time period is a Saturday, Sunday, or public holiday, the period shall run until the end of the next following business day. Where a period of time prescribed by the rules set forth in this chapter is measured from the service of a paper and service of that paper is made in the manner provided by paragraph (ii) of subdivision (c) or paragraph (2) of subdivision (d) of this section, five days shall be added to the prescribed period.

(f) *Confidentiality.*

All matters relating to complaints submitted to or inquired into by the Board, or any action taken by the Board in connection therewith or hearings conducted by the Board or OATH, shall be kept confidential unless the public servant waives confidentiality and the Board determines that confidentiality is not otherwise required. Hearings conducted by the Board or by OATH shall be public if requested by the public servant. Final findings, conclusions, and orders issued upon a violation of Chapter 68 shall be made public.

(g) Ex Parte *communications with Board.*

(1) After service of the petition in a case, counsel conducting the prosecution of the case on behalf of the Board shall not communicate *ex parte* with any member of the Board concerning the merits of the case, except as provided in paragraph (2) of this subdivision.

(2) Counsel conducting the prosecution of a case on behalf of the Board may communicate *ex parte* with the Board, or any member thereof, with respect to ministerial matters involving the case or on consent of the respondent or respondent's counsel or in an emergency.

(h) *Disposition by agreement.*

At any time after the service of a notice of probable cause in a proceeding brought pursuant to Chapter 68 or at any time after service of a petition in a proceeding brought pursuant to Section 12-110 of the Administrative Code, the public servant and the Board may agree to dispose of the case by agreement. For this purpose, the Board or any Board

member designated by the Board may conduct a disposition conference, provided that, when the Board or a member of the Board conducts or is to conduct the hearing, the Board shall comply with the requirements of section 2-03(d)(2). All offers of disposition, whether made at a conference, hearing, or otherwise, shall be confidential and shall be inadmissible at trial of any case. If a disposition by agreement is reached, it shall be reduced to writing and signed by the public servant or his or her representative and the Board or, in the discretion of the Board, placed on the record. When a disposition by agreement contains an acknowledgment that a public servant's conduct has violated a provision of Chapter 68 of the City Charter or Section 12-110 of the Administrative Code, that disposition by agreement shall be made public by the Board.

(i) *OATH rules*.

In the event of any inconsistency between these rules and the rules of the Office of Administrative Trials and Hearings, these rules shall govern.

FOR ADDITIONAL INFORMATION, CONTACT

NEW YORK CITY CONFLICTS OF INTEREST BOARD
2 LAFAYETTE STREET, SUITE 1010
NEW YORK, NY 10007
212-442-1400 (TDD 212-442-1443)

OR VISIT THE BOARD'S WEB SITE AT
http://nyc.gov/ethics

Annual Disclosure

Section 12-110 of the New York City Administrative Code

Revised: December 2016

COIB | Conflicts of Interest Board of The City of New York

ANNUAL DISCLOSURE

SECTION 12-110
OF THE NEW YORK CITY
ADMINISTRATIVE CODE

§12-110 **Annual disclosure**.

a. Definitions.

As used in this section:

1. The term "affiliated" shall mean a firm that is a subsidiary of another firm, or two firms that have a parent in common, or two firms with a stockholder in common who owns at least twenty-five per cent of the shares of each such firm.

2. The "agency" or "city agency" shall mean a city, county, borough or other office, position, administration, department, division, bureau, board, commission, authority, corporation, committee or other agency of government, the expenses of which are paid in whole or in part from the city treasury, and shall include but not be limited to the council, the offices of each elected city official, the board of education, community boards, the health and hospitals corporation, the New York city industrial development agency, the offices of the district attorneys of the counties of Bronx, Kings, New York, Queens and Richmond, and of the special narcotics prosecutor, the New York city housing authority, and the New York city housing development corporation, but shall not include any court or any corporation or institution maintaining or operating a public library, museum, botanical garden, arboretum, tomb, memorial building, aquarium, zoological garden or similar facility or any advisory committee as that term is defined in subdivision one of section twenty-six hundred one of the charter.

3. The term "business dealings" shall mean any transaction involving the sale, purchase, rental, disposition or exchange of any goods, services, or property, any license, permit, grant or benefit, and any performance of or litigation with respect to any of the foregoing, but shall not include any transaction involving a public servant's residence or any ministerial matter.

4. The term "city" shall mean the city of New York and shall include an agency of the city.

5. The term "conflicts of interest board" or "board" shall mean the conflicts of interest board appointed pursuant to section twenty-six hundred two of the New York city charter.

6. The term “domestic partners” shall mean persons who have a registered domestic partnership, which shall include any partnership registered pursuant to section 3-240 of the administrative code of the city of New York.

7. The term "gift" shall mean anything of value for which a person pays nothing or less than fair market value and may be in the form of money, services, reduced interest on a loan, travel, travel reimbursement, entertainment, hospitality, thing, promise, or in any other form. “Gift” shall not include reimbursements.

8. The term “income” shall include, but not be limited to, salary from government employment, income from other compensated employment whether public or private, directorships and other fiduciary or advisory positions, contractual arrangements, teaching income, partnership income, lecture fees, consultant fees, bank and bond interest, dividends, income derived from a trust, real estate rents, and recognized gains from the sale or exchange of real or other property.

9. The term “independent body” shall mean any organization or group of voters which nominates a candidate or candidates for office to be voted for at an election, and which is not a political party as defined in paragraph twelve of this subdivision.

10. The terms "local authority," "local public authority" or "city public authority" shall be given the same meaning as the term "local authority" is given in subdivision two of section two of the public authorities law and shall include only such entities that have their primary office in the city of New York.

11. The term "local political party official" shall mean:

(a) any chair of a county committee elected pursuant to section 2-112 of the election law, or his or her successor in office, who received compensation or expenses, or both, from constituted committee or political committee funds, or both, during the reporting period aggregating thirty thousand dollars or more;

(b) that person (usually designated by the rules of a county committee as the “county leader” or “chair of the executive committee”) by whatever title designated, who pursuant to the rules of a county committee or in actual practice, possesses or performs any or all of the following duties or roles, provided that such person received compensation or expenses, or both, from constituted committee or political committee funds, or both, during the reporting period aggregating thirty thousand dollars or more:

(1) the principal political, executive and administrative officer of the county committee;

(2) the power of general management over the affairs of the county committee;

(3) the power to exercise the powers of the chair of the county committee as provided for in the rules of the county committee;

(4) the power to preside at all meetings of the county executive committee if such a committee is created by the rules of the county committee or exists de facto, or any other committee or subcommittee of the county committee vested by such rules with or having de facto the power of general management over the affairs of the county committee at times when the county committee is not in actual session;

(5) the power to call a meeting of the county committee or of any committee or subcommittee vested with the rights, powers, duties or privileges of the county committee pursuant to the rules of the county committee, for the purpose of filling an office at a special election in accordance with section 6-114 of the election law, for the purpose of filling a vacancy in accordance with section 6-116 of such law or for the purpose of filling a vacancy or vacancies in the county committee which exist by reason of an increase in the number of election districts within the county occasioned by a change of the boundaries of one or more election districts, taking effect after the election of its members, or for the purpose of determining the districts that the elected members shall represent until the next election at which such members of such committee are elected; provided, however, that in no event shall such power encompass the power of a chair of an assembly district committee or other district committee smaller than a county and created by the rules of the county committee, to call a meeting of such district committee for such purpose;

(6) the power to direct the treasurer of the party to expend funds of the county committee; or

(7) the power to procure from one or more bank accounts of the county committee the necessary funds to defray the expenses of the county committee. The terms “constituted committee” and “political committee” as used in this subparagraph shall have the same meanings as those contained in section 14-100 of the election law.

12. The term "policymaking position" shall mean the position held by a person charged with "substantial policy discretion" as referenced in paragraphs twelve and fifteen of subdivision b of section twenty-six hundred four of the New York city charter and as defined by rule of the conflicts of interest board.

13. The term “political party” shall mean any political organization which at the last preceding election for governor polled at least fifty thousand votes for its candidate for governor.

14. The term “political organization” shall mean any political party as defined in paragraph thirteen of this subdivision, or independent body, as defined in paragraph nine of this

subdivision, or any organization that is affiliated with or a subsidiary of a party or independent body.

15. The term “reimbursements” shall mean any travel-related expenses provided by non-governmental sources, whether directly or as repayment, for activities related to the reporting person’s official duties, such as speaking engagements, conferences, or fact-finding events, but shall not include gifts.

16. The term "relative" shall mean the spouse, domestic partner, child, stepchild, brother, sister, parent, or stepparent of the person reporting, or any person whom the person reporting claimed as a dependent on his or her most recently filed personal income tax return, and each such relative's spouse or domestic partner.

17. The term “securities” shall mean bonds, mortgages, notes, obligations, warrants and stocks of any class, investment interests in limited or general partnerships and such other evidences of indebtedness and certificates of interest as are usually referred to as securities.

18. The terms "state agency" and "local agency" shall be given the same meanings as such terms are given in section eight hundred ten of the general municipal law.

19. The term "unemancipated child" shall mean any son, daughter, stepson or stepdaughter who is under age eighteen, unmarried and living in the household of the person reporting at the time the person files his or her annual disclosure report, and shall also include any son or daughter of the spouse or domestic partner of such person who is under age eighteen, unmarried and living in the household of the person reporting at the time the person files his or her annual disclosure report.

b. Persons required to file an annual disclosure report.

The following persons shall file with the conflicts of interest board an annual disclosure report, in such form as the board shall determine, disclosing certain financial interests as hereinafter provided. Reports shall, except as otherwise provided by the board, be filed electronically, in such form as the board may determine.

1. Elected and political party officials.

(a) Each elected officer described in sections four, twenty-four, twenty-five, eighty-one, ninety-one and eleven hundred twenty-five of the New York city charter, and each local political party official described in paragraph eleven of subdivision a of this section, shall file such report not later than such date designated by the conflicts of interest board each year.

(b) A local political party official required to file a report pursuant to subparagraph (a) of this paragraph who is also subject to the financial disclosure filing requirements of subdivision two of section seventy-three-a of the public officers law may satisfy the requirements of paragraph one by filing with the conflicts of interest board a copy of the

statement filed pursuant to section seventy-three-a of the public officers law, on or before the filing deadline provided in such section seventy-three-a, notwithstanding the filing deadline otherwise imposed by paragraph one of this subdivision.

2. Candidates for public office.

(a) Each person, other than any person described in paragraph one, who has declared his or her intention to seek nomination or election and who has filed papers or petitions for nomination or election, or on whose behalf a declaration or nominating paper or petition has been made or filed which has not been declined, for an office described in paragraph one of subdivision b of this section shall file such report on or before the last day for filing his or her designating petitions pursuant to the election law.

(b) Each person, other than any person described in paragraph one, who was a write-in candidate at the primary election for an office described in paragraph one of subdivision b of this section and whose name is thereafter entered in the nomination book at the board of elections, shall file such report within twenty days after such primary election.

(c) Each person, other than any person described in paragraph one, who has been designated to fill a vacancy in a designation or nomination for an office described in paragraph one of subdivision b of this section shall file such report within fifteen days after a certificate designating such person to fill such vacancy is filed with the board of elections, or within five days before the election for which the certificate is filed, whichever is earlier.

(d) The conflicts of interest board shall obtain from the board of elections lists of all candidates for the elected positions set forth below, and from such lists, shall determine and publish lists of those candidates who have not, within ten days after the required date for filing such reports, filed the reports required by this section.

3. (a) The following categories of persons who had such status during the preceding calendar year or up until the date of filing their annual disclosure report shall be required to file a report not later than the date designated by the conflicts of interest board each year:

(1) Each agency head, deputy agency head, assistant agency head, and member of any board or commission who on the date designated by the board for filing holds a policymaking position, as defined by rule of the board and as annually determined by the head of his or her agency, subject to review by the board;

(2) Each officer or employee of the city in the mayor’s office, the city council, a district attorney’s office, the office of the special narcotics prosecutor, or any other agency that does not employ M-level mayor’s management plan indicators for its managers, whose responsibilities on the date designated by the board for filing involve the independent exercise of managerial or policymaking functions or who holds a policymaking position on such date, as defined by rule of the board and as annually determined by the appointing authority of his or her agency, subject to review by the board;

(3) Each officer or employee of the city, other than an officer or employee of the city in the mayor's office, the city council, a district attorney's office or the special narcotics prosecutor's office, who, on the date designated by the board for filing, is paid in accordance with the mayor's management pay plan at level M4 or higher, or who holds a policymaking position on such date, as defined by rule of the board and as annually determined by the head of his or her agency, subject to review by the board;

(4) Each officer or employee of the city whose duties at any time during the preceding calendar year involved the negotiation, authorization or approval of contracts, leases, franchises, revocable consents, concessions and applications for zoning changes, variances and special permits, as defined by rule of the board and as annually determined by his or her agency head, subject to review by the board.

(5) Each assessor required to file a report solely by reason of section three hundred thirty-six of the real property tax law.

(6) Each of the following members, officers and employees of city public authorities:

(i) Each member of the authority;

(ii) Each head, deputy head or assistant head of the authority;

(iii) Each officer and employee of the authority who on the date designated by the board for filing holds a policymaking position, as defined by rule of the board and as annually determined by the head of his or her authority, subject to review by the board; and

(iv) Each officer or employee of the authority whose duties at any time during the preceding calendar year involved the negotiation, authorization or approval of contracts, leases, franchises, revocable consents, concessions and applications for zoning changes, variances and special permits, as defined by rule of the conflicts of interest board and as annually determined by the head of his or her authority, subject to review by the board.

(7) Any person required by New York state law to file an annual disclosure report with the conflicts of interest board.

(b) Separation from service:

(1) Each person described in this paragraph shall, following separation from service, file such report for the portion of the last calendar year in which he or she served in his or her position within sixty days of his or her separation from service or on or before the date designated by the conflicts of interest board for filing pursuant to subparagraph (a) of this

paragraph, whichever is earlier, if such person met the criteria of this subparagraph on his or her last day of service. Each such person who leaves service prior to the date designated by the board for filing pursuant to subparagraph (a) of this paragraph shall also file a report for the previous calendar year within sixty days of his or her separation from service or on or before such date designated by the board, whichever is earlier.

(2) Each such person who is terminating or separating from service shall not receive his or her final paycheck, and/or any lump sum payment to which he or she may be entitled, until such person has complied with the requirements of this section.

(3) Each elected officer and each local political party official described in paragraph eleven of subdivision a of this section shall, after leaving office, file such report for the previous calendar year, if such officer or local political party official has not previously filed such report, and shall file such report for the portion of the last calendar year in which he or she served in office, within sixty days of his or her last day in office or on or before the date designated by the board for filing pursuant to subparagraph (a) of paragraph one of this subdivision, whichever is earlier.

c. Procedures involving the filing of annual disclosure reports.

1. Each agency head or head of a city public authority shall file with the conflicts of interest board, prior to the date required for the filing of reports, a list of persons obligated to report pursuant to this section.

2. Each agency head or head of a city public authority shall determine, subject to review by the conflicts of interest board, which persons within the agency or city public authority occupy positions that are described in clauses three and four of subparagraph (a) of paragraph three of subdivision b of this section, and shall, prior to the date on which the filing of the report is required, inform such employees of their obligation to report. The conflicts of interest board shall promulgate rules establishing procedures whereby any employee may seek review of the agency's or city public authority's determination that he or she is required to report.

3. The speaker of the council, each district attorney and the special narcotics prosecutor shall determine, subject to review by the conflicts of interest board, which persons on their staff occupy positions that are described in clause two of subparagraph (a) of paragraph three of subdivision b of this section, and shall, prior to the date required for the filing of the reports, inform such employees of their obligation to report.

4. The conflicts of interest board shall promulgate rules establishing procedures whereby a person required to file an annual disclosure report may request an additional period of time within which to file such report, due to justifiable cause or undue hardship. Such rules shall include, but not be limited to, the establishment of a date beyond which in all cases of justifiable cause or undue hardship no further extension of time will be granted.

5. Any amendments and changes to an annual disclosure report made after its filing shall be made on a form to be prescribed by the conflicts of interest board. Amendments shall be made only by the person who originally filed such report.

d. Information to be reported.

1. Officers and employees of the city; members of city boards and commissions entitled to compensation; candidates for public office; elected and political party officials**.** The report filed by officers and employees of the city, members of city boards and commissions entitled to compensation, candidates for public office, elected officials, political party officials, and any other person required by state law to file a report other than a person described by paragraph three or four of this subdivision, shall contain the information required by this paragraph on such form as the board shall prescribe. For purposes of filing an annual disclosure report, members of the New York city housing development corporation shall be deemed to be members of a city board or commission entitled to compensation.

(a) List the name of the person reporting; his or her title or position; the entity by which he or she is employed or from which he or she receives compensation; his or her office address and telephone number; list the marital status of the person reporting, and if married, list the spouse's full name including maiden name where applicable; indicate whether the person is a member of a domestic partnership, and if so, list the partner's full name; list the names of all unemancipated children.

(b) List any office, trusteeship, directorship, partnership, or position of any nature including honorary positions, whether compensated or not, held by the person reporting or his or her spouse or domestic partner or unemancipated child with any firm, corporation, association, partnership, or other organization other than the state of New York. Do not list membership positions. If the listed entity was licensed or regulated by any state or local agency, or engaged in business dealings with, or had matters other than ministerial matters before, any state or local agency, list the name of such agency.

(c) (1) List the name, address and description of any occupation, trade, business, profession or employment, other than the employment listed pursuant to paragraph one of this subdivision, engaged in by the person reporting. If such employer or business was licensed or regulated by any state or local agency, or engaged in business dealings with, or matters other than ministerial matters before, any state or local agency, list the name of any such agency.

(2) If the spouse, domestic partner or unemancipated child of the person reporting was engaged in any occupation, employment, trade, business or profession which activity was licensed or regulated by any state or local agency, or engaged in business dealings with, or had matters other than ministerial matters before, any state or local agency, list the name, address and description of such occupation, employment, trade, business or profession and the name of any such agency.

(d) List any positions the person reporting held as an officer of any political party or political organization, as a member of any political party committee, or as a political party district leader.

(e) If the person reporting practices law, is licensed by the department of state as a real estate broker or agent or practices a profession licensed by the state department of education, give a general description of the principal subject areas of matters undertaken by such person. If the person reporting practices with a firm or corporation of which he or she is a partner or shareholder, give a general description of principal subject areas of matters undertaken by such firm or corporation. Do not list the name of the individual clients, customers or patients.

(f) (1) Describe the terms of, and the parties to, any agreement providing for future payments or benefits to the person reporting [of one thousand dollars or more from] by a prior or current employer other than the city of New York. Such description of an agreement shall include interests in or contributions to a pension fund, profit-sharing plan, life or health insurance, buy-out agreements or severance payments, etc.

(2) Describe the terms of, and the parties to, any contract, promise or agreement between the person reporting and any person, firm or corporation with respect to the future employment of such reporting person.

(g) List the nature and amount of any income of one thousand dollars or more from each source derived during the preceding calendar year, to the person reporting or his or her spouse or domestic partner. Income from a business or profession and real estate rents shall be reported with the source identified by the building address in the case of real estate rents and otherwise by the name of the entity and not by the name of the individual customers, clients or tenants, with the aggregate net income before taxes for each building address or entity. The receipt of maintenance received in connection with a matrimonial action, alimony and child support payments shall not be listed.

(h) List the source of each of the following items received or accrued during the preceding calendar year by the person reporting:

(1) Any deferred income to be paid following the close of the calendar year for which this disclosure statement is filed, other than any source of income otherwise disclosed pursuant to subparagraph (a) of paragraph nine of this subdivision, of one thousand dollars or more from each source. Deferred income derived from the practice of a profession shall be listed in the aggregate and shall be identified as to the source, including the name of the firm, corporation, partnership or association through which the income was derived, but shall not include individual clients' identities.

(2) Reimbursement to the person reporting or his or her spouse or domestic partner, for expenditures, excluding campaign expenditures and expenditures in connection with official duties reimbursed by the city, of one thousand dollars or more in each instance.

(3) Honoraria received by the person reporting or his or her spouse or domestic partner from a single source in the aggregate amount of one thousand dollars or more.

(4) Any gift, its value and nature, from any single source received by the person reporting, his or her spouse or domestic partner or unemancipated child, during the preceding calendar year, excluding gifts from a relative, except as otherwise provided under the election law covering campaign contributions. Gifts in the aggregate amount or value of less than one thousand dollars from any single source shall not be reported where, from the beginning of the reporting period until the date the report is filed, the donor engaged in no business dealings with the city. Gifts in the aggregate amount or value of less than fifty dollars from any single source shall not be reported. The value of separate gifts from the same or affiliated donors during the reporting period shall be aggregated.

(i) (1) List the identity and value, if reasonably ascertainable, of each interest in a trust, estate or beneficial interest held by the person reporting or his or her spouse or domestic partner, including but not limited to (1) retirement plans (other than retirement plans of the state of New York or city of New York) and (2) deferred compensation plans established in accordance with the internal revenue code, where the person reporting or his or her spouse or domestic partner held a beneficial interest of one thousand dollars or more during the preceding calendar year. Do not report interests in an estate of a relative or interests in a trust or other beneficial interest established by or for a relative or by or for the estate of a relative.

(2) List each assignment of income of one thousand dollars or more, and each transfer other than to a relative during the preceding calendar year for less than fair consideration of an interest of one thousand dollars or more, in a trust, estate, or other beneficial interest, securities or real property, by the person reporting, which would otherwise be required to be reported herein and is not or has not been reported.

(j) List any interest of one thousand dollars or more, excluding bonds and notes, held by the person reporting, his or her spouse or domestic partner or the reporting person's unemancipated child, or partnership of which any such person is a member, or corporation, ten per centum or more of the stock of which is owned or controlled by any such person, whether vested or contingent, in any contract made or executed by a state or local agency. Include the name of the entity which holds such interest and the relationship of the person reporting, or his or her spouse or domestic partner or unemancipated child, to such entity and the interest in such contract. Do not list any interest in any such contract on which final payment has been made and all obligations under the contract, except for guarantees and warranties, have been performed, provided, however, that such an interest shall be listed if there has been an ongoing dispute during the calendar year for which this statement is filed with respect to any such guarantees or warranties. Do not list any interest in a contract made or executed by a state agency after public notice and pursuant to a process for competitive bidding or a process for competitive requests for proposals.

(k) List the name, principal address and general description or the nature of the business activity of any entity in which the person reporting or his or her spouse or domestic partner or unemancipated child had an investment of one thousand dollars or more, excluding investments in securities and interests in real property.

(l) List the type and market value of securities held by the person reporting or his or her spouse or domestic partner or unemancipated child from each issuing entity, valued at one thousand dollars or more at the close of the preceding calendar year, including the name of the issuing entity, exclusive of securities held by the person reporting issued by a professional corporation. Whenever an interest in securities exists through a beneficial interest in a trust, the securities held in such trust shall be listed only if the person reporting has knowledge thereof, except where the person reporting or his or her spouse or domestic partner has transferred assets to such trust for his or her benefit; in that event the securities shall be listed unless they are not ascertainable by the person reporting because the trustee is under an obligation or has been instructed in writing not to disclose the contents of the trust to the person reporting. Securities of which the person reporting or his or her spouse or domestic partner is the owner of record but in which he or she has no beneficial interest shall not be listed. Where the person or his or her spouse or domestic partner holds more than five per centum of the stock of a publicly held corporation or more than ten per centum of a privately held corporation, percentage of ownership shall be listed. List any securities owned for investment purposes by a corporation more than fifty per centum of the stock of which is owned or controlled by the person reporting or his or her spouse or domestic partner. The market value for such securities shall be reported only if reasonably ascertainable and shall not be reported if the security is an interest in a general partnership that was listed in subparagraph e of this subdivision or if the security is corporate stock, not publicly traded, in a trade or business of the reporting person or his or her spouse or domestic partner.

(m) List the location, size, general nature, acquisition date, market value and percentage of ownership of any real property in which any vested or contingent interest of one thousand dollars or more was held by the person reporting or his or her spouse or domestic partner or unemancipated child during the preceding calendar year. List real property owned for investment purposes by a corporation more than fifty per centum of the stock of which is owned or controlled by the person reporting or his or her spouse or domestic partner. Do not list any real property which is the primary or secondary personal residence of the reporting person or his or her spouse or domestic partner, except where there is a co-owner who is other than a relative.

(n) List the identity of each note or account receivable or other outstanding loan in the amount of one thousand dollars or more held by the person reporting or his or her spouse or domestic partner during the preceding calendar year, including debts secured by a mortgage, and other secured and unsecured debts. List the name of the debtor, type of obligation, date due and the nature of the collateral, if any, securing payment for each such debt. Debts, notes and accounts receivable owed to the person reporting or his or her spouse or domestic partner by a relative shall not be reported.

(o) List each creditor to whom the person reporting or his or her spouse or domestic partner was indebted, for a period of ninety consecutive days or more during the preceding calendar year, and each such creditor to whom any debt was owed on the date of filing, in an amount of five thousand dollars or more. Debts to be listed include real estate mortgages and other secured and unsecured loans. If any reportable liability has been guaranteed by any third person, list the name of such guarantor. Do not list liabilities incurred by, or guarantees made by, the person reporting or his or her spouse or domestic partner or by any proprietorship, partnership or corporation in which such person has an interest, when incurred or made in the ordinary course of trade, business or professional practice of such person. Include the name of the creditor and any collateral pledged by such individual to secure payment of any such liability. Do not list any liability to a relative or any obligation to pay maintenance in connection with a matrimonial action, alimony or child support payments. Revolving charge account information shall only be set forth if the liability thereon is in excess of five thousand dollars for a period of ninety consecutive days or more during the preceding calendar year, or if the liability thereon is in excess of five thousand dollars as of the time of filing. Any loan issued in the ordinary course of business by a financial institution to finance educational costs, the cost of home purchase or improvements for a primary or secondary residence, or purchase of a personally owned motor vehicle, household furniture or appliances shall be excluded.

(p) The name, title, and position of any relative of the person reporting who holds a position, whether paid or unpaid, with the city; the city agency with which such position is held; and the relationship between such relative and the person reporting.

(q) Whenever a "value" or "amount" is required to be reported pursuant to this section, such value or amount shall be reported as being within one of the following categories: (a) at least one thousand dollars but less than five thousand dollars; (b) at least five thousand dollars but less than thirty-two thousand dollars, or such other amount as the conflicts of interest board shall set pursuant to subdivision sixteen of section twenty-six hundred one and subdivision a of section twenty-six hundred three of the charter; (c) at least thirty-two thousand dollars, or such other amount as the conflicts of interest board shall set pursuant to subdivision sixteen of section twenty-six hundred one and subdivision a of section twenty-six hundred three of the charter, but less than sixty thousand dollars; (d) at least sixty thousand dollars but less than one hundred thousand dollars; (e) at least one hundred thousand dollars but less than two hundred fifty thousand dollars; (f) at least two hundred fifty thousand dollars but less than five hundred thousand dollars; and *(*g) five hundred thousand dollars or more.

2. Uncompensated members of boards and commissions of the city**.** The report required to be filed by a person who is a member of a city board or commission and is not entitled to compensation for such service shall contain the information required by this paragraph on such form as the board shall prescribe. For purposes of filing an annual disclosure report, members of the New York city housing development corporation shall be deemed to be compensated members of a city board or commission who are required to file an annual disclosure report in accordance with paragraph one of subdivision d of this section.

(a) The name of the person reporting; each of his or her city board, commission or agency titles and positions; his or her city employee identification number, if any; his or her office address, email address, if any, and telephone number; his or her home address, personal email address, if any, and home telephone number; whether he or she has a spouse or domestic partner and, if so, the full name of such spouse or domestic partner; and the names of all unemancipated children.

(b) The location, size, and general nature of any residential, commercial, retail or industrial real property that is owned by, rented to or rented by the person reporting, or his or her spouse or domestic partner or unemancipated child. Only real property that is within the city of New York shall be reported. Residential property in which the person reporting or a relative resides shall not be reported. For other residential property, only the borough, city (if outside New York city), town, or village shall be reported.

(c) The name of each employer or business, other than the city of New York, from which the person reporting or his or her spouse or domestic partner or unemancipated child received, during the reporting period, compensation for services performed or for goods sold or produced or as a member, officer, director, or employee. The name of individual clients, customers or patients shall not be reported, nor shall any business in which the reporting person or his or her spouse or domestic partner or unemancipated child was an investor only. The nature of the business shall also be identified, as well as the relationship between the reporting person or his or her spouse, domestic partner, or unemancipated child and the employer or business (owner, partner, officer, director, member, employee, and/or shareholder). An employer or business shall not be reported where, from the beginning of the reporting period until the date the report is filed, the employer or business engaged in no business dealings with the agency of which the person reporting is a board or commission member.

(d) The name of any entity in which the person reporting or his or her spouse or domestic partner or unemancipated child has an interest that exceeds five percent of the firm or an investment of ten thousand dollars, whichever is less. The nature of the business and the type of business shall also be identified. An entity shall not be reported where, from the beginning of the reporting period until the date the report is filed, the entity engaged in no business dealings with the agency of which the person reporting is a board or commission member.

(e) Gifts having a value of fifty dollars or more received by the person reporting or his or her spouse or domestic partner or unemancipated child during the reporting period, including the recipient of the gift, the donor of the gift, the relationship between the recipient and the donor, and the nature of the gift. The value of separate gifts from the same or affiliated donors during the reporting period shall be aggregated.

A gift shall not be reported where (i) the gift is from a relative; or (ii) from the beginning of the reporting period until the date the report is filed, the donor engaged in no business dealings with the agency of which the person reporting is a board or commission member; or (iii) the gift consists of attendance, including meals and refreshments, at a meeting,

public affair, function, or occasion and complies with the rules of the board governing the acceptance of such attendance, meals, or refreshments.

3. Members, officers and employees of city public authorities. The report required to be filed by a person pursuant to subdivision three of section twenty-eight hundred twenty-five of the public authorities law shall contain the following information:

(a) The name of the person reporting; the name of the city public authority of which the person reporting is a board member, officer or employee; his or her title and position with such entity; any city title and position that he or she holds; any city agency of which the person reporting is a member, officer or employee; his or her city employee identification number, if any; his or her office address, email address, if any, and telephone number; his or her home address, personal email address, if any, and home telephone number; whether he or she has a spouse or domestic partner and, if so, the full name of such spouse or domestic partner; and the names of all unemancipated children.

(b) The location, size, and general nature of any residential, commercial, retail or industrial real property that is owned by, rented to or rented by the person reporting, or his or her spouse or domestic partner or unemancipated child. Only real property that is within the city of New York shall be reported. Residential property in which the person reporting or a relative resides shall not be reported. For other residential property, only the borough, city (if outside New York city), town, or village shall be reported.

(c) The name of each employer or business, other than the city of New York, from which the person reporting or his or her spouse or domestic partner or unemancipated child received, during the reporting period, compensation for services performed or for goods sold or produced or as a member, officer, director, or employee. The name of individual clients, customers or patients shall not be reported, nor shall any business in which the reporting person or his or her spouse or domestic partner or unemancipated child was an investor only. The nature of the business shall also be identified, as well as the relationship between the reporting person or his or her spouse, domestic partner, or unemancipated child and the employer or business (owner, partner, officer, director, member, employee, and/or shareholder). An employer or business shall not be reported where, from the beginning of the reporting period until the date the report is filed, the employer or business engaged in no business dealings with the local public authority of which the person reporting is a board member, officer or employee.

(d) The name of any entity in which the person reporting or his or her spouse or domestic partner or unemancipated child has an interest that exceeds five percent of the firm or an investment of ten thousand dollars, whichever is less. The nature of the business and the type of business shall also be identified. An entity shall not be reported where, from the beginning of the reporting period until the date the report is filed, the entity engaged in no business dealings with the local public authority of which the person reporting is a board member, officer or employee.

(e) Gifts having a value of fifty dollars or more received by the person reporting or his or her spouse or domestic partner or unemancipated child during the reporting period, including the recipient of the gift, the donor of the gift, the relationship between the recipient and the donor, and the nature of the gift. The value of separate gifts from the same or affiliated donors during the reporting period shall be aggregated.

A gift shall not be reported where (i) the gift is from a relative; or (ii) from the beginning of the reporting period until the date the report is filed, the donor engaged in no business dealings with the local public authority of which the person reporting is a board member, officer or employee; or (iii) the gift consists of attendance, including meals and refreshments, at a meeting, public affair, function, or occasion and complies with the rules of the board governing the acceptance of such attendance, meals, or refreshments.

4. Tax assessors. The report required to be filed by a person pursuant to section three hundred thirty-six of the real property tax law shall be on the form prescribed by such law.

5. Filers in multiple filing categories. If a person is required to file an annual disclosure report by more than one paragraph of subdivision b of this section, he or she shall file the most comprehensive report of those required by paragraphs one through four of this subdivision. The most comprehensive report shall be deemed to be the report required by paragraph one of this subdivision; the second most comprehensive report shall be deemed to be the report required by paragraph four of this subdivision; and the third most comprehensive report shall be deemed to be the report required by paragraphs two and three of this subdivision.

e. Public Inspection of Reports and Privacy Considerations.

Information filed in reports required by this section shall be maintained by the conflicts of interest board and shall be made available for public inspection, upon written request on such form as the board shall prescribe, except that information filed in reports required by this section by each elected officer described in sections four, twenty-four, twenty-five, eight-one, ninety-one and eleven hundred twenty-five of the New York city charter shall be made available for public inspection on the board's website without written request. The availability of forms for public inspection pursuant to this subdivision is subject to the following provisions:

1. Privacy, safety and security requests.

(a) Any person required to file a report pursuant to this section may, at the time the report is filed or at any time thereafter, except when a request for inspection is pending, submit a request to the conflicts of interest board, in such form as the board shall require, to withhold any item disclosed therein from public inspection on the ground that the inspection of such item by the public would constitute an unwarranted invasion of his or her privacy or a risk to the safety or security of any person. Such request shall be in writing and shall be in such form as the conflicts of interest board shall prescribe and shall set forth the reason such person believes the item should not be disclosed. During the time for evaluation of such a request, such report shall not be available for public inspection.

(b) The conflicts of interest board shall evaluate such request and any such item shall be withheld from public inspection upon a finding by the board that the inspection of such item by the public would constitute an unwarranted invasion of privacy or a risk to the safety or security of any person. In making this determination, the board shall consider the following factors:

(1) whether the item is of a highly personal nature;

(2) whether the item in any way relates to the duties of the positions held by such person, including whether there are security or safety issues relating to such duties;

(3) whether the disclosure poses a risk to the security or safety of the reporting person or any other individual;

(4) whether the item involves an actual or potential conflict of interest.

(c) The conflicts of interest board shall provide a written notification of the board's determination to the person who requested that information be withheld from public inspection and shall not release the information subject to the request until at least ten days after mailing of the notification. Such notification shall advise the person of his or her right to seek review of such determination by the supreme court of the state of New York and that the conflicts of interest board will not release the information subject to the request until ten days after the mailing of the notification.

(d) Any information regarding any financial interests of the spouse, domestic partner or an unemancipated child of a person filing in which the person filing has no financial interest shall be withheld from public inspection, except the information disclosed pursuant to subparagraph (p) of paragraph one of subdivision d of this section, as an unwarranted invasion of privacy unless the conflicts of interest board determines that such information involves an actual or potential conflict of interest on the part of the person filing, subject to the factors set forth in subparagraph (b) of paragraph one of this subdivision.

(e) Whether or not a person required to file a report pursuant to this section has submitted a request for privacy, the conflicts of interest board may upon its own initiative grant privacy as to any information contained in such person's report upon a finding by the board that the release of such information would constitute a risk to the safety or security of any person.

(f) Where a person required to file a report pursuant to this section files an amendment to a previously submitted report, both the original submission and the amendment shall be available for public inspection, subject to the provisions of this subdivision.

(g) The conflicts of interest board shall establish procedures governing the withholding of information on the ground of privacy. Such procedures shall include provision for the person who filed the information to appear in person to set forth, or submit a written

statement setting forth, the reasons why the information should be withheld from public inspection.

2. Requests to examine reports.

Whenever pursuant to this section the conflicts of interest board produces a report for public inspection, the board shall notify the person who filed the report of the production and of the identity of the person to whom such report was produced, except that no such notification shall be required if the report is made available for public inspection on the board's website without written request or if the request to examine the report is made by the department of investigation or any governmental unit, or component thereof, which performs as one of its principal functions any activity pertaining to the enforcement of criminal laws, provided that such report is requested solely for a law enforcement function. Nothing in this section shall preclude the conflicts of interest board from disclosing any and all information in an annual disclosure report to the department of investigation or any other governmental unit, or component thereof, which performs as one of its principal functions any activity pertaining to the enforcement of criminal laws, provided that such report is requested solely for a law enforcement function.

f. **Retention of reports**.

Reports filed pursuant to this section shall be retained by the conflicts of interest board for a period of two years following the termination of the public employment or service of the person who filed the report. In the case of candidates for office who have filed reports pursuant to this section and who were not elected, the reports shall be retained by the board for a period of two years following the day of an election on which the candidates were defeated. Notwithstanding the foregoing, the board, in consultation with the department of records and information services and the department of investigation, may establish by rule a different period or periods of retention of annual disclosure reports which takes into account the need for efficient records management and the need to retain such reports for a reasonable period for investigatory and other purposes. Such reports shall thereafter be destroyed by the board unless a request for public disclosure of an item contained in such report is pending. In lieu of the destruction of such reports, the board, in its discretion, may establish procedures providing for their return to the persons who filed them.

g. Penalties.

1. Any person required to file a report pursuant to this section who has not so filed at the end of one week after the date required for filing shall be subject to a fine of not less than two hundred fifty dollars or more than ten thousand dollars. Factors to be considered by the conflicts of interest board in determining the amount of the fine shall include but not be limited to the person's failure in prior years to file a report in a timely manner, and the length of the delay in filing. In addition, within two months after the date required for filing, the conflicts of interest

board shall inform the appropriate agency and the commissioner of investigation of the failure to file of any such person.

2. Any intentional violation of the provisions of this section, including but not limited to failure to file, failure to include assets or liabilities, and misstatement of assets or liabilities, shall constitute a misdemeanor punishable by imprisonment for not more than one year or by a fine not to exceed one thousand dollars, or by both, and shall constitute grounds for imposition of disciplinary penalties, including removal from office in the manner provided by law. In addition, any intentional violation of the provisions of this section may subject the person reporting to assessment by the conflicts of interest board of a civil penalty in an amount not to exceed ten thousand dollars.

3. Any intentional and willful unlawful disclosure of confidential information that is contained in a report filed in accordance with this section, by a city officer or employee or by any other person who has obtained access to such a report or confidential information contained therein, shall constitute a misdemeanor punishable by imprisonment for not more than one year or a fine not to exceed one thousand dollars, or by both, and shall constitute grounds for imposition of disciplinary penalties, including removal from office or position in the manner provided by law.

4. The conflicts of interest board shall establish procedures governing the receipt of complaints alleging a violation of this section.

FOR ADDITIONAL

INFORMATION, CONTACT

NEW YORK CITY CONFLICTS OF INTEREST BOARD
2 LAFAYETTE STREET, SUITE 1010
NEW YORK, NY 10007
212-442-1400

OR VISIT THE BOARD'S WEB SITE AT

http://nyc.gov/ethics

APPENDIX D

Other Relevant Law

I. Penal Law Provisions

200.10 Bribe receiving in the third degree.

A public servant is guilty of bribe receiving in the third degree when he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that his vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.

Bribe receiving in the third degree is a class D felony.

200.25 Receiving reward for official misconduct in the second degree.

A public servant is guilty of receiving reward for official misconduct in the second degree when he solicits, accepts or agrees to accept any benefit from another person for having violated his duty as a public servant.

Receiving reward for official misconduct in the second degree is a class E felony.

200.35 Receiving unlawful gratuities.

A public servant is guilty of receiving unlawful gratuities when he solicits, accepts or agrees to accept any benefit for having engaged in official conduct which he was required or authorized to perform, and for which he was not entitled to any special or additional compensation.

Receiving unlawful gratuities is a class A misdemeanor.

200.50 Bribe receiving for public office.

A public servant or a party officer is guilty of bribe receiving for public office when he solicits, accepts or agrees to accept any money or other property from another person upon an agreement or understanding that some person will or may be appointed to a public office or designated or nominated as a candidate for public office.

Bribe receiving for public office is a class D felony.

195.00 Official misconduct.

A public servant is guilty of official misconduct when, with intent to obtain a benefit or deprive another person of a benefit:

He commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized; or

He knowingly refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office.

Official misconduct is a class A misdemeanor.

195.20 Defrauding the government.

A person is guilty of defrauding the government when, being a public servant or party officer, he or she:

(a) engages in a scheme constituting a systematic ongoing course of conduct with intent to:

(i) defraud the state or a political subdivision of the state or a governmental instrumentality within the state or to obtain property, services or other resources from the state or a political subdivision of the state or a governmental instrumentality within the state by false or fraudulent pretenses, representations or promises; or

(ii) defraud the state or a political subdivision of the state or a governmental instrumentality within the state by making use of property, services or resources of the state, political subdivision of the state or a governmental instrumentality within the state for private business purposes or other compensated non-governmental purposes; and

(b) so obtains property, services or other resources with a value in excess of one thousand dollars from such state, political subdivision or governmental instrumentality.

Defrauding the government is a class E felony.

II. Executive Order No. 16 (1978)

§ 4(d)

Every officer and employee of the City shall have the affirmative obligation to report, directly and without undue delay, to the Commissioner or an Inspector General any and all information concerning conduct which they know or should reasonably know to involve corrupt or other criminal activity or conflict of interest, (i) by another City officer or employee, which

concerns his or her office or employment, or (ii) by persons dealing with the City, which concerns their dealings with the City. The knowing failure of any officer or employee to report as required above shall constitute cause for removal from office or employment or other appropriate penalty.

III. Section 192 City Planning Commission

§ 192 (b)

Members, except for the chair, shall not be considered regular employees of the City for the purposes of Chapter 68. The agency served by the members of the Commission shall for purposes of Chapter 68 be deemed to be both the Commission and the Department of City Planning. No member, while serving as a member, shall appear directly or indirectly before the Department, the Commission, or any other City agency for which the Conflicts of Interest Board shall, by rule, determine such appearance creates a conflict of interest with the duties and responsibilities of the member. No firm in which a member has an interest may appear directly or indirectly before the Department or Commission. For purposes of this section, the terms "agency," "appear," "firm," and "interest" shall be defined as provided in Chapter 68.

IV. Regulation of Lobbying

§ 3-211 of the Administrative Code

§ 3-211 **Definitions.** Whenever used in this subchapter, the following words and phrases shall be construed as defined in this section:

(a) The term "lobbyist" shall mean every person or organization retained, employed or designated by any client to engage in lobbying. The term "lobbyist" shall not include any officer or employee of the city of New York, the State of New York, any political subdivision of the State, or any public corporation, agency or commission, or the United States when discharging his or her official duties.

(b) The term "client" shall mean every person or organization who retains, employs or designates any person or organization to carry on lobbying activities on behalf of such client.

(c) (1) The term "lobbying" or "lobbying activities" shall mean any attempt to influence:

(i) the passage or defeat of any local law or resolution by the city council,

(ii) the approval or disapproval of any local law or resolution by the mayor,

(iii) any determination made by an elected city official or an officer or employee of the city with respect to the procurement of goods, services or construction, including the preparation of contract specifications, or the solicitation, award or administration of a contract, or with respect to the solicitation, award or administration of a grant, loan, or agreement involving the disbursement of public monies,

(iv) any determination made by the mayor, the city council, the city planning commission, a borough president, a borough board or a community board with respect to zoning or the use, development or improvement of real property subject to city regulation,

(v) any determination made by an elected city official or an officer or employee of the city with respect to the terms of the acquisition or disposition by the city of any interest in real property, with respect to a license or permit for the use of real property of or by the city, or with respect to a franchise, concession or revocable consent,

(vi) the adoption, amendment or rejection by an agency of any rule having the force and effect of law,

(vii) the outcome of any rate making proceeding before an agency, or

(viii) any determination of a board or commission.

(2)The definition of the term "lobbying" or "lobbying activities" shall not apply to any determination in an adjudicatory proceeding.

(3)The following person and organizations shall be deemed not to be engaged in "lobbying activities":

(i) persons engaged in advising clients, rendering opinions and drafting, in relation to proposed legislation, resolutions, rules, rates, or other proposed legislative, executive or administrative action, where such persons do not themselves engage in an attempt to influence such action;

(ii) newspapers and other periodicals and radio and television stations, and owners and employees thereof, provided that their activities are limited to the publication or broadcast of news items, editorials or other comment, or paid advertisements;

(iii) persons who participate as witnesses, attorneys or other representatives in public rule making or rate making proceedings of an agency, with respect to all participation by such persons which is part of the public record thereof and all preparation by such persons for

such participation;

(iv) persons who appear before an agency in an adjudicatory proceeding;

(v) persons who prepare or submit a response to a request for information or comments by the city council or one of its committees, the mayor, or other elected city official or an agency;

(vi) (A) contractors or prospective contractors who communicate with or appear before city contracting officers or employees in the regular course of procurement planning, contract development, the contractor selection process, the administration of a contract, or the audit of a contract, when such communications or appearances are made by such contractors or prospective contractors personally, or through;

1. such officers and employees of the contractors or prospective contractors who are charged with the performance of functions relating to contracts:

2. subcontractors or prospective subcontractors who are or will be engaged in the delivery of goods, services or construction pursuant to the contract of such officers and employees of the subcontractor or prospective subcontractor who are charged with the performance of functions relating to contracts; or

3. persons who provide technical or professional services, as defined in clause (B) of this subparagraph, on behalf of such contractor, prospective contractor, subcontractor or prospective subcontractor.

(B) For the purposes of clause (A) of this subparagraph:

1."technical services" shall be limited to advice and analysis directly applying any engineering, scientific, or other similar technical discipline;

2."professional services" shall be limited to advice and analysis directly applying any legal, accounting or other similar professional discipline in connection with the following elements of the procurement process only: dispute resolution, vendor protests, responsiveness, and responsibility determinations, determinations of prequalification, suspensions, debarments, objections to registration pursuant to section 328 of the charter, contract interpretation, negotiation of contract terms after the award of a contract, defaults, the termination of contracts and audit of contracts. Any person who provides professional services pursuant to this subparagraph in connection with elements of the procurement process not specified above in this item, whether prior to, in connection with or after the award of a contract, shall be deemed to be engaged in lobbying activities, unless such person is deemed not to be engaged in lobbying activities, under another provision of this paragraph; and

3. "city contracting officers or employees" shall not include elected officials

or deputies of elected officials or any person not duly authorized to enter into and administer contracts and make determinations with respect thereto; and

(vii) persons or organizations who advertise the availability of goods or services with fliers, leaflets or other advertising circulars.

(d) The term "organization" shall include any corporation, company, foundation, association, labor organization, firm, partnership, society, or joint stock company.

(e) The term "compensation" shall mean any salary, fee, gift, payment, subscription, loan, advance or any other thing of value paid, owed, given or promised by the client to the lobbyist for the purpose of lobbying.

(f) The term "expenditure" shall mean any expenses incurred by or reimbursed to the lobbyist for lobbying.

§ 3-224 through § 3-228 of the Administrative Code

§ 3-224. **Definitions.**

Whenever used in this subchapter, the term "public servant" shall mean a public servant as defined in subdivision nineteen of section two thousand six hundred one of the charter.

§ 3-225. **Prohibition of gifts.**

No person required to be listed on a statement of registration pursuant to section 3-213(c)(1) of subchapter 2 of this chapter shall offer or give a gift to any public servant.

§ 3-226. **Enforcement.**

Complaints alleging violations of this subchapter shall be made, received, investigated and adjudicated in a manner consistent with investigations and adjudications of conflicts of interest pursuant to chapters sixty-eight and thirty-four of the charter.

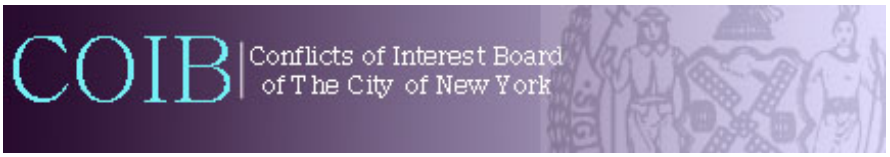
§ 3-227. **Penalties.**

Any person required to be listed on the statement of registration pursuant to section 3-213(c)(1) that knowingly and willfully violates any provision of this subchapter shall be subject to a civil penalty, which for the first offense shall be not less than two thousand five hundred dollars and not more than five thousand dollars, for the second offense not less than five thousand dollars and not more than fifteen thousand dollars, and for the third and subsequent offenses not less than fifteen thousand dollars and not more than thirty thousand dollars. In addition to such civil penalties, for the second and subsequent offenses a person required to be listed on the statement

of registration pursuant to section 3-213(c)(1) that knowingly and willfully violates the provisions of this subchapter shall also be guilty of a class A misdemeanor.

§ 3-228. **Rulemaking.**

The conflicts of interest board, in consultation with the clerk, shall adopt such rules as necessary to ensure the implementation of this subchapter, including rules defining prohibited gifts and exceptions including de minimis gifts, such as pens and mugs, gifts that public servants may accept as gifts to the city and gifts from family members and close personal friends on family or social occasions, and to the extent practicable, such rules shall be promulgated in a manner consistent with the rules and advisory opinions of such board governing the receipt of valuable gifts by public servants.



New York Conflicts of Interest Law, Covering New York City Public Servants
(*Plain Language Version)**

1. ***Misuse of Office.*** Public servants may not use or misuse the position to financially benefit themselves, their family members, or anyone with whom they have a business or financial relationship. [Charter § 2604(b)(3)]

2. ***Misuse of City Resources.*** Public servants may not use City letterhead, personnel, equipment, supplies, or resources for a non-City purpose, nor may they pursue personal or private activities during times when they are required to work for the City. [(b)(2), Rules § 1-13(a), (b)]

3. ***Gifts.*** Public servants may not accept anything valued at $50 or more from anyone that they know or should know is doing business or seeking to do business with the City. [(b)(5), Rules § 1-01]

4. ***Gratuities.*** Public servants may not accept anything from anyone other than the City for performing their official duties. [(b)(13)]

5. ***Seeking Other Jobs.*** Public servants may not seek or obtain a non-City job with anyone whom they are dealing with in their City job. [(d)(1)]

6. ***Moonlighting.*** Public servants may not have a job with anyone that they know or should know does business with the City or that receives a license, permit, grant, or benefit from the City. [(a)(1)]

7. ***Owning Businesses.*** Public Servants may not own any part of a business or firm that they know or should know does business with the City or that receives a license, permit, grant, or benefit from the City, nor may their spouses, or their domestic partners, nor any of their children. [(a)(1)]

8. ***Confidential Information.*** Public servants may not disclose confidential City information or use it for any non-City purpose, even after they leave City service. [(b)(4), (d)(5)]

9. ***Appearances Before the City.*** Public servants may not accept anything from anyone other than the City for communicating with any City agency or for appearing anywhere on a City matter. [(b)(6)]

10. ***Lawyers and Experts.*** Public servants may not receive anything from anyone to act as a lawyer or expert against the City's interests in any lawsuit brought by or against the City. [(b)(7), (8)]

11. ***Buying Office or Promotion.*** Public servants may not give or promise to give anything to anyone for being elected or appointed to City service or for receiving a promotion or raise. [(b)(10), (11)(b)]

12. ***Business with Subordinates.*** Public servants may not enter into any business or financial dealings with a subordinate or supervisor. [(b)(14)]

13. ***Political Solicitation of Subordinates.*** Public servants may not directly or indirectly ask a subordinate to make a political contribution or to do any political activity. [(b)(9)(b), (11)(c)]

14. ***Coercive Political Activity***. Public servants may not force or try to force anyone to do any political activity. [(b)(9)(a)]

15. ***Coercive Political Solicitation.*** Public servants may not directly or indirectly threaten anyone or promise anything to anyone in order to obtain a political contribution. [(b)(11)(a)]

16. ***Political Activities by High-Level Officials.*** Deputy mayors, agency heads, deputy or assistant agency heads, chiefs of staff, directors, or members of boards or commissions may not ask anyone to contribute to the political campaign of anyone running for City office or to the political campaign of a City elected official running for any office. These appointed officials, and elected officials as well, may not hold certain political party positions. [(b)(12), (15)]

17. ***Post-Employment One-Year Ban.*** For one year after leaving City service, former public servants may not accept anything from anyone, including the City, for communicating with their former City agency. [(d)(2)]

18. ***Post-Employment One-Year Ban for High-Level Officials.*** Elected officials, deputy mayors, the chair of the City Planning Commission, and the heads of the Office of Management and Budget, Law Department, or Departments of Citywide Administrative Services, Finance, or Investigation, for one year after they leave City service, may not accept anything from anyone, including the City, for communicating with their former branch of City government. [(d)(3)]

19. ***Post-Employment Particular Matter Bar.*** After leaving City service, former public servants may never work on a particular matter they personally and substantially worked on for the City. [(d)(4)]

20. ***Improper Conduct.*** Public servants may not take any action or have any position or interest, as defined by the Conflicts of Interest Board, that conflicts with their City duties. [(b)(2)]

21. ***Inducement of Others.*** Public servants may not cause, try to cause, or help another public servant to do anything that would violate this Code of Ethics. [Rules § 1-13(d)]

22. ***Disclosure and Recusal.*** As soon as a public servant faces a possible conflict of interest under this Code of Ethics, he or she must disclose the conflict to the Conflicts of Interest Board and comply with the Board's instructions, which may include recusal, divestiture, or other actions.

23. ***Volunteer Activities.*** Public servants may be officers or directors of a not-for-profit with business dealings with the City if they do this work on their own time, they are not compensated for such work**,** the not-for-profit has no dealings with their City agency (unless the head of the agency has given approval), and the public servant is in no way involved in the not-for-profit's business with the City. [(c)(6)]

FOR ADDITIONAL INFORMATION, CONTACT

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NEW YORK, NY 10007
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http://nyc.gov/ethics

* This material is intended as a general guide. It is not intended to replace the text of the law (NYC Charter § 2604). For more particular information or to obtain answers to specific questions, you may write or call the Board. Also, bear in mind that individual agencies may have additional restrictions on the acceptance of gifts, moonlighting, and other issues. Contact your agency counsel for more information.