



Ethical Times

ETHICS LIGHTS THE WAY TO GOOD GOVERNMENT

Conflicts of Interest Board Holds Eighth Annual Citywide Seminar on “Ethics in New York City Government”

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The NYC Conflicts of Interest Board will provide the full text of any document reported in this issue.

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On Wednesday, May 29 the Conflicts of Interest Board held its eighth annual seminar on Ethics in New York City Government. The seminar was held at the New York Law School, whose Center for New York City Law co-sponsored the event.

The seminar was extremely well attended. Nearly 300 conferees came to learn, to discuss, and to sharpen their awareness of New York City’s conflicts of interest law.

The day’s events began with registration and a continental breakfast, followed by welcome remarks by Professor Ross Sandler, Director of the Center for New York City Law. Mayor Michael R. Bloomberg then addressed a packed Steifel Auditorium. The Mayor acknowledged New York Law School for co-sponsoring the conference with the Conflicts of Interest Board. He noted that the conference kept City agency heads, counsel, and

elected officials abreast of the latest COIB decisions and activities regarding conflicts of interest law, and it provided a forum for the discussion of complex conflicts of interest issues.

Mayor Bloomberg noted that the conference communicates to City employees the message that City government takes seriously the importance of ethical public administration and service. The Mayor emphasized that the Conflicts of Interest Board provides a valuable service by advising agency directors and City employees about how to avoid conflicts of interest in the performance of their official duties.

The Mayor concluded his remarks by pointing out that it is essential to make it as easy as possible for City employees to understand what they can and cannot do in their official duties.

Mayor Bloomberg was followed on the podium by Council Speaker A. Gifford Miller, who provided historical background on the crea-

tion of the current Conflicts of Interest Board, after which he defined a conflict of interest as a situation in which a public official has a private interest sufficient to influence or appear to influence the objective exercise of his or her professional obligations. Speaker Miller stressed that the current New York City Council is firmly committed not only to the idea of ethics, but to the reality of ethics as well, to forestall conflicts of interest and, when necessary, to investigate and uproot the seeds of corruption.

Following Council Speaker Miller, Council Member Helen Sears, Chair of the Committee on Standards and Ethics, spoke about her Committee’s plans to re-vamp the whistle blower statute, which she felt was inadequate. After her remarks, Benito Romano, Acting Chair of the Conflicts of Interest Board, presented the Sheldon Oliensis Ethics in City Government Award to the Department of Environmental Protection, citing in particular its work in the COIB’s Train the Trainer

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Ethics Myth: Legal Reality

PRIVATE PRACTICE OF LAW

By Bonnie Beth Greenball

Myth: If I work for the City, I may not have an outside practice of law.

Fact: Unless your agency has stricter rules, the City's conflicts rules permit, with certain limitations, the outside practice of law.

Some people may believe that City attorneys may never practice law privately. While this is not necessarily the case, you must take great care to conform your outside practice of law, whether compensated or pro bono, to the conflicts of interest provisions contained in Chapter 68 of the City Charter. In addition, City agencies may have rules that are stricter than the conflicts of interest law. In fact, some City agencies absolutely prohibit attorneys from engaging in private practice. You should check with your agency counsel to determine whether your proposed outside law practice is permissible.

Business with the City

Once you find out that your agency does indeed permit attorneys to engage in the private practice of law, your inquiry does not end. Next, you must be certain to conform your practice to Chapter 68.

First, you must determine whether the person or firm for whom you wish to provide legal services has business dealings with the City. If you wish to pro-

vide **compensated** legal services to a person or firm that has business dealings with the City, you should contact the Board to apply for a waiver. In order to obtain a waiver, you must receive written approval from the head of your agency, and then the Board will evaluate your request and determine whether to issue a public waiver permitting you to work for the person or firm. If you wish to provide pro bono legal services to a person or entity that has business dealings with the City, your inquiry would be different. You may engage in **uncompensated** legal representation of a not-for-profit that does business with the City, provided that the not-for-profit does not have business dealings with your own agency (although, in rare circumstances, a waiver may be granted), and that you **do not** work on the not-for-profit's City business.

City Time and Resources

You may not engage in outside legal practice, whether compensated or uncompensated, during times when you are required to perform services for the City, and you may not use City letterhead, personnel, equipment, resources, or supplies for any non-City purpose, which includes, of course, the private practice of law. You should be particularly mindful never to use City letterhead or your City title in the representation of private clients. This would be a very serious violation of the conflicts of interest law.

The same rules

generally apply for attorneys providing pro bono legal services. The only exception would be if a City agency head wished to encourage and support the pro bono practice of law by attorneys in his or her agency and provided written approval to the Board stating his or her view that such activities would further the purposes and interests of the City. Should the Board agree with that view, City attorneys in that agency would be permitted to use modest amounts of City time and resources (but not City letterhead) for pro bono work within the parameters laid out by the agency and the Board.

City position and confidential information

Regardless of whether the legal work you are doing is compensated or uncompensated, you may not use the powers of your office to obtain a benefit for yourself or your outside clients. For example, you **may not** identify yourself to an adversary or tribunal as a City attorney. Furthermore, you may not use confidential City information in the course of such representation.

Appearing before the City and Litigating Against the City

If you work full-time for the City, you may not, directly or indirectly, appear on behalf of private interests in matters involving the City or represent, for compensation, private interests that are before any City agency. If you work part-time, that is, less than twenty hours per week, the restriction applies only to your **own** agency. Furthermore, even if you are handling matters on a pro bono basis, you should not be

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involved in your clients' City business.

The Charter specifically prohibits attorneys, regardless of whether they are compensated, from appearing as an 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 his or her official duties, is a complainant. In the case of part-time employees, this applies only to the agency served by the public servant.

Superior/Subordinate

You may never represent a superior or subordinate, regardless of whether you receive compensation for such representation. Therefore, for example, you may not do a favor for your secretary and complete a real estate closing on his or her behalf.

Pro Bono

City attorneys are generally civic-minded and may have an interest in providing pro bono legal services. Furthermore, City attorneys possess a vast reservoir of professional experience and talent. Some City lawyers, however, may be uncertain whether the conflicts laws would permit pro bono work and may have hesitated to volunteer their services. In order to provide guidance, the Board, in Advisory Opinion No. 2001-3 on the private practice of law by City attorneys, specifically addressed pro bono practice. First, the Board recognized that the 1997 Resolution of the Administrative Board of the Courts, which exhorts all New York City lawyers to provide at least 20 pro bono hours annually, indeed means all lawyers, including those who work for the City. The Board went on to note the limitations that Chapter 68 imposes on such work; primary among those limitations are: 1) that City lawyers may not handle pro bono matters which involve the City, and 2) that pro bono work may not be performed on City time or using City resources. The Board noted, however, that in appropriate cases, it would accept applications from the heads of City agencies who provide the Board with written approval for staff attorneys to use reasonable amounts of City time and resources in support of outside pro bono work.

Conclusion

Before engaging in any outside practice, whether compensated or pro bono, you should be very careful and should follow the provisions outlined above and contained in Advisory Opinion No. 2001-3. Furthermore, you should feel free to consult with the attorneys at the Conflicts of Interest Board at 212-442-1400 for advice. All calls are confidential.

Bonnie Beth Greenball is an Associate Counsel to the Conflicts of Interest Board

Steven B. Rosenfeld Appointed Chair of the Conflicts of Interest Board

On May 21, the City Council confirmed Mayor Bloomberg's appointment of Steven B. Rosenfeld as the newest member of the Conflicts of Interest Board. On June 18, Mayor Bloomberg appointed Mr. Rosenfeld as Chair of the Board.

Mr. Rosenfeld has a distinguished record of public and private service in the law. In 1967 he graduated magna cum laude from Columbia Law School, where he was a James Kent Scholar, Harlan Fiske Stone Scholar, and Recent Developments Editor of the Columbia Law Review. Upon graduation from law school, he served as law clerk to the Honorable Charles M. Metzner of the U.S. District Court for the Southern District of New York. Mr. Rosenfeld is currently a partner at Paul, Weiss, Rifkind, Wharton & Garrison, which he joined in 1968. His litigation experience includes appearances in numerous federal securities class actions, SEC investigations, international arbitrations, and copyright, banking, and insurance litigations in federal and state court.

Mr. Rosenfeld has a long history of *pro bono* and public service. He has actively litigated, *pro bono*, criminal and civil appeals, death penalty cases, and poverty law matters. Before joining Paul Weiss, he was deputy general counsel of the New York State Special Commission on

Attica. His professional activities have included serving as a board member and President of the Legal Aid Society of New York City, Vice President and member of the Executive Committee of the Association of the Bar of the City of New York, where he also chaired several committees, and a member of the Indigent Defense Oversight Committee of the Appellate Division, First Department. He has been a Director of the Columbia Law School Alumni Association and a member of the House of Delegates of the New York State Bar Association. He is an honorary overseas member of the London Commercial Bar Association (COMBAR).

Mr. Rosenfeld's community activities include past service on the Boards of Trustees of the Dalton School in New York City and The Putney School in Vermont. He has been Director of the New York Association of New Americans and continues to serve as a trustee of the New York Theatre Workshop. Among his numerous publications are an article on mandatory *pro bono*, reprinted in Ethics and the Legal Profession (1986), and a chapter, "Litigation in the United States," written for the Encyclopedia of International Commercial Litigation. His teaching experience includes stints as a lecturer in law at Columbia Law School (Trial Practice and Profession of Law) and a faculty member of Cardozo Law School's Intensive Trial Advocacy Program and the Legal Aid Society's Criminal Defense Division Training Program.



NYC CONFLICTS OF INTEREST BOARD

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Program.

The day offered three concurrent workshops covering particular ethics issues in City government.

"Acceptance of Gifts, Meals, and Travel Expenses" reviewed the rule of City employees accepting gifts, ticket, and meals, as well as the rule on gifts to the City. "Outside Activities" examined the restriction on City employees' outside activities, both compensated and volunteer. Among the topics discussed were moonlighting, business ownership, and the representation of private interest before the City. "Enforcement and Misuse of Position" covered a range of misuses of City office, and reviewed the Charter's strict requirement that City officials must inform themselves of their business dealing that could create a conflict of interest. The process by which the Conflict of Interest Board enforces Chapter 68 was also reviewed in this session.

The alternate sessions included

"Ethics 101," a day long introduction to the Conflicts of Interest Law and the Board; "Financial Disclosure or What Do You Do with Those FD Reports?"; "Emerging Issues in the Conflicts of Interest Law"; and "Train the Trainer Updates," which included a discussion of the agency's e-training initiatives.

Among the best attended sessions were "What Do You Do with Those FD Reports?" and "Emerging Issues." "What Do You Do with Those FD Reports?" reviewed the principles and processes of the City's financial disclosure system and examined possible changes to the financial disclosure law and procedures. Mark Davies, Executive Director of the Conflicts of Interest Board, along with Joanne Giura-Else, Acting Financial Disclosure Director, and Holli Hellman, Senior Financial Disclosure Analyst, led the session, which closed with a demonstration of a model electronic filing system.

"Emerging Issues in Conflicts of Interest Law" was moderated by Wayne

Hawley, General Counsel of the Conflicts of Interest Board, and Joan Salzman, Deputy Executive Director and Chief of Enforcement of the Conflicts of Interest Board. Their session highlighted issues sure to be faced by the Board and many other City agencies in the coming months as City officials consider turning to the private sector for support of City projects.

Many agencies and elected officials solicit or accept donations from City vendors as "gifts to the City," and there is a good deal of debate as to how to best, i. e., most ethically, do this. After much discussion and debate by a well-informed and articulate panel comprised of Carol Robles-Roman, Alain Bourgeois, Gene Russianoff, and Andrea Berger, the consensus seemed to be that gifts to the City are a good thing. (Rome was not built in a day, but it was built and rebuilt by gifts to the city.) The point of concern, many agreed, was that each gift and benefit from the private to the public sector should be appropriately vetted and approved before the City accepts it.