

ENFORCEMENT

by

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A. Introduction

Conflicts of interest among City employees, allowed to go unchecked, can impose significant costs on the City. Conflicts of interest can deprive the City of its resources, as money, staff time, or office supplies are diverted from their intended purposes to the personal benefit of a particular public servant. In an era of tight budgets, even the smallest losses 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 in City service and from being properly acknowledged for their efforts. 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 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.

The Enforcement Unit of the Conflicts of Interest Board is committed to minimizing these costs and fighting the conflicts of interest that are implicated by Chapter 68 of the City Charter, the City's ethics law.

B. The New York City Enforcement Program

While there are certain breaches of the public trust which are appropriately handled criminally – such as high-level public officials accepting bribes – most breaches of the public trust are best addressed by local government ethics agencies equipped to enforce civil penalties. This chapter reviews the New York City ethics enforcement program.

Any good ethics enforcement program has the following features: (1) fairness; (2) effective penalties; (3) some type of confidentiality prior to final decision; (4) a means of publishing final findings of conflicts of interest so that the particular cases can be used for educational purposes; and (5) appellate review. The New York City model is based upon certain fundamental indicia of fairness in the legal process: due process of law, meaning a full and fair

opportunity to be heard in an administrative court that is unbiased, and confidential proceedings until a finding of conflict of interest is made by the body charged with enforcing the ethics laws.

Confidentiality provisions in enforcement proceedings recognize the tension between the interest of the party charged with unethical conduct in preserving his or her reputation and the right of the public to know, once the charges are proved, when officials act in a corrupt way. In New York City, the Chapter 68 enforcement process requires publication of case results where findings of a conflict of interest are made. The enforcement program also allows for effective monetary and other penalties that will serve to deter misconduct in the future, both in the case of a specific respondent and in general.

The New York City Conflicts of Interest Board's *advisory* function must be distinguished from its *enforcement* 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 future conduct they propose (such as teaching part-time at a university that has business dealings with the City or placing private investments in a blind trust before accepting a City appointment).¹ By contrast, the Board's enforcement function applies to *past* conduct that violates Chapter 68 of the City Charter, the Rules of the Conflicts of Interest Board (the "Board Rules"),² or Section 12-110 of the Administrative Code, the City's financial disclosure law.³

Examples of Chapter 68 Violations

Following are some examples of violations of New York City's conflicts of interest law (each of which is discussed in more detail in their respective chapters):

- Holding a prohibited interest or position in a firm that does business with the City.
- Engaging in conduct that conflicts with 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.
- Coercing other City employees into working on or contributing to political campaigns.
- Negotiating with City contractors for private jobs when working with those entities on City matters.
- Entering into a financial relationship with a superior or subordinate (*e.g.*, asking one's subordinate for a \$1,000 loan or renting a vacation home together).

- 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 that one previously worked on personally and substantially for the City.

C. **Enforcement Procedures**

The New York City Office of Administrative Trials and Hearings (“OATH”) is New York City’s central administrative tribunal and hears cases from a wide variety of City agencies.⁴ The Board routinely delegates its hearing function to OATH, which employs professional administrative law judges and courtrooms equipped with hearing facilities and transcription capabilities. The use of such a central tribunal creates great efficiencies, eliminates the need for the local ethics commission to have its own hearing facilities, and adds a layer of professionalism, independence, and formality to the proceedings.

To prove a case at OATH, the Board’s Enforcement Unit must produce admissible evidence, including witnesses and documents, concerning the alleged violations. All Board proceedings and records are confidential, except for the final Board order finding a violation.⁵ Public dispositions by agreement are discussed below in Section D.

1. **Complaints**

When the Board receives a *complaint*, the Board has five choices as to how to treat it under Charter § 2603(e):

- a. Dismiss the complaint if no action is required; or
- b. Refer the complaint to the New York City Department of Investigation (“DOI”) for investigation; or
- c. Make an “initial determination of probable cause” to believe that the public servant violated the City’s conflicts of interest law and serve written notice of that initial determination upon the public servant; or
- d. Refer the complaint back to the head of the agency employing the public servant if the violation is minor or if related disciplinary charges are pending at the agency;⁶ or
- e. Issue a confidential warning letter to the public servant. Where conduct was inappropriate but minor, a private (*i.e.*, non-public and confidential) warning letter may be the proper disposition of a case of an alleged violation of the conflicts of interest law. These letters are also useful in the enforcement process if, in the future, a public

servant who has been so warned commits another offense. On occasion, the Board makes this private warning letter public, but only with the consent of the public servant whose conduct is the subject of the letter.⁷ Such warning letters are made public to provide guidance to other City employees in similar situations.

If the Board makes a referral to another agency for possible disciplinary charges, the agency head must then consult with the Board prior to final disposition.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 law.⁹

The Board may also direct DOI to investigate matters that are not brought by formal complaint.¹⁰ An important source of such complaints is the news media. An article in the newspaper citing allegations of corruption 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, that reported 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.

DOI must also report to the Board confidentially on cases that involve or may involve violations of the conflicts of interest law.¹¹ City agencies also have an obligation to refer complaints of Chapter 68 violations to the Board.¹²

The Board also has jurisdiction over *former* public servants.¹³ This means that a public servant cannot insulate himself from enforcement of the ethics law simply by resigning quietly from his agency and hoping that the Board's enforcement case will go away.

2. Due Process: After DOI Conducts an Investigation, A Full and Fair Opportunity to Be Heard

Once DOI makes its *confidential* report¹⁴ to the Board, the Board may have additional questions and ask DOI to continue or expand its investigation. With the report and supporting information in hand, the Board then determines whether to issue a private warning letter, to proceed with further enforcement proceedings if there is probable cause to believe that the current or former public servant violated the conflicts of interest law, or to dismiss case if there is insufficient evidence to warrant enforcement. In its discretion, when a case is dismissed, the Board may inform the subject public servant that the matter is closed.

3. After the Notice of Initial Determination of Probable Cause

If the Board finds probable cause to believe that a current or former City employee has violated the conflicts of interest law, the Board's Enforcement Staff will prepare and serve a written "Notice of Initial Determination of Probable Cause."¹⁵ The City employee or official then has 15 days (20 days if service of the Notice was by mail) to answer the Notice, either orally or in writing.¹⁶

The City employee has the right to be represented by counsel or any other person. The OATH Rules of Practice also apply, but the Board's Rules govern in case of a conflict between the two sets of procedural rules.¹⁷ 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.

The Board reviews the public servant's response to the Notice of Initial Determination of Probable Cause and will either dismiss the case or sustain its initial finding of probable cause.¹⁸ The Board always considers the defenses offered by public servants and has dismissed cases at this stage. This means that the process is not *pro forma*, and City employees have a real opportunity to obtain dismissal of a case that should not go forward for reasons – either factual or legal – not previously brought to the Board's attention. If a Notice of Initial Determination of Probable Cause has been served upon a public servant, and he or she has responded, and the Board decides to dismiss the case, that public servant receives a written notice of dismissal.¹⁹ If the Board sustains its finding of probable cause, the Board will either hold a hearing or direct a hearing to be held at OATH.²⁰ Most hearings are held at OATH before an administrative law judge, although a Board member could, under Board Rules, conduct the hearing.²¹

If the City employee is subject to any state law or collective bargaining agreement providing for the conduct of disciplinary proceedings, after the Board sustains its finding of probable cause, the Board is required to refer the matter to the appropriate agency, and the agency must consult with the Board prior to a final decision.²² The Board, however, retains ultimate jurisdiction to enforce the City's conflicts of interest law.²³ 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 claims.²⁴

4. Formal Proceedings

If the Board sustains its finding of probable cause to believe that the City employee violated Chapter 68 (and the matter is not referred to the employee's agency if the employee is a member of a union), the Board's enforcement counsel serves a formal Petition, which constitutes the institution of formal proceedings by the Board.²⁵ The respondent serves an Answer (8 days after service of Petition, 13 days if service was by mail).²⁶ The failure to answer means that all the allegations of the Petition are deemed admitted.²⁷ Pleadings may be amended within 25 days prior to hearing. If a party wishes to amend the pleadings later than 25 days prior to trial, there must be consent or leave of the Board or of an OATH administrative law judge.²⁸ Documents may be exchanged. 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."²⁹

5. Subpoenas

Only an administrative law judge at OATH or a Board member may issue subpoenas for witnesses and documents.³⁰ 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.³¹ 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 24 hours' notice, even by fax.³² OATH continues to encourage the making and scheduling of requests for subpoenas by conference call to the assigned administrative law judge.

6. The Hearing

Hearings in Board enforcement actions are not public unless requested by the public servant. At OATH, each case is assigned a settlement judge and a trial judge. In most cases (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 prior to the commencement of trial. If the settlement judge cannot resolve the matter, 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.

At trial, each side may present an opening statement summarizing the case and the proof. 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. The City employee, either on his own or by counsel, then presents his or her case. The enforcement attorney may present rebuttal evidence.³³

Witnesses testify under oath and on the record. The parties or their counsel (or other representative, since non-lawyers may appear at OATH) conduct direct and cross-examination. The rules of evidence are relaxed, and hearsay is admissible. An audiotape of the proceedings is made, and OATH sees that the tape is transcribed into a *verbatim* transcript of the testimony. (That transcript is made available by OATH to the parties at no cost, and can be received via e-mail shortly after a formal written request for the transcript is made.) The Board's first full trial, which involved the former City Comptroller, took eleven days, with 2,000 pages of testimony, 150 trial exhibits, and more than fifteen witnesses.

After the close of the evidence, each side may present a closing statement.³⁴ This time, the respondent goes first. As part of its mandate to educate City employees about the conflicts of interest law, the Board has produced two, one-hour videotaped mock trials showing all of these elements of the trial phase of the Board's proceedings. The tapes have been broadcast on the City's Crosswalks Television station.

7. 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. After due reflection on the facts and the applicable law, the administrative law judge issues a confidential, non-binding written report and recommendation to the Board.³⁵ This report and recommendation includes findings of fact,

conclusions of law, and a proposed penalty, if applicable.

The parties (*i.e.*, the respondent and/or the respondent's representative and enforcement counsel) have 10 days from service of the OATH administrative law judge's report and recommendation to submit comments to the Board.³⁶ The Board considers the administrative law judge's report and all of the evidence in the record. The Board then makes its own order and findings of fact and conclusions of law.³⁷ Deference is given to the administrative law judge, but the Board issues its own decision and is free to modify the recommendations of the administrative law judge. If no violation is found, the order is not made public by the Board (although the respondent is free to do so if he or she chooses).³⁸ If a violation is found, the order is made public by the Board, as are the final findings and conclusions.³⁹ The exception to this practice involves 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.⁴⁰

Examples of Board Decisions Following OATH Hearings

In April 1996, in the case of the former City Comptroller, Elizabeth Holtzman, after a full trial on the merits, the Board fined Ms. Holtzman \$7,500 (of a maximum \$10,000) for violating Section 2604(b)(3) of the Charter (prohibiting use of public office for private gain). The Board also found that she had violated Section 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.⁴¹

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. The fine was collected in full in December 2000. Katsorhis habitually used City letterhead, supplies, equipment, and personnel to conduct an outside law practice. He had correspondence to private clients typed by City personnel on City letterhead during City time and mailed or faxed using City postage meters and fax machines. Katsorhis also 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' private clients at a court appearance. In 2000, the New York State Supreme Court Appellate Division, First Department, twice dismissed as untimely perfected 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 have been exhausted and the Board decision stands.⁴²

Pursuant to its Charter requirements, the Board published its final decisions in these cases.

8. 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 who feels aggrieved by an agency decision complete the administrative process (where he may find redress) before challenging the final agency action in the courts.

In the *Katsorhis* case, 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 the *Holtzman* case, the parties proceeded directly to the Appellate Division. There, 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, as noted, dismissed the *Katsorhis* case 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, ruling confirming the Board’s decision in *COIB v. Holtzman*.⁴³ 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.’”⁴⁴ (Imputed knowledge is discussed in greater detail in Section E(4) below.) The Court also found that Ms. 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.”⁴⁵ Finally, the Court held that the Federal Election Campaign Act does not preempt local ethics laws.

D. Disposition by Agreement

It is possible to reach a “disposition by agreement” at any point in the course of any enforcement proceeding.⁴⁶ Any such disposition which contains an acknowledgment that the respondent violated Chapter 68 of the Charter or the Administrative Code must be made public.⁴⁷ This publication requirement has a salutary effect. It allows the public to be apprised of important cases and puts enforcement to work as a part of the Board’s education program: teaching by example. It helps to hold public servants accountable. Dispositions by agreement afford public servants more of a say in the outcome of enforcement cases than they may have if the case proceeds to trial and they lose. Early settlements spare both the City and the City employee who has been served with claims of conflicts of interest a great deal of time and resources. Often, a negotiated settlement, in which the public servant can have input into the penalty and the description of his or her conduct, will be more palatable to the public servant than a full trial, which carries the risk of a judicial finding, upon a fully developed public record, that his or her conduct was improper.

A settlement or disposition by agreement requires a monetary fine, an admission of a violation of the law, a meaningful statement of facts, and an agreement that the disposition is public. For example, in *COIB v. Matos*, COIB Case No. 1994-368 (1996), there was an admission of a conflicts of interest law violation and 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. Many government employees do not have the resources to pay large fines, and an ethics enforcement agency can and should take into account true financial hardship in setting the fine. In the *Matos* case, the Board agreed to forgive a portion of the fine in recognition of unemployment and real hardship shown by sworn affidavit, if the hardship continued. The Board thus held the case open for a year after the disposition, by its terms, for the submission by Matos and review by the Board of a second, sworn statement of circumstances showing continued hardship.

In a few cases, if the City employee is unable to pay the fine in full at the time of the settlement, the Board has approved dispositions that extend payments over a period of time. Such scheduled payments are, however, very much the exception. The Board requires a confession of judgment in such cases, to avoid protracted collection problems if the City employee defaults on the settlement payment schedule. A public servant who wishes to settle but lacks cash 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. The Board fined a firefighter \$7,500 for unauthorized moonlighting with a distributor of fire trucks and spare parts to the 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.⁴⁸

At the end of this Chapter is Appendix A, which describes all the dispositions made public by the Board from April 1, 2008, through April 1, 2009. 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>.

E. Penalties for Violations of the Conflicts of Interest Law

The penalties applicable in cases involving violations of the City's conflicts of interest law are:

1. The Board can impose a civil monetary fine up to \$10,000 per violation. (Charter § 2606(b).)
2. The Board can recommend suspension or removal from office after consultation with the relevant agency head. (Charter § 2606(b).)
3. The Board can void a contract or transaction (after consultation with the agency head). (Charter § 2606(a).)

In the *Holtzman* case, 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. This action preceded the Board's administrative proceedings.

4. Violation of Chapter 68 is a misdemeanor. Upon conviction (in a separate criminal proceeding conducted by one of the City's District Attorneys), the City official must forfeit public office or employment. (Charter § 2606(c).)

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 the Charter, 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. Mr. Jones had denied that he worked for another City agency when he applied 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 2001, two Department of Buildings officials were prosecuted criminally in Manhattan for accepting gifts from expeditors. In *People v. Hilton*, the court declared a mistrial and the defendant pleaded guilty to a misdemeanor violation of the City's conflicts of interest law. In *People v. Cox*, the defendant was convicted following a jury trial of the misdemeanor of receiving unlawful gratuities and of two felony counts of offering false instruments for filing by deliberately answering falsely in City financial disclosure reports calling for the listing of the gifts.

In 2006, Bernard Kerik, former New York City Police Commissioner, pled guilty to misdemeanor charges that, when he was Commissioner of the Department of Correction, he accepted a gift valued at approximately \$165,000 in renovation work on his apartment 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 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.

Imputed Knowledge

Actual knowledge of a business dealing with the City is required for criminal conviction based on holding a prohibited interest. (Charter § 2606(c).) However, Chapter 68 imputes knowledge of business dealings with the City for purposes of all

cases involving civil penalties under a “should have known” standard. Thus, Charter § 2604(a)(6) provides that for purposes of imposing civil penalties such as the \$10,000 fine, voiding a transaction, or recommending disciplinary action as provided in Charter § 2606(a) and (b), “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.”

In 2000, the Board announced that it had rebuked a former New York City Police Commissioner for accepting a free trip to the 1999 Academy Awards festivities in Los Angeles. Revlon was the donor of the trip, valued at over \$7,000. The Board defined for the first time the duties of high-level public servants to inquire about the business dealings of the donor. Because this was the first public announcement of this duty, and the business dealings of Revlon 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. The Police Commissioner repaid the cost of the trip. *In re Safir*, COIB Case No. 1999-115 (2000). The concept of imputed knowledge is a central theme of Chapter 68. For example, public servants may not accept gifts from donors they know engage in or even *intend* to engage in business dealings with the City. See Charter § 2604(b)(5). 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.

5. Conviction for buying public office leads to lifetime disqualification from being elected, appointed, or employed in City service. (Charter § 2606(c).)

F. Penalties for Financial Disclosure Violations

Penalties for violating the City’s financial disclosure law 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). (Administrative Code § 12-110(g)(2).) See *COIB v. Desai*, Index No. 403858/95 (Sup. Ct. N.Y. Co. 1996).
2. 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. (Administrative Code § 12-110(g)(2).) Criminal proceedings are brought by other law enforcement agencies.
3. Disclosure of confidential information contained in a financial 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. (Administrative Code § 12-110(g)(3).)

G. Conclusion

The primary purpose of enforcement lies not in punishing public servants but in preventing future conflicts of interest. 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 the officials elected or appointed to serve the people. Fair, swift, and sensible enforcement will foster good government and sound economic development by ensuring that scarce 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.

¹ See Charter § 2603(c).

² Rules of the Conflicts of Interest Board (“Board Rules”), Title 53, Rules of the City of New York (“RCNY”).

³ Charter § 2603(d); Administrative Code § 12-110(h).

⁴ See Chapter 45-A of the Charter.

⁵ Charter §§ 2603(h)(4), 2603(k).

⁶ Charter § 2603(e)(2)(d).

⁷ From April 1, 2007, through April 1, 2008, the Board issued 27 public warning letters to current and former City employees.

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(f).

¹¹ Charter § 2603(f)(2).

¹² Charter § 2603(g)(2).

¹³ Charter §§ 2603(e)(3), 2603(g)(3), 2603(h)(7).

¹⁴ Charter § 2603(f)(1).

¹⁵ Board Rules §§ 2-01(a), 2-05(e).

¹⁶ Board Rules §§ 2-01(a), 2-05(e).

¹⁷ Board Rules § 2-05(i).

¹⁸ Board Rules § 2-02(a).

¹⁹ Board Rules § 2-01(d).

²⁰ Charter § 2603(h)(2); Board Rules §§ 2-01(d), 2-02.

²¹ Board Rules § 2-03(a).

²² Charter § 2603(h)(2). *See generally* Report of the New York City Charter Revision Commission, December 1986-November 1988, Vol. II, at 165.

²³ *See* Charter § 2603(h)(6).

²⁴ In fact, from April 1, 2007, through April 1, 2008, the Board entered into 23 three-way dispositions with public servants and their agencies, out of 61 public dispositions during that time period imposing fines.

²⁵ Board Rules § 2-02(b).

²⁶ Board Rules §§ 2-02(c), 2-05(e).

²⁷ Board Rules § 2-02(c)(3).

²⁸ Charter § 2603(h)(4); Board Rules § 2-05(f).

²⁹ OATH Rules of Practice §1-33.

³⁰ Board Rules § 2-03(b).

³¹ OATH Rules of Practice § 1-43.

³² OATH Rules of Practice § 1-43(b).

³³ Board Rules § 2-03(d)(3).

³⁴ Board Rules § 2-03(d)(3).

³⁵ Board Rules §§ 2-04(a), (b).

³⁶ Board Rules § 2-04(a).

³⁷ Board Rules § 2-04(b).

³⁸ Board Rules § 2-04(d).

³⁹ Charter § 2603(h)(4); Board Rules §§ 2-04(b), 2-05(f).

⁴⁰ Charter § 2603(h)(3); Board Rules § 2-04(b).

⁴¹ *COIB v. Holtzman*, COIB Case No. 93-121 (1996), *aff'd*, 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).

⁴² *COIB v. Katsorhis*, COIB Case No. 94-351 (1998), *appeal dismissed*, M-1723/M-1904 (1st Dep't, April 13, 2000), *appeal dismissed*, 95 N.Y.2d 918, 719 N.Y.S.2d 645 (Nov. 21, 2000).

⁴³ 91 N.Y.2d 488, 673 N.Y.S.2d 23, 695 N.E.2d 1104 (1998).

⁴⁴ 91 N.Y.2d at 497.

⁴⁵ 91 N.Y.2d at 498.

⁴⁶ Board Rules § 2-05(h).

⁴⁷ Board Rules § 2-05(h).

⁴⁸ *COIB v. Ludewig*, COIB Case No. 1997-247 (1999).