

**NEW YORK CITY CONFLICTS OF INTEREST BOARD CHAIR
STEVEN ROSENFELD'S "STATE OF THE BOARD" REMARKS**

Delivered as part of the eighteenth annual citywide seminar on Ethics in New York City Government on May 22, 2012.

As the regulars among you know, it's become a tradition to include in this plenary session a brief "State of the COIB" report – a capsule summary of what appears in our 2011 Annual Report, which you can and I hope will read on our website.

2011 was a pretty important year for the Board. Our longtime colleague, Manana Freyre, left the Board to become General Counsel of the Export-Import Bank in Washington, and we sent her off with last year's Powell Pierpoint Award for Outstanding Service to the Board. Manana's seat has been assumed by our newest member, Erika Thomas-Yuille, Associate Counsel of McGraw-Hill; we're delighted to have Erika with us and I wanted to be the first to formally introduce her to you [Erika? Please stand.]

2011 was the first full year in which the Board operated under the three Charter amendments approved by the voters in November 2010 -- increasing the maximum fine for ethics violations to \$25,000, authorizing disgorgement as a remedy, and making ethics training mandatory for all City public servants. We've already sought the higher fines and the disgorgement remedy in enforcement cases filed in the past 18 months. And mindful that *every* City public servant must now

have Chapter 68 training every two years, we're working with your agencies to broaden training programs, while enhancing our on-line training. Meanwhile, the Board continues to work with the Administration and the City Council on numerous additional revisions to Chapter 68 we proposed in August 2009, that remain pending before the Council. We look forward to seeing many, if not all, of these long-overdue changes become law in 2012.

2011 was also a year in which the Board, ably represented by the City's Law Department, successfully litigated a challenge to its ability to enforce the Conflicts of Interest Law against a large segment of public servants. The petitioners in *Rosenblum v. COIB* had argued that the state education law permitted only the Department of Education to impose fines on tenured DOE staff for Chapter 68 violations. Two lower courts had agreed with them. If those decision had stood, independent ethics enforcement against tenured teachers and principals would have ceased. By extension, the COIB could have lost the power to enforce the City's ethics law against 90% of the City's work force that is unionized. But on February 9, 2012, the New York State Court of Appeals reversed the lower court decisions and held that COIB can pursue its own actions based on violations of Chapter 68. The Court made it clear that, whatever an employee's agency does or does not do, the Board can independently prosecute an ethics violation.

While getting used to its new statutory remedies, and helping the Law Department guide the *Rosenblum* litigation to a successful conclusion, our Enforcement Unit had another busy year. Growing awareness and sensitivity to the requirements of the conflicts of interest law translates into more frequent reports of ethical violations by public servants, citizens and the media. Thus, in 2011, the Enforcement Unit received 440 new complaints, closed 504 cases, referred 65 matters to DOI for investigation, published 18 public warning letters, and concluded 61 dispositions involving fines aggregating \$127,769. Many of the dispositions were three-way settlements that included pending disciplinary charges in the employing agency. So we encourage all of you entrusted with agency discipline to involve COIB in your proceedings when there's a Chapter 68 issue, as a way to conserve resources of both the Board and your agencies, and achieve finality for affected public servants.

Summaries of each of the Board's public enforcement dispositions for 2011 are in an appendix to our Annual Report -- in fact, summaries of *all* the Board's enforcement dispositions from 1990 to the present are available on the Board's website -- but here are a few of the most significant public dispositions last year:

- In a widely reported case, the Board fined the Brooklyn Borough President \$20,000 for having accepted free foreign travel and related accommodations for his wife on trips where he was conducting official business and thus

could accept payment for his own expenses, but had been told by the Board that if he wished to have his wife accompany him, he was required to pay for her travel expenses himself. This case highlighted the Board's long-standing position that a public servant may violate Charter Section 2604(b)(3) by accepting a gift even if the donor does not have City business dealings, if the gift is made only because of the recipient's position.

- In another significant matter involving a Borough President, the Board fined a former Bronx Borough President \$10,000 for having retained and paid, for the renovation of his home, an architect who was at the same time involved in a development project that required the Borough President's official approval. The former Borough President knew the architect had been associated with similar projects that had come before his Office in the past, and was required to exercise reasonable care in ascertaining the relevant facts that could create a conflict of interest with his official duties.
- In a novel application of the Board Rule prohibiting a City employee from aiding, inducing, or causing another City employee to violate the Conflicts of Interest Law, the Board fined an electrician at FDNY for causing his father-in-law, who had been one of his supervisors, to assign him overtime resulting in substantial compensation over his regular FDNY salary. The respondent acknowledged that his father-in-law had violated the provision of

the Conflicts of Interest Law that prohibits a public servant from using his position to help an “associated” person such as a son-in-law, and that, by allowing himself to be supervised by his father-in-law, by requesting and accepting overtime assigned by his father-in-law, and by having his father-in-law sign his overtime sheets, he had caused his father-in-law to violate the Conflicts of Interest Law, and thus himself violated Charter §2604(b)(2) and Board Rule 1-13(d)(1) .

- Another case served as a useful reminder that public servants are prohibited from accepting anything of value from any source other than the City for doing their City jobs. The Board imposed a \$2,500 fine on a former Chaplain for the Department of Correction for accepting as a gratuity a solid silver Kiddush cup and plate, estimated to cost \$500, for having arranged a private celebration of the Bar Mitzvah of an inmate’s son at the Manhattan Detention Complex.

We know that most public servants are law-abiding and want to act ethically, and we vastly prefer not to have to enforce the law and impose fines. That’s especially true when we get enforcement cases that involve the same kind of conduct we’ve frequently enforced against in the past and/or made the subject of public advisory opinions -- like hiring or supervising your relative, or engaging in a sou-sou savings club that includes a superior or subordinate in your agency. We

look to you guys to help us, through training programs and requests for advice, to minimize the need for enforcement. Which brings me to the 2011 accomplishments of our Training and Advice Units.

With a staff of only two, the Training & Education Unit conducted 318 classes at 41 City agencies in 2011 -- a 14% increase over 2010 -- reaching approximately 10,544 City employees and training the entire staffs the City Council, the Department of Buildings, the Department of Youth and Community Development, the Office of Administrative Trials and Hearings, and the School Construction Authority. Still, that is far below the mandate of the 2010 Charter amendment requiring that all 300,000 public servants of the City *must* receive such training every two years, and so we're happy to report that for the upcoming fiscal year, we'll be able to hire additional trainers to conduct in-person training. The Unit will do that, while simultaneously developing our online training programs for the vast majority of City employees, continuing to maintain the Board's website, publish the Board's monthly *Ethical Times*, write a monthly column in the *Chief-Leader* – and, of course, plan this Seminar.

As you know, Section 2603(c)(1) of the City Charter requires the Board to “render advisory opinions with respect to the matters covered by” Chapter 68, “on the request of a public servant or a supervisory official of a public servant.” Receiving written advice from the Board or its staff affords public

servants a safe harbor against future enforcement action. It's the 4-lawyer Legal Advice Unit that responds to the *hundreds* of written, and, with the help of the Enforcement attorneys, the *thousands* of telephonic, requests for advice received by the Board each year. In 2011, the Unit turned out 523 requests for advice, consisting of 83 Board letters and orders reflecting Board action, 188 staff advice letters, 250 waiver letters signed by the Chair on behalf of the Board, and two public Advisory Opinions. Not only that, but, with the help of *all* of the staff's lawyers in all of our units, the staff handled 3,310 telephone requests for advice. Telephone advice provides the first line of defense against violations of the Conflicts of Interest Law and thus remains one of the Board's highest priorities.

Two matters were considered by the Board to be of sufficient precedential value to incorporate in formal public advisory opinions last year – one regarding public servants' affiliations with law firms whose clients had a matter pending before the public servant's agency and the other detailing the circumstances under which City officials may accept payment for travel, typically abroad, that is asserted to be for a City purpose. Both of those AOs are summarized in the Annual Report, and you can read their full texts– in fact, *all* the AOs we've *ever* written -- on line in full-text searchable form, thanks to the website maintained in cooperation with our friends here at New York Law School's Center for New York City Law.

Our fourth mandate under the law is to oversee annual financial disclosure reports by the nearly 8,000 City public servants required to file them. Electronic filing has made it easier than ever to discharge this chore, so it's not surprising that employees continue to show an excellent compliance rate: for the past six years, it's been 97.6%. In 2011, our FD Unit actually reviewed 7,443 reports from prior years to check for any disclosed conflicts of interest, fielded 1,427 calls requesting assistance with filing, responded to 1,967 requests to inspect those public filings, and considered several appeals by public servants exercising their right to contest the determination that they are required to file.

Despite the high compliance rate, we continue to believe that, even filing on-line, it's a real burden to assemble all the required information and complete these reports. That's why we're continuing to press for amendments to the City's financial disclosure law that would streamline the reports to eliminate irrelevant questions and tie them directly to the substantive mandates of the conflicts of interest law.

So that ends my whirlwind summary of what we did in 2011, but it wasn't all done by the five Board members. The people who really deserve the credit are our terrific staff, whose names are in the Annual Report. They're a wonderful team, most of you know who they are, and if you don't you'll meet and hear from

them during the break-out sessions coming up -- but still, I'd like them to stand so we can give them the recognition they all deserve. **[Applause.]**