

*Ethics lights the way to good government*

# The Ethical Times

A Publication of the New York City Conflicts of Interest Board

Phil Weitzman, Editor



## Outside Practice of Law

By  
Sung Mo Kim

**Question:** *I am an attorney who recently joined City service as a full-time employee. Prior to joining City service, I operated a solo law practice, handling real estate, wills and estates, and civil lawsuits. I don't want to give up my private practice. Would it be permissible for me to maintain my outside practice of law, handling a limited number of cases?*

**Answer:** Generally, yes. But, as you might have guessed, there are number of restrictions that exist to ensure that your outside practice of law does not cause a conflict of interest with your City job responsibilities. We will discuss these restrictions in more detail below. To make it a little easier to understand, I've broken the restrictions into two sets, the first set includes restrictions that are generally applicable to all outside employment. The second set includes restrictions that are specific to the outside practice of law.

The first set of restrictions should be familiar to all public servants since these restrictions, as mentioned above, are applicable in all outside employment situations:

- 1) You must perform your outside work on your own time.
- 2) You may not use City equipment (for example, your City telephone, computer, or email account), City supplies, City resources, City letterhead, or City employees for your outside work.
- 3) You may not use your City position or title to obtain any private advantage for yourself or your clients.
- 4) You may not promote your outside work to anyone with whom you deal in your City work.
- 5) You may not disclose or use confidential information. Confidential information is any information that a member of the general public cannot obtain.

In addition to these general restrictions, the City's conflicts of interest law also has additional restrictions specific to the outside practice of law. Here are some examples:

- 1) You may not provide counsel or advice to any client that has business dealings with the City.
- 2) You may not, directly or indirectly, appear on behalf of private interests in matters involving the City or represent private interests before the City.
- 3) You may not 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 employee of the City, acting in the course of official duties, is a complainant.
- 4) You may not appear as attorney or counsel in any criminal defense matter in State court within the City and you may not receive any referral fee in connection with such matters, whether or not you perform any services in connection therewith.
- 5) You may not represent or provide legal services to any of your City superiors or subordinates.

6) Moreover, if one of your clients has a matter before the City, you may not in your City position participate in any manner in the consideration of that matter.

And remember, as always: above and beyond the restrictions in the City's conflicts of interest law, your own agency may have stricter rules, so you should check with your agency counsel before engaging in any outside employment.

If you have questions about whether your outside practice of law would create a conflict of interest, or you have any other questions about the City's conflicts of interest laws, call the Conflicts of Interest Board at 212-442-1400 and ask for the attorney of the day. You can also email us through our website (<http://www.nyc.gov/ethics>) by clicking on "Contact COIB." All calls and emails are confidential, and you may contact us anonymously.

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*This article originally appeared in The Chief Leader.*

## Recent Enforcement Cases

► The Board fined a former Commissioner of the New York City Department of Finance \$22,000 for her multiple violations of the City's conflicts of interest law. The former Finance Commissioner had received written advice from the Board that she could serve as a paid independent member of the Board of Directors of Tarragon Realty Investors Inc., a publicly-traded real estate investment company with no real estate in New York City, provided that she avoid using her City position or resources in connection with Tarragon. Despite these written instructions from the Board, the former Finance Commissioner proceeded to engage in such prohibited conduct.

First, the Finance Commissioner admitted that, from March 2005 through April 2009, she used her City computer and City e-mail account to send and receive approximately 300 e-mails related to Tarragon, including e-mails identifying herself as Finance Commissioner sent to a bank she had dealt with in her official capacity as Commissioner and to the IRS. She also directed her subordinates to perform Tarragon-related tasks. Separately, the former Finance Commissioner admitted that she sent an e-mail from her Finance e-mail account to a real estate executive to assist her registered domestic partner in looking for an apartment, which ultimately resulted in her domestic partner renting an apartment in one of the corporation's buildings. She also admitted that she sent an e-mail from her Finance e-mail account to a trade association executive representing real estate interests in New York State, for assistance for her recently laid off step-sister in finding a new job. Finally, the former Finance Commissioner admitted that, in June and July 2008, she was personally and directly involved in the employment of her half-brother, who was employed at Finance as a paid summer and part-time college aide, including intervening with her half-brother's supervisor concerning supervisory and performance issues.

▶ The Board and HRA concluded a three-way settlement with an HRA Executive Regional Manager who paid a \$3,750 fine to the Board for using his assigned City vehicle to drive his friend to work and to run personal errands, despite two prior warnings from HRA that such use was prohibited.

▶ A former DOE Principal was demoted to the position of teacher for violating the City's conflicts of interest law by failing to account for \$1,860 that he collected from two snack machine vendors as commission payments from vending machines in his school.

▶ A DOE Principal paid the Board a \$2,500 fine in a joint settlement with DOE for calling the Vice President of the company that contracts to clean his school and asking if his sons could apply for positions with the company. The Vice President hired one son, but not the other.

▶ A former DCP City Planner paid a \$6,500 fine to the Board for creating and using a fake City parking placard, on three occasions even using the fake placard to have parking summons' dismissed at hearings.

▶ The Board issued a public warning letter to a DOE ESL teacher for using his position to enroll fifteen of his City ESL students in Supplemental Educational Services with his outside employer.

▶ A DOE Principal paid a \$1,000 fine for taking home a grand piano that had been donated to his school.

▶ A DOE teacher paid a \$1,000 fine to the Board for making an unauthorized photocopy of a City parking placard for her personal use.

▶ In a joint settlement with the Board and DoITT, a Senior Administrative Coordinator agreed to resign for using an agency-owned Blackberry to make 19,857 minutes of personal calls over the course of ten months, incurring \$3,316.10 in charges, which charges she knowingly failed to repay to DoITT.

▶ A DOE Principal paid a \$1,500 fine to the Board for providing her brother's name for an open position with a vendor to her school; her brother worked in the position for two years after being hired by the vendor.

▶ In a joint settlement with the Board and DOE, an Assistant Principal paid a \$25,000 fine to DOE for giving 75 Great Adventure tickets that had been donated to the City to his friend's Cub Scout troop and his family members.

▶ In a joint settlement with the Board and

DOHMH, a City Research Scientist IV agreed to pay a \$2,000 fine for using her City computer and DOHMH e-mail account to perform work for an outside not-for-profit.

▶ The Board and HRA concluded a three-way settlement with an Associate Fraud Investigator who agreed to pay HRA a fine equivalent to thirty days' pay, valued at \$5,304.74, for accessing a City database to view the public assistance records of his tenant.

▶ In a joint settlement with the Board and ACS, a Child Protective Specialist II agreed to be suspended for twelve work days, valued at approximately \$2,348, for looking up her niece in a New York State database. She then used the information she obtained to e-mail her niece's foster care agency, and, identifying herself as an ACS employee, request that her niece be placed in her home.

▶ In a joint disposition with the Board and DOE, a DOE Principal paid a \$4,500 fine to the Board for (1) asking a subordinate teacher at her school to miss class in order to babysit the Principal's nephew on 10 occasions over a two-month period, and (2) supervising her own sister.

▶ In a joint disposition with the Board and DOE, a DOE Principal paid a \$2,000 fine for cancelling a math teacher's class so the teacher could spend time tutoring the Principal's college-age son, who was visiting the school.

▶ The Board fined a former DOE Master Electrician \$3,500 for performing work for his private electrical contracting business during his DOE work hours and for using a DOE vehicle in connection with the private business.

▶ The Board and DOE concluded a joint settlement with a DOE Principal who paid a \$1,250 fine to the Board for twice approaching her subordinate, to ask her to clean and organize the Principal's apartment.

▶ The Board issued a public warning letter jointly with DSNY to a DSNY District Superintendent who accepted \$800 from her subordinates to repair her vehicle, which was damaged while parked at the workers' district garage; the District Superintendent later returned the \$800.

▶ In a joint disposition with the Board and DOHMH, a Supervising Public Health Advisor paid a \$2,000 fine to DOHMH for using City resources on behalf of his 'bootleg' DVD business.

▶ The Board fined a former NYPD attorney \$1,000 for sending a business letter on behalf of a private client to NYPD within one year of the termination of his NYPD employment.

▶ The Board and the Parks Department entered into a three-way settlement with a Parks Computer Operations Manager who agreed to a total financial penalty of \$9,800 for using City time and resources to search the internet for vehicles to be salvaged and sold through his private business.

▶ The Board and ACS concluded a three-way settlement with a Supervising Special Officer I who was suspended for thirty days for using City time and resources to sell financial products to her coworkers, including subordinates, as a representative of a multi-level marketing company.

▶ The Board and HRA concluded a three-way settlement with an Associate Job Opportunity Specialist who agreed to pay HRA a fine equivalent to twenty days' pay, valued at \$2,252.11, for accessing a City database to view the public assistance records of her nephew, to whom she rented living space, for her personal use.

*Interested in more information?  
Get in touch with COIB's Training &  
Education Unit to arrange a class in  
Chapter 68 for you and your staff.  
Contact Alex Kipp, Director of Training, at  
[kipp@coib.nyc.gov](mailto:kipp@coib.nyc.gov)*

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