

Ethics lights the way to good government

The Ethical Times

A publication of the New York City Conflicts of Interest Board

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Misuse of Position

by
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Chapter 68 of the New York City Charter prohibits public servants from using, or attempting to use, their positions to obtain a benefit for themselves or anyone with whom they are associated including parents, spouses, siblings, children, and anyone with whom they have a business or financial relationship. There are many situations in which this prohibition applies.

Hiring/Supervising: One area is hiring, recommending, or supervising someone with whom a public servant is associated—all prohibited under the rule. Becoming involved in such matters taints the process. For example, job seekers and contract bidders may feel that their applications and proposals are being judged unfairly if the City official involved in evaluating the applications is associated with a competitor. Public servants may also question how their job performance is being evaluated if they learn that a co-worker is associated with their supervisor. The Board has fined several public servants for supervising their relatives or helping them to obtain employment, including one public servant who directed her subordinate to interview the public servant's brother.

If the action a public servant is about to take is going to benefit him/herself or an associate, then the public servant must not take that action and in general must recuse from the situation. Recusal requires disclosure to both superiors and subordinates that the public servant is not going to participate in discussions, attend meetings, or receive copies of e-mails or documents related to the matter, and then, in fact, doing so.

Special Access & Privileges: Another situation in which the rule applies is special access. Many public servants have access to confidential records or public records that are not easily available to the public. This rule prohibits public servants from using their position to gain access to such information for non-City purposes. For example, the Board has fined several public servants for accessing City records, including a public servant who did so in order to conduct genealogy research for his private clients.

The Board has issued fines to public servants for using their authority to obtain privileges for themselves and their associates including: lowering a sibling's child support payments; approving a parent's food stamp application; expediting a parent's benefits reimbursement check; and using a City credit card or a City tax identification number to make personal purchases. City resources should be used for official purposes only. Doing so

encourages and preserves the public trust.

Soliciting Loans/Business: The Board has also fined public servants for obtaining benefits from people whom they meet as part of their official duties or those with whom they work. For example, public servants are prohibited from borrowing money from their City client or soliciting the City client to hire their private business. Public servants must also refrain from using their positions to coerce their subordinates, including asking subordinates to run personal errands; referring subordinates to a private businesses in order to collect a referral fee; or soliciting subordinates to join, or donate money to, not-for-profits of which they are Board members.

Public servants who have questions about these, or any other of the City's ethics laws, should contact the Conflicts of Interest Board for free, confidential advice at 212-442-1400. All calls are confidential and you may call anonymously. You may also refer to the Board's website at www.nyc.gov/ethics. □

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Recent Enforcement Cases

- ▶ The Board issued a public warning letter to a seasonal DOE Parent Coordinator for using his DOE email account to send a PowerPoint Presentation endorsing a political candidate to over 600 DOE employees.
- ▶ The Board fined a DOE Supervisor of School Aides \$2,500 for using her school's address and tax exempt identification number to open four personal cellular phone accounts over an eight-year period.
- ▶ The Board and DOHMH-OCME concluded a three-way settlement in which an OCME Mortuary Technician was suspended for ten days by OCME, valued at \$1,433, for taking an OCME Morgue Van without agency permission for two hours in the middle of his shift to attend a family member's wake. He was not authorized by OCME to drive any OCME vehicle.
- ▶ The Board fined a former HRA Executive Agency Counsel \$1,500 for using her City-issued LexisNexis password to access LexisNexis for non-City purposes on thirty-one occasions.
- ▶ The Board and ACS concluded a three-way settlement in which an ACS Secretary in the Division of Child Protection was suspended for 16 days by ACS, valued at \$2,491.55, for using City resources to work on a variety of private business ventures while on City time.

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► The Board fined a DOE Computer Science Technician \$1,250 for using his DOE cellular phone during City time, communicating with his private clients from his DOE e-mail address, and using his DOE cellular telephone number as his contact number in both the e-mails and in an online real estate advertisement he created, all for his private business as a real estate agent.

► The Board and DCAS concluded a three-way settlement with a DCAS Senior Special Officer who was suspended for fifteen days by DCAS, valued at \$2,999.40, and forfeited ten days of annual leave, valued at \$1,993.60, for a total financial penalty of \$4,984, for using his position to obtain a \$4,600 loan from his DCAS subordinate, a City Security Aide. The Senior Special Officer repaid the Security Aide only after he was interviewed by the Department of Investigation about this matter.

► The Board and DOHMH concluded a three-way settlement with a Clerical Associate in the DOHMH Bureau of Communicable Diseases who was suspended by DOHMH for two days and forfeited three days of annual leave, with the total approximate value of \$549.85, for using City resources, while on City time, to pursue an online degree at the University of Phoenix.

► The Board and ACS concluded a three-way settlement with an ACS Child Protective Specialist who was suspended for 10 days by ACS, valued at approximately \$1,420.08, for accessing confidential information about her close family friend on three occasions.

► The Board and DOHMH concluded a three-way settlement with a Clerical Associate in the DOHMH Bureau of Health Care Access and Improvement who was suspended for five days by DOHMH and forfeited five days of annual leave, with the total approximate value of \$1,523.20, for using City resources, while on City time, to pursue an degree at Monroe College.

► The Board fined a former Special Officer in the Security Division of the New York City DHS \$1,000 for using DHS facilities and City time to perform work related to his private tax preparation business.

► The Board issued a public disposition to a DOT Floor Supervisor, who was suspended by DOT for fifteen days, valued at \$1,644, for borrowing \$660 from his DOT subordinate, a Maintenance Service Worker. In light of the suspension by DOT, the Board did not impose its own separate penalty.

► The Board and NYCHA concluded a three-way settlement with a NYCHA Supervisor Elevator Mechanic who was suspended by NYCHA for 15 days, valued at approximately \$4,695, for performing his private employment while on City time and using his City computer, despite having received written advice from the Board advising him that he

could not use City time or City resources for any outside employment.

► The Board and DOHMH concluded a three-way settlement with a Supervising Public Health Advisor in the DOHMH Bureau of Sexually Transmitted Diseases who was suspended for 7 days by DOHMH, with the approximate value of \$1,412.46, for using City resources, while on City time, to pursue an online degree at the University of Phoenix.

► The Board fined the former Interim President of the EDC \$1,500 for appearing before the Hudson Yards Development Corporation within one year of his resignation from EDC. The HYDC Bylaws provide that the President of EDC shall serve as a Member and Director of HYDC and, as such, HYDC was an “agency served” by the former Interim President of EDC within the meaning of the conflicts of interest law.

► The Board fined a former DOE Substance Abuse Prevention and Intervention Specialist \$1,000 for using his position to benefit a not-for-profit organization he created.

► The Board fined a former HRA Assistant Deputy Commissioner \$1,000 for using his City telephone to make and receive approximately 43 calls during his City work hours related to his real estate business.

► The Board fined a former DOE Assistant Principal \$1,000 for entering into a financial relationship with five of her DOE subordinates by participating in a “sou-sou” savings club with them. The Board also issued the five subordinate DOE employees Public Warning Letters for their respective involvement in this financial relationship with their superior.

► The Board and HRA concluded a three-way settlement with an HRA Eligibility Specialist II, who was suspended by HRA for 60 calendar-days, valued at \$6,100, for disclosing confidential City information. The Eligibility Specialist II admitted that she used her HRA position to gain unauthorized access to the Welfare Management System (“WMS”) to obtain confidential public assistance records concerning her husband, her landlord, her landlord’s girlfriend, and the girlfriend’s sister.

► The Board issued a public letter to a Board Member of the CCRB who released two draft letters written by the CCRB Chair, one to the Corporation Counsel and one to the Police Commissioner, which letters, at the time of the Board Member’s release, were not otherwise available to the public and, as such, were confidential.

► The Board and DOHMH concluded a three-way settlement in which a Hearing Officer in the Administrative Tribunal of DOHMH’s Office of the General Counsel paid a \$1,400 fine to DOHMH for, while on

City time, using City resources to pursue an online degree at Capella University.

► The Board imposed, and then forgave based on a showing of extreme financial hardship, a \$7,500 fine on a former Eligibility Specialist at HRA who accessed the confidential records of her sister and of her tenant, who was also her paid child-care provider, and used her City position to benefit her paid child-care provider by processing his applications for recertification of his food stamps benefits.

► The Board and DOE concluded a three-way settlement with an Assistant Principal who agreed to pay \$1,300 in restitution to DOE and a \$1,500 fine to the Board for misusing his DOE position and DOE resources by using a DOE procurement card for personal purposes.

► The Board fined the former Senior Vice President of the South Manhattan Health Care Network and Executive Director of the Bellevue Hospital Center, an HHC facility, \$12,500 for multiple violations of the City’s conflicts of interest and financial disclosure laws.

► The Board fined a DOE Teacher \$1,000 for owning and operating a firm that contracted with DOE and for appearing before DOE on behalf of that firm. □

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

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http://www.nyls.edu/centers/harlan_scholar_centers/center_for_new_york_city_law/cityadmin_library

