

*Ethics lights the way  
to good government*

# THE ETHICAL TIMES

A publication of the New York City Conflicts of Interest Board

Alex Kipp, Editor



## ***First Code of Ethics for City Administrative Law Judges and Hearing Officers***

*By David B. Goldin*

February 13, 2007 marked the effective date of the first code of ethics for the City's administrative law judges and hearing officers ("ALJs"). The new code – required by a City Charter amendment approved by voters in November 2005 – was developed under the leadership of Chief Administrative Law Judge Roberto Velez of the City's Office of Administrative Trials and Hearings ("OATH") and the Administrative Justice Coordinator in the Mayor's Office, David B. Goldin. It applies to the more than 500 ALJs who serve at OATH, the Adjudication Division of the Department of Finance (parking violations), the Environmental Control Board, the Taxi and Limousine Commission, the Tax Appeals Tribunal, the tribunals of the Departments of Health and Mental Hygiene and of Consumer Affairs and similar agencies. All City ALJs are attorneys; the majority of them are per diem employees or contractors.

All City ALJs are already covered by Chapter 68 of the City Charter, the City's "Conflicts of Interest Law." So why is it necessary to have an additional ethics code that applies to them? ALJs, like judges who sit in the State's and City's courts, have special obligations that can't be completely described by referring to the Conflicts of Interest Law or the Code of Professional Responsibility that applies to all attorneys. Judges' conduct is governed by a State code of ethics, but that code doesn't apply to the City's ALJs. Because administrative tribunals aren't the same as courts, the City couldn't adopt the State code exactly as written and apply it to City ALJs. Nonetheless, the State code did provide the basis for the City's new code.

### *Key Obligations: Impartiality, Fairness, Avoiding Impropriety*

The basic responsibilities of an ALJ are to maintain impartiality, ensure fairness and avoid impropriety.

- ▶ **Impartiality**" means that an ALJ must approach each case with an open mind and without having a relationship with either party that might predispose the ALJ to favor one party or the other.
- ▶ **Fairness**" means that each party must be given the same opportunity to present its case.
- ▶ **Avoiding impropriety**" means that an ALJ must not engage in conduct that would undermine the parties' or the public's confidence in the ALJ's impartiality, the proceeding's fairness or the integrity or dignity of the City's tribunals.

### *Disqualification*

Fulfilling the obligation of impartiality requires that in some circumstances an ALJ must not sit on a particular case. An ALJ is disqualified if the ALJ:

- ▶ is closely related to, or a personal friend of, a party or witness;
- ▶ has a personal bias in favor of one party or the other;
- ▶ has personal knowledge of facts in the case;
- ▶ worked on the case as a private attorney or as a City employee;
- ▶ has a personal interest that would be affected by the outcome of the case.

### *Parties Without Professional Representation*

Many parties who appear before City tribunals are not represented professionally. Some are represented by colleagues, employees, friends or family members; many represent themselves. The code of ethics requires City ALJs to make a special effort to ensure that a party without professional representation nonetheless has a fair opportunity to present his or her case. The ALJ may not take sides and become an advocate for the party, but the ALJ may:

- ▶ liberally interpret and allow amendment of papers;
- ▶ briefly explain the hearing process;
- ▶ briefly explain what types of evidence may be submitted;
- ▶ be sensitive to language barriers;
- ▶ ask questions to obtain or clarify information;
- ▶ modify the order in which evidence is presented;
- ▶ reduce the use of complex legal terms;
- ▶ explain the decision verbally during the hearing or in writing after the hearing;
- ▶ refer a party to sources that may help with case preparation.

### *Extra-Judicial Activities*

An ALJ's participation in other governmental, civic, charitable, financial or business activities must not:

- ▶ cast doubt on his or her ability to act impartially as an ALJ;
- ▶ detract from the dignity of judicial office;
- ▶ interfere with the proper performance of his or her duties as an ALJ; or
- ▶ be incompatible with service as an ALJ.

An ALJ who raises funds for an organization may not use his or her office to help with fundraising and may not focus fundraising efforts on persons who come before the tribunal. Similarly, in pursuing financial or business interests or privately practicing law, an ALJ is restricted from involvement with companies or attorneys who come before the

tribunal.

### *Political Activities*

The code does not restrict most political activities, such as endorsing, campaigning for or contributing to candidates. But it does impose a few limitations. An ALJ may not be a leader or officeholder in a political club or party and may not raise funds for a political organization or candidate. An ALJ must resign in order to run for election to a position other than a judgeship.

### *Further Information*

The "Rules of Conduct for Administrative Law Judges and Hearing Officers of the City of New York" can be found at [www.nyc.gov/html/oath/html/inst\\_rules.html](http://www.nyc.gov/html/oath/html/inst_rules.html). An ALJ who needs further guidance can request an advisory opinion by contacting Chief Judge Roberto Velez at OATH, 40 Rector St., New York, N.Y. 10006. A complaint alleging misconduct under the code can be filed with Judge Velez or Administrative Justice Coordinator David B. Goldin, Room 1012, 1 Centre St., New York, N.Y. 10007. □

*David Goldin is Administrative Justice Coordinator for the Mayor's Office.*

### **Recent Enforcement Cases**

▶ The COIB fined a DDC construction project manager \$1250 for recommending his sister for a job with a DDC vendor whose project he managed on behalf of DDC.

▶ The COIB fined a former NYCHA housing assistant \$2250 for using his position to attempt to obtain a NYCHA apartment for his wife.

▶ The COIB fined an HRA custodial supervisor \$500 for using City time, resources, and personnel to move and store personal electronic equipment.

▶ The COIB fined a NYCHA community services aide \$500 for accepting private compensation for supervising NYCHA properties she was assigned to supervise as part of her NYCHA job.

▶ The COIB fined a DOE employee \$1,000 for holding a position with an outside employer that had business dealings with the City and failing to obtain written approval from the DOE and a waiver from the Board.

▶ The COIB issued a public warning letter to a DOE assistant principal for representing a private entity on a DOE-related proposal and using her DOE email address as her contact information on the proposal.

▶ The COIB fined a DOE teacher who holds a law license \$1000 for representing DOE students at a DOE suspension hearing.

▶ The COIB fined a former director of NYCERS \$500 for representing parties before his former agency within one year of his resignation.

▶ The COIB fined a former DOE teacher \$750 for heading & owning a company that had matters before DOE, and representing the company on those DOE matters.

▶ The COIB and DDC concluded a 3-way settlement with a former DDC employee who agreed to forfeit \$1000 of annual leave, pay a \$1000 fine, and resign from his position at DDC for working for a private employer on DDC time and making false entries on DDC timesheets and expense reports.

▶ The COIB fined a former NYCHA borough administrator \$500 for receiving private fitness training session at a NYCHA facility from a consultant employed by NYCHA.

▶ The COIB fined a former NYCHA administrative staff analyst \$2000 for using her city telephone and email account to pursue her private work for a not-for-profit organization.

▶ The COIB fined a former assistant commissioner at Sanitation \$2000 for running a travel agency and working for "Hevesi for Mayor" campaign, both on City time, and both involving his subordinates.

▶ The COIB issued a public warning letter to a former Sanitation director for appearing before Sanitation for a private company within one year of leaving service at the Department of Sanitation.

▶ The COIB fined a DOC staff analyst \$500 for using his position to benefit his wife's business.

▶ The COIB fined a former executive director of the New York City Teachers' Retirement System \$500 for allowing his daughter to use his TRS-issued cellphone.

▶ The COIB fined a district manager at a community board \$1000 for recommending her son-in-law for a custodial position at the community board and approving his payments.

▶ The COIB fined a senior crew chief at DOHMH \$500 for using his City position to obtain private clean-up business. □

*Interested in more information?*

*Contact COIB's Training & Education Unit to arrange a class in Chapter 68 for you and your staff.*

*Contact Alex Kipp, Director of Training  
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**<http://www.citylaw.org/cityadmin.php>**

