

**THE CITY OF NEW YORK
CONFLICTS OF INTEREST BOARD**

x

In the Matter of

BEVERLY McINNIS

x

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER**

Upon consideration of all the evidence presented in this matter, the Conflicts of Interest Board ("COIB" or "the Board") finds that Beverly McInnis is required to file a financial disclosure report pursuant to Section 12-110(b)(3)(a)(3) of the New York City Administrative Code and Board Rules (53 RCNY) Section 1-02 because her duties "involve the independent exercise of managerial or policymaking functions." Administrative Code Section 12-110(b)(3)(a)(3). Accordingly, the above-captioned employee shall file a financial disclosure report for calendar year 2008 within thirty days after receipt of this order.

This financial disclosure appeal involves Beverly McInnis, who is the Director of Labor Relations at the Department of Juvenile Justice ("DJJ").¹ On February 13, 2009, Neil Hernandez, DJJ Commissioner, emailed McInnis, as well as other DJJ employees, to inform them that he intended to include them in the agency's list of public servants deemed to have substantial policy discretion. See February 13, 2009, email of Commissioner Hernandez; Board Rules Section 1-02(a). The February 13, 2009, email advised those recipients that "there is a requirement that if you are deemed with such discretion you have to complete financial disclosure reports each year with the COIB." See February 13, 2009, email of Commissioner Hernandez.² Commissioner Hernandez invited the recipients of the email to "share with me your candid thoughts about your inclusion ... by February 25th." See id. Commissioner Hernandez sent a second email on February 17, 2009, again reminding those receiving the email that inclusion on the list of public servants with substantial policy discretion would require the filing of financial disclosure reports: "Hi. An additional attachment for my e-mail to you on Friday regarding the filing of annual financial disclosure reports. See Section 12-110(b)(3)(a)(3) [page 5]." See February 17, 2009, email of Commissioner Hernandez (bracketed material in original). On February 25, 2009, Beverly McInnis informed Commissioner Hernandez, "I have no concern or opposition to being included." See February 25, 2009, email of Beverly McInnis. On February 27, 2009, Commissioner Hernandez notified those employees whom he had included on the list, including Beverly McInnis, that they had the opportunity to appeal his

¹ Her civil service title is Administrative Staff Analyst.

² Pursuant to Board Rules Section 1-14, an employee who is designated as having substantial policy discretion is a policymaker for financial disclosure purposes and thus required to file a financial disclosure report.

decision.³ See February 27, 2009, letter of Commissioner Hernandez. McInnis did not appeal at that time.

On May 21, 2009, McInnis signed for the materials that gave her access to file her 2008 financial disclosure report electronically.⁴ On May 28, 2009, McInnis fully and timely appealed her designation as a required filer to her agency head. See Appeal to Agency Head. In the “Brief Statement of Reason for Appeal,” McInnis stated:

As the Director of Labor Relations, I am responsible for union contract interpretation in addition to other related citywide and agency policies. I inform and consult with the responsible oversight agencies and authorities to confirm and guide. Based on my interpretations and consults I guide agency mgmt staff by suggesting the appropriate actions to take. I do not believe my actions or responsibility rise to the level of substantial policy discretion.

See id.

Commissioner Hernandez denied McInnis’ appeal, finding that McInnis’ duties as Director of Labor Relations fell within the guidelines of employees charged with substantial policy discretion as defined by Board Rules Section 1-02. See June 12, 2009, letter of Commissioner Hernandez. He noted that McInnis had previously stated no concern or objection when notified of his intention to include her on the list of employees charged with substantial policy discretion. See id.

McInnis fully and timely appealed her designation as a required filer to the Board. See Notice of Appeal to Conflicts of Interest Board. She claimed that: 1) she had “incorrectly been deemed a Public Servant with substantial policy discretion”; 2) her “duties and responsibilities as Director of Labor Relations **do not** fall within the guidelines of the Rules of the City of New York, Volume 12, Title 53, Chapter 1, Section 1-02 ... insomuch that my responsibilities are not deemed major and I am not allowed independent judgment in connection with determining important agency matters” (emphasis in original); and 3) she did not contest her designation as a public servant with substantial policy discretion when given the opportunity to do so because she never had the opportunity to review the documents provided.⁵ See id.⁶

³ There is no provision in the Administrative Code or the Board Rules enabling an employee to appeal to his or her agency head his or her inclusion on the list. The Board, however, has the ultimate authority to determine who is properly on an agency’s list of those charged with substantial policy discretion, and the rules suggest that an employee so included could contest his or her designation to the Board. See Board Rules Section 1-02(a).

⁴ Financial disclosure reports pertaining to a particular calendar year are filed in the next calendar year. For example, reports relating to 2006 are filed in 2007.

⁵ As noted in footnote 3, there is no provision in the Administrative Code or the Board Rules enabling an employee to appeal to his or her agency head his or her inclusion on the list. Furthermore, McInnis did not claim that the documents had not been provided to her, but suggested that she simply did not have the time to review them: “I did not submit my response prior to the requested date with intentions of reviewing the documents in their entirety. However, I never got the opportunity to review them and the submission date arrived, therefore I forwarded my response... .” She added, “Upon review of the documents, I do not believe I meet the requirements to file with COIB.” See Notice of Appeal to Conflicts of Interest Board. The Board rejects this explanation as a belated attempt to excuse her failure to address the issue promptly and at a time when comments might have impacted the

Section 12-110(b)(3)(a)(3) of the Administrative Code of the City of New York requires filing of a financial disclosure report by:

Each city employee, other than an employee of the mayor's office, the city council, a district attorney's office or the special narcotics prosecutor's office, who... holds a policymaking position ..., as defined by rule of the conflicts of interest board and as annually determined by the head of his or her agency, subject to review by the conflicts of interest board.

Board Rules Section 1-14 provides that "a City employee shall be deemed to hold a policymaking position, and therefore be required to file a Financial Disclosure Report, if such employee is charged with substantial policy discretion within the meaning of [Board Rules] Section 1-02" Board Rules Section 1-02(a) deems a public servant "to have substantial policy discretion if he or she has major responsibilities and exercises independent judgment in connection with determining important agency matters" (emphasis added).

As the DJJ Director of Labor Relations, McInnis is an Administrative Director in charge of DJJ's Labor Relations Unit. In this capacity, McInnis hears, determines, and writes the decisions for Step II grievance procedures for DJJ. See June 11, 2009, letter of Commissioner Hernandez. McInnis herself described these responsibilities:

As the director I am responsible for coordinating and responding [to] the Step II grievances. I arrange Step II meetings as requested ...by the aggrieved employee and union representation and based on the information obtained in the meeting and a review of the contractual language, I will issue written memorandum [sic] with suggestions ... for corrective action/s or forward written responses to inform matter deemed resolved or no contractual violation was found

See Notice of Appeal to Conflicts of Interest Board. If McInnis resolves the matter or there is no appeal of her ruling, her decision is the final determination of the agency. It is the Board's view that determinations of employee grievances, as well as other labor relations issues, are important agency matters. Therefore, this task clearly fills the requirement that a public servant has "major responsibilities and exercises independent judgment in connection with determining important agency matters" in order to be designated as being charged with substantial policy discretion, and, therefore required to file a financial disclosure report. See Board Rules Sections 1-02(a), 1-14 (emphasis added).

McInnis asserts that her duties and responsibilities do not fall within the guidelines for employees charged with substantial policy discretion "insomuch that my responsibilities are not deemed major and I am not allowed independent judgment in connection with determining

Commissioner's decision. However, as noted, McInnis did fully and timely appeal her designation as an employee required to file a financial disclosure report.

⁶ McInnis also denied that she met any of the other filing criteria set forth in Admin. Code Section 12-110(b), such as elected official, agency head or deputy or assistant agency head, a manager at level M4 or above, employee involved in certain contracting functions, or tax assessor. The only criterion for filing relevant to this case is the policymaker category. See Admin. Code Section 12-110(b)(3)(a).

important agency matters.” See Notice of Appeal to Conflicts of Interest Board. She further asserts that while her job title “implies a role with major responsibilities, the position does not include the exercising of independent judgment in connection with determining important agency matters.” See id. However, exhibits provided by McInnis, including her own resolutions of Step II grievances, attest to her independent judgment, as they indicate that she alone has made the relevant determination in regard to deciding Step II grievances.. See, e.g., Attachment “5,” Letter of April 15, 2008 (“I have reviewed the record, including the testimony given at the Step II conference and have determined that a violation has not been established”). It is clear that her duties and responsibilities rise to the level of exercising independent judgment in connection with determining important agency matters. Therefore, she was properly designated a public servant charged with substantial policy discretion and required to file a financial disclosure report.

In addition to McInnis’ tasks concerning Step II grievances, her other responsibilities also justify DJJ’s designating her as a public servant charged with substantial policy discretion. They include managing the Labor Relations program and administering, implementing, and interpreting collective bargaining agreements, all “significant and major Departmental responsibilities.” See June 12, 2009, letter of Commissioner Hernandez.

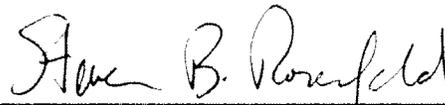
Finally, the Board considers the work performed by McInnis to be the type in which conflicts of interest might arise, thus justifying the need for filing of a financial disclosure report. McInnis interacts with non-DJJ personnel in important agency matters that require her to exercise independent judgment; she has the ability, among other duties, to decide and/or resolve grievances against the agency. Her decisions for Step II grievance procedures can be, if not contested, the final determination of the agency. As such, this is precisely the kind of work in which it is crucial to be vigilant about possible conflicts of interest, and thus requires filing a financial disclosure report.

For these reasons, the Board finds that Beverly McInnis is required to file a financial disclosure report for calendar year 2008.

WHEREFORE, IT IS HEREBY ORDERED, pursuant to Administrative Code §12-110(b)(3)(a)(3), that Beverly McInnis file a financial disclosure report for calendar year 2008 within thirty days after receipt of this order.

Beverly McInnis has the right to appeal this Order to the Supreme Court of the State of New York.

The Conflicts of Interest Board



By: Steven B. Rosenfeld, Chair

Monica Blum
Angela Mariana Freyre
Andrew Irving
Burton Lehman

Dated: January 21, 2010

cc: Neil Hernandez, Commissioner, DJJ
Judith Pincus, First Deputy Commissioner, DJJ
Herman Dawson, General Counsel and Deputy Commissioner for Legal Affairs, DJJ
Jacqueline James, Deputy Commissioner for Administration and Policy, DJJ
Sandra Gordon, Assistant Commissioner for Workforce Development, DJJ
Karen Durante, DJJ COIB Financial Disclosure Liaison, DJJ
Beverly McInnis
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