

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

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In the Matter of

John Acito
Lisa Bernard
Retha Boston
Pamela Clipper
Heidi Elias
William Flores
John Gonzalez
Elliot Greene
Beth Hoffman
Terry Jacobson
James Keller
Nicole Lewis
Joanne Morey
Pilar Pardon
Sandra Piggée
Jeffrey Rosen
Lydia Schwartz
Elaine Wilson

FD No. 2012-02

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

Upon consideration of all papers submitted in this matter, the Conflicts of Interest Board (“COIB” or “the Board”) determines as a matter of law that the appeals of the above captioned Department of Health and Mental Hygiene (“DOHMH”) employees are remanded for all appellants to have the full 14 days to submit written statements or supplemental written statements setting forth the reasons why the employee believes he or she should not be designated as a required filer of a financial disclosure report for calendar year 2011.¹ DOHMH must then decide each appeal within 14 days of the deadline for submission of such written statements.

Each of the above named employees was notified of his or her designation, pursuant to New York City Administrative Code § 12-110 (hereinafter “NYC Admin. Code”), as an employee required to file a financial disclosure report for calendar year 2011. Between April 19,

¹ Financial disclosure reports pertaining to a particular calendar year are filed in the next calendar year. For example, reports relating to 2011 were filed in 2012.

2012, and May 3, 2012, each employee timely appealed his or her designation as a required filer to DOHMH.² Between April 27, 2012, and May 3, 2012, DOHMH denied each of the appeals.³ DOHMH advised the filer of the option either to file the 2011 financial disclosure report or to appeal further to the Board.⁴

Between May 11, 2012, and June 1, 2012, each of the DOHMH employees timely appealed to the Board his or her designation as a required filer of a 2011 financial disclosure report by the agency.⁵

Section 12-110(b) of the New York City Administrative Code sets forth the categories of required filers of financial disclosure reports. These categories include those that are easily identifiable, e.g., elected and political party officials⁶ and candidates for public office,⁷ and those that require analysis of an employee's duties and responsibilities, e.g., policymakers⁸ and filers who have contracting responsibilities ("contract filers").⁹

² Pamela Clipper, William Flores, and Jeffrey Rosen appealed on April 19, 2012; Joanne Morey appealed on April 23, 2012; Terry Jacobson appealed on April 24, 2012; Lydia Schwartz appealed on April 25, 2012; Elaine Wilson appealed on April 27, 2012; Pilar Pardon and Heidi Elias appealed on April 30, 2012; Nicole Lewis appealed on May 1, 2012; John Acito, Lisa Bernard, John Gonzalez, James Keller, and Sandra Piggée appealed on May 2, 2012; Retha Boston appealed on May 2, 2012; and Elliot Greene and Beth Hoffman appealed on May 3, 2012.

³ On May 1, 2012, DOHMH emailed its April 27, 2012, decisions to William Flores, Terry Jacobson, Joanne Morey, Jeffrey Rosen, Lydia Schwartz, and Elaine Wilson, and its April 30, 2012, decision to Pamela Clipper. On May 7, 2012, DOHMH emailed its May 2, 2012, decisions to John Acito, Lisa Bernard, Retha Boston, Heidi Elias, John Gonzalez, James Keller, Nicole Lewis, Pilar Pardon, Sandra Piggée, and its May 3, 2012, decisions to Elliot Greene and Beth Hoffman.

⁴ See Financial Disclosure Appeals Process § D(3) (an employee whose appeal is denied by the agency shall, within thirty days of service of the denial, either submit a financial disclosure report to the Board or file an appeal with the Board).

⁵ Jeffrey Rosen appealed to the Board on May 8, 2012; Pamela Clipper and William Flores appealed to the Board on May 18, 2012; Heidi Elias appealed to the Board on May 22, 2012; James Keller, Joanne Morey, and Lydia Schwartz appealed to the Board on May 25, 2012; John Acito, Lisa Bernard, Retha Boston, John Gonzalez, Elliot Greene, Beth Hoffman, Sandra Piggée, and Elaine Wilson appealed to the Board on May 30, 2012; Nicole Lewis and Pilar Pardon appealed to the Board on June 1, 2012; and Terry Jacobson appealed to the Board on June 4, 2012.

⁶ NYC Admin. Code § 12-110(b)(1).

⁷ NYC Admin. Code § 12-110(b)(2).

⁸ NYC Admin. Code § 12-110(b)(3)(a)(3).

⁹ NYC Admin. Code § 12-110(b)(3)(a)(4).

The Financial Disclosure Appeals Process sets forth the procedures to appeal a designation as a required filer of a financial disclosure report. Pursuant to this Process, no later than 14 days after filing the Notice of Appeal, the employee must either: 1) submit to the agency head a written statement setting forth the reasons that the employee believes he or she should not be required to file a financial disclosure report; or 2) request, in writing, a meeting with the agency head to discuss the reasons for designating the employee as a required filer.¹⁰ Failure of the employee to submit a written statement or request a meeting within the 14-day period “shall waive the right to appeal” absent a showing of good cause for the failure.¹¹

When the employee has submitted a written statement in support of the appeal, “the agency head or the agency head’s designee, within 14 days of receipt of that statement, shall advise the employee ... in writing, of the decision as to whether or not the employee must file.”¹² Furthermore, “[i]f the agency head or the agency head’s designee fails to meet that 14-day deadline, the appeal shall be granted upon default.”¹³

DOHMH prematurely decided these 18 appeals because it failed to accord to the employees the full 14-day period to submit a written statement. It incorrectly calculated the 14-day period to make its decision as commencing from the date of the filing of the Notice of Appeal, rather than from the date the written statement was due, and decided each of the appeals within 14 days of filing of Notice of Appeal, **before** the written statements in support of the Notice of Appeal were due. Of the 18 appeals DOHMH decided, no written statements had yet been submitted in four appeals,¹⁴ written statements were submitted with the notice of appeal or shortly thereafter in 10 appeals,¹⁵ and written statements were submitted after the agency decision, but within the requisite 14-day time period, in four appeals.¹⁶

¹⁰ Financial Disclosure Appeals Process § B(4). While employees have the option to either submit a written statement or request a meeting with the agency head, each DOHMH employee in these cases elected to submit a written statement.

¹¹ *Id.*

¹² Financial Disclosure Appeals Process § B(5).

¹³ *Id.*

¹⁴ Though four employees did not submit written statements, DOHMH decided their appeals either the same day or one day after DOHMH received the Notices of Appeal, and before the 14-day period expired. DOHMH emailed its May 2, 2012, decision to Ms. Boston and Ms. Lewis on May 7, 2012, even though written statements were not due until May 16, 2012, and May 15, 2012, respectively. DOHMH emailed its April 27, 2012, decisions to Mr. Rosen and Ms. Wilson on May 1, 2012, even though written statements were not due until May 3, 2012, and May 11, 2012, respectively. *See Appeals of Boston, Lewis, Rosen, and Wilson.*

¹⁵ Ten employees submitted their written statements with the Notice of Appeal or shortly thereafter. DOHMH emailed its April 27, 2012, decisions to Mr. Flores, Ms. Jacobson, Ms. Morey, and Ms. Schwartz on May 1, 2012, even though written statements were not due until May 3, 2012, May 8, 2012, May 7, 2012, and May 9, 2012, respectively; it emailed its April 30, 2012, decision to Ms. Clipper on

Had DOHMH calculated the period correctly, those employees who had not yet submitted written statements in support of the Notices of Appeal would have had the opportunity to do so, and the agency would presumably have considered those statements before rendering its decision. Moreover, any appellant who had timely submitted a written statement before the 14 days had expired could have submitted a supplemental statement before the 14 days had expired. Consequently, the agency failed to provide the appealing employees with the requisite time in which to file their written statements or to supplement their previously submitted written statements to support their appeals.¹⁷

The Board holds that the 14-day period in which an agency must render its decision commences 14 days after the date of the filing of the Notice of Appeal, i.e., the date the written statements are due, and that the agency must wait until expiration of this period before rendering its decision on a financial disclosure appeal.¹⁸ Failure to do so deprives the appealing employee of the requisite period to file a written statement to which he or she is entitled under the Financial Disclosure Appeals Process. Therefore, the aforementioned appeals are remanded to DOHMH and DOHMH is directed to provide each of the appealing employees with a new period of 14 days to submit written statements or supplemental written statements in support of their appeals. The agency will have 14 days from the date of submission of any statements to decide each appeal.¹⁹

May 1, 2012, even though a written statement was not due until May 3, 2012; it emailed its May 2, 2012, decisions to Ms. Elias, Mr. Keller, and Ms. Pardon on May 7, 2012, even though written statements were not due until May 14, 2012, May 16, 2012, and May 15, 2012, respectively; and it emailed its May 3, 2012, decisions to Ms. Hoffman and Mr. Greene on May 7, 2012, even though written statements were not due until May 17, 2012. *See* appeals of Clipper, Elias, Flores, Greene, Hoffman, Jacobson, Keller, Morey, Pardon, and Schwartz.

¹⁶ DOHMH decided the appeals of John Acito, Lisa Bernard, John Gonzalez, and Sandra Piggée on May 2, 2012, before having received their written statements on May 8, 2012, even though written statements were not due until May 16, 2012. *See* appeals of Acito, Bernard, and Gonzalez.

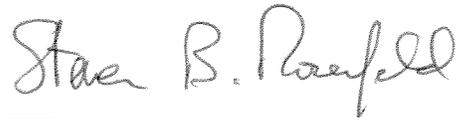
¹⁷ DOHMH decided nine of the 18 employees' appeals the same day it received them. *See* Appeals of Acito, Bernard, Boston, Gonzalez, Greene, Hoffman, Keller, Piggée, and Wilson.

¹⁸ Accordingly an agency must decide a financial disclosure appeal within 28 days of the filing of the Notice of Appeal.

¹⁹ *See* Financial Disclosure Appeals Process § B(5) ("If the agency head or the agency head's designee fails to meet the 14-day deadline [to render a decision after the employee submits a written statement], the appeal shall be granted upon default").

WHEREFORE, IT IS HEREBY ORDERED that the aforementioned appeals are remanded to DOHMH to provide each appellant with the full 14 days to submit written statements or supplemental written statements setting forth the reasons he or she should not be designated as a required filer of a financial disclosure report for calendar year 2011. DOHMH must decide each appeal within 14 days of the deadline for submission of such written statements.

The Conflicts of Interest Board



By: Steven B. Rosenfeld, Chair

Monica Blum
Andrew Irving
Burton Lehmann
Erika Thomas-Yuille

Dated: August 28, 2012

cc:

John Acito
Lisa Bernard
Retha Boston
Pamela Clipper
Heidi Elias
William Flores
John Gonzalez
Elliot Greene
Beth Hoffman
Terry Jacobson
James Keller
Nicole Lewis
Joanne Morey
Pilar Pardon
Sandra Piggée
Jeffrey Rosen
Lydia Schwartz
Elaine Wilson

Thomas Merrill, General Counsel, DOHMH