

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

Notice of Opportunity to Comment on Proposed Rule Establishing  
Procedures to Appeal a Designation as a Required Filer of a Financial  
Disclosure Report pursuant to Section 12-110(b) of the Administrative Code

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the Conflicts of Interest Board by Section 2603(a) of the New York City Charter and Section 12-110(c)(2) of the New York City Administrative Code that the Conflicts of Interest Board intends to adopt a rule, Section 1-17 of Title 53 of the Rules of the City of New York, establishing procedures to appeal a designation as a required filer of a financial disclosure report pursuant to Section 12-110(b) of the Administrative Code. The proposed rule is set forth below.

Written comments regarding this proposed amendment may be sent to the office of Julia Davis, Director of Financial Disclosure and Special Counsel, Conflicts of Interest Board, 2 Lafayette Street, Suite 1010, New York, New York 10007, on or before XXXX \_\_, 2010. A public hearing will be held on XXXX \_\_, 2010, from 9:00 a.m. to 5:00 p.m., at the foregoing address. Persons seeking to testify are requested to notify Ms. Davis at the foregoing address. Written comments and a summary of oral comments received at the hearing will be available for public

inspection, within a reasonable time after receipt, between the hours of 9:00 a.m. and 5:00 p.m., at Ms. Davis's office.

Title 53 of the Rules of the City of New York is amended by adding a new Section 1-17, to read as follows:

[New matter is underscored]

§1-17 PROCEDURES TO APPEAL A DESIGNATION AS A REQUIRED  
FILER

(a) Applicability

Any employee designated as a required filer by his or her agency may appeal, first to his or her agency head and then to the Conflicts of Interest Board ("COIB" or "the Board"), the determination that he or she is required to file a financial disclosure report with the Board pursuant to New York City Administrative Code § 12-110.

(b) Appeal to the Agency Head

(1) The employee must complete a "Notice of Appeal to the Agency Head" form, in such form as the Board shall adopt, providing the employee's name, employee identification number ("EIN") or agency identifier, agency name, agency code, civil service title, office title, and a brief statement of the grounds for the appeal. This form shall be available on the Board's website.

(2) The employee must file the completed Notice of Appeal with his or her agency financial disclosure liaison before the deadline for filing his or her financial disclosure report but in any event the employee shall have no less than 21 days in which to file the Notice of Appeal after receiving the notification by the agency that he or she must file a financial disclosure report. Failure to file the Notice of Appeal by that deadline will waive the right to appeal and the filer will be required to file a financial disclosure report.

(3) Upon receipt of the completed Notice of Appeal, the agency financial disclosure liaison shall:

(a) Immediately time and date stamp the Notice of Appeal to indicate receipt;

(b) Immediately give the employee a copy of the time and date-stamped receipt of the Notice of Appeal;

(c) Transmit the Notice of Appeal forthwith to the agency head (or the agency head's designee); and

(d) Within five days of the receipt of the Notice of Appeal, notify the COIB by e-mail of the pendency of the appeal. Such notice to the COIB shall contain the employee's name, agency, EIN (or agency identifier), and the date that the appeal was filed.

(4) No later than 14 days after filing the Notice of Appeal, the employee shall submit to the agency head (or the agency head's designee) a written statement setting forth the reasons that the employee believes he or she should not be designated as a required filer of a financial disclosure report and any supporting documentation. Failure to submit the written statement within the 14-day period shall waive the right to appeal.

(5) After the employee has submitted a written statement, the agency head or the agency head's designee, within 14 days of receipt of that statement, shall advise the employee and the employee's collective bargaining representative or other attorney or representative, if any, in writing, of the decision as to whether or not the employee must file. If the agency head or the agency head's designee fails to meet that 14-day deadline, the appeal shall be granted upon default.

(6) Any written decision of the agency head or agency head's designee that denies an appeal shall set forth the reasons for that determination and the specific evidence in support of the determination. The burden rests upon the agency to come forward with specific evidence showing that the employee met the requirements of at least one of the filing categories pursuant to New York City Administrative Code § 12-110(b)(3)(a)(1)-(4) and Rules of the City of New York, Title 53, §§ 1-02, 1-14, and 1-15. An agency's failure to set forth the reasons for denial and the specific evidence in support of that determination shall, in the event

the employee appeals the agency's determination to the COIB, result in the appeal being granted on default, regardless of any additional documentation submitted by the agency to the COIB pursuant to paragraph 4 of subdivision d below.

(7) The agency may consult with the COIB prior to rendering a decision.

(c) Procedure Where Agency Grants Appeal

If the agency grants the employee's appeal, the agency shall forthwith notify the COIB of the agency's decision. The COIB shall remove the employee from its list of required filers. The agency shall not place the employee back on the list of required filers until or unless his or her title, position, duties, or responsibilities change in such a way that he or she would be required to file pursuant to the criteria specified by New York City Administrative Code § 12-110(b).

(d) Procedure Where Agency Denies Appeal

(1) Where the agency denies an appeal, the agency must give notice of its decision within 14 days and must submit forthwith to the COIB by email the date on which, and manner by which, the notice of that denial was sent to the employee.

2) An employee whose appeal is denied by his or her agency shall, within 30 days after receipt of the agency's notice of denial, either:

(a) file a completed financial disclosure report with the COIB and forego a further appeal, or

(b) file with the COIB and serve upon the employee's agency a completed "Notice of Appeal to the COIB" form, in such form as the Board shall prescribe. The form shall be available on the Board's website.

Failure to file either a financial disclosure report or an appeal with the COIB within the 30-day period waives the right to a further appeal and subjects the employee to the imposition of the statutory late filing fine.

(3) Within 30 days after filing the Notice of Appeal to the COIB, the employee shall file with the COIB and serve upon the employee's agency the following materials:

(a) A copy of the materials submitted to the agency head by the employee on the appeal;

(b) A copy of the agency head's decision on the appeal, and

(c) Any supplemental documents the employee elects to provide.

(4) Within 30 days after the employee files the materials set forth in paragraph 3 of this subdivision, the agency shall file with the COIB all materials relied upon by the agency in making its determination that the employee is required to file a financial disclosure report, as well as any additional documents in support of the agency's determination.

(5) Within 30 days after the agency has filed the materials set forth in paragraph 4 of this subdivision, the employee may file with the COIB such additional material as he or she deems necessary to either rebut evidence produced by the agency or to further support his or her position.

(6) Both the employee and the agency shall provide to the COIB whatever additional information it requests. Failure of either party to timely provide any of the requested information may result in a summary finding adverse to that party.

(7) The Director of Financial Disclosure at the COIB shall review the agency's determination and the documents submitted by the employee and the agency and shall make a recommendation to the Board, or to the Executive Director upon delegation by the Board pursuant to New York City Charter § 2602(g), whether the agency's determination should be upheld or reversed. The agency and employee shall each be provided with a copy of the recommendation of the Director of Financial Disclosure and, within 30 days of receipt of the recommendation, may submit written comments to the Board or Executive Director, as the case may be, upon the proposed recommendation.

(8) The Board shall review the recommendation and any comments submitted in response thereto and issue a decision and order either upholding or reversing the agency's determination. The Board may, in its sole discretion, order

a hearing, at which the employee and agency may call witnesses to testify under oath, to determine an issue of credibility.

(9) If the COIB grants the appeal, the employee shall be removed from the list of required filers and will not be required to file a financial disclosure report for that filing year or in future years until or unless the employee's title, position, duties, or responsibilities change such that he or she should be a required filer.

(10) If the appeal is denied, the employee shall either:

(a) file a financial disclosure report for that filing year within 30 days after service of the denial of the appeal by the COIB, or

(2) file an article 78 proceeding to challenge the denial within the time provided by law.

If the COIB denies the appeal, the employee shall file a financial disclosure report for that year and future years until or unless the employee's title, position, duties, or responsibilities change such that he or she should not be a required filer.

(11) Once an employee files an appeal with the COIB, neither the employee nor the agency may communicate *ex parte* with any member of the COIB staff or Board, except on consent of the opposing party or in an emergency.

(e) General Provisions

(1) At all stages of the financial disclosure appeals process, the employee may be represented by a union representative and/or an attorney.

(2) During the pendency of the appeal and any court proceeding timely brought by the employee of review any denial of the appeal by the COIB, the employee need not file a report, and no late filing fines will be assessed for that period.

(3) Whenever a deadline in the above process is measured from the service of notice and notice is served by United States Postal Service mail, five days shall be added to the deadline.

(4) In the case of any appeal that is granted by default, the grant of the appeal shall apply to that filing year only and shall not be a determination on the merits.

(5) Unless otherwise stated, any reference to a number of days specified as a period within which an act is required to be done means such number of calendar days.

(6) Nothing in this rule shall foreclose the COIB from determining that any public servant, regardless of an agency's determination, must file a financial disclosure report pursuant to New York City Administrative Code § 12-110.

STATUTORY AUTHORITY: Sections 2603(a) of the New York City Charter and Section 12-110(c)(2) of the New York City Administrative Code.

STATEMENT OF BASIS OF PURPOSE OF THE PROPOSED RULE:

As mandated by New York City's Financial Disclosure Law, the Board must adopt a rule regulating appeals by public servants who contest their designation as required filers based on their policymaking or contracting responsibilities. See Ad. Code § 12-110(c)(2), as amended by Local Law 43 of 2003. See also Ad. Code § 12-110(b)(3)(a)(3)-(4). Determination of such appeals by employees was initially the responsibility of the Department of Investigation and in 2004 was transferred to the City's Conflicts of Interest Board ("COIB" or "the Board"). See Ad. Code § 12-110(c)(2), as amended by Local Law 43 of 2003.

Subsequent to the transfer of the determination of appeals to the Board, the City, through the Office of Labor Relations and with the consent of the Board, and DC-37 entered into a pilot program, entitled "Financial Disclosure Appeals Process," which created a procedure for appeals for filers of financial disclosure reports. This rule is based on that process and contains delineated procedures for an employee to appeal a designation as a required filer based on policymaking or contracting responsibilities and for agencies to respond to those appeals. The rule

provides the employee with notice and the opportunity to be heard at each stage of the appeal and further provides the employee with the opportunity to comment on a recommended decision.

In light of the foregoing, the Board's intent in drafting the rule is threefold: (1) to provide all City employees with a delineated procedure to appeal their designation as a required filer based on policymaking or contracting responsibilities; (2) to ensure the uniform and prompt resolution of financial disclosure appeals; and (3) to provide guidance, through decisions on these appeals, to agencies as to which categories of employees are required filers as policymakers or contract filers. In the Board's opinion, the proposed rule meets those requirements.