



CITY OF NEW YORK
CONFLICTS OF INTEREST BOARD

2 Lafayette Street, Suite 1010
New York, New York 10007
(212) 442-1400
Fax - (212) 442-1423 TDD - (212) 442-1407

Sheldon Oliensis
Chair

Beryl R. Jones

Jane W. Parver

Benito Romano

Shirley Adelson Siegel

Mark Davies
*Executive Director
Counsel*

Jo-Antoinette Frey
Deputy Director

Hugh B. Weinberg
Deputy Counsel

Appearance By Public Servant's Firm Before
His City Agency
Charter Sections 2604(b)(2), (b)(3), (b)(6)

Advisory Opinion No. 94-24

The Conflicts of Interest Board (the "Board") has received a request for an opinion from a high-level, part-time public servant as to whether it would be consistent with the conflicts of interest provisions of Chapter 68 of the City Charter for his private law firm (the "Firm"), in which he is a partner, to appear on behalf of a private litigant before the agency served by the public servant (the "Agency").

For the reasons discussed below, the Board has determined that the Firm must divest itself of any pending cases which would require appearances before the Agency, if such cases are in the preliminary stages of litigation, unless such divestiture would create a substantial hardship for the client. With respect to any matters that have already progressed beyond the preliminary stages of litigation, the Firm may retain such matters, under the conditions discussed in this opinion. The Firm may not accept any new matters which

would require appearances before the Agency.

Background

The public servant has advised the Board that the Agency is an adjudicatory body and that, although he works part-time for the Agency, he is actively involved in the Agency's adjudications. The public servant has also advised the Board that he is a partner in the Firm; that the Firm represents several clients in cases pending before the Agency; and that he is not personally involved, as a member of the Firm, in any of these matters.

Discussion

Chapter 68 prohibits public servants from having private interests that conflict with their official duties and, moreover, from using or attempting to use their official City positions to advance private interests. If the Firm were to continue handling private matters before the Agency, except to the limited extent provided in this opinion, the Firm's handling of such matters could conflict with the public servant's official City duties by creating confusion because of the public servant's dual role as both a partner in the Firm, which represents claimants before

the Agency, and a City official in the Agency, which, as an adjudicatory body, must maintain the highest standard of impartiality. See Charter Section 2604(b)(2), which provides that no public servant shall engage in any business, transaction, or private employment, or have any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties.

While the public servant has offered to recuse himself from any matters which the Firm has before the Agency, such recusal would not cure the perception of a conflict of interest. Other officials within the Agency might be unduly influenced in their deliberations concerning the Firm's cases because of the public servant's partnership in the Firm. Further, there could be a public perception that the Firm receives preferential treatment, or is in a position to receive such treatment, in its representation of clients before the Agency. See Charter Section 2604(b)(3), which provides that no public servant shall use or attempt to use his or her position as a public servant to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for the public servant

or any person or firm associated with the public servant. A person or firm associated with a public servant includes each firm in which the public servant has a present or potential interest. See Charter Section 2601(5).

Additionally, Charter Section 2604(b)(6) prohibits public servants who are not regular employees of the City from representing private interests, for compensation, before their City agencies or appearing, directly or indirectly, on behalf of private interests in matters involving the public servants' agencies.¹ The Firm's representation of clients before the Agency would constitute an indirect appearance by the public servant in such matters because the public servant is closely identified with the Firm as one of its partners. In particular, the presence of the public servant's name on the Firm's letterhead would

¹ "Regular employee" means all elected officials and public servants whose primary employment, as defined by rule of the Board, is with the City. See Charter Section 2601(20). Since the public servant in this case works less than 20 hours per week for the Agency, he is not considered a regular employee as that term is defined in Board Rule § 1-06. Accordingly, he is prohibited by Charter Section 2604(b)(6) from representing private interests before the Agency, but not from representing such interests before other City agencies or in matters involving other City agencies.

constitute at least an indirect appearance and would serve to notify Agency employees that the public servant is a partner and has an interest in the Firm.² Any personal appearances before the Agency by members of the Firm would also constitute an indirect appearance by the public servant because his position with and ownership interest in the Firm would, in most cases, render him too closely associated with the Firm to make his recusal from any such matters effective.

Notwithstanding the foregoing, in order to avoid prejudice to any of the Firm's clients with respect to matters pending before the Agency, the Board has determined that, with respect only to those matters which have progressed beyond the preliminary stages of litigation, the Firm may retain such matters, but the public servant must recuse himself from these matters, both as a member of the Firm and as a City official. Such recusal means that the public servant may not

² As noted above, Charter Section 2604(b)(6), in contrast to Charter Section 2604(d)(2), prohibits indirect appearances by a public servant before his or her agency. See Advisory Opinion No. 93-11, which permits, under Charter Section 2604(d)(2), a former public servant's law firm, but not the former public servant himself, to communicate with the public servant's former agency using letterhead containing his name.

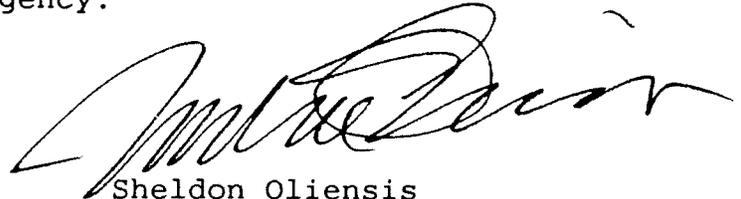
participate in discussions concerning these matters, may not attend any meetings in which these matters are discussed and may not receive copies of documents relating to these matters. Further, the public servant's name may neither appear on the Firm's letterhead or other documents used in the Firm's dealings with the Agency, nor be invoked in any way regarding these matters. Finally, the public servant may not share in the proceeds from the Firm's representation of clients in these matters.

Conclusion

It is the opinion of the Board that the Firm may not appear before the Agency except to the extent described in this opinion. Thus, the Firm must divest itself of any pending cases involving the Agency, if such cases are in the preliminary stages of litigation. However, with respect to cases where divestiture would create a substantial hardship for the client, the Board has determined that the Firm may retain those cases. The Firm may also retain any matters which have progressed beyond the preliminary stages of litigation. However, the public servant must recuse himself, both as a member of the Firm and as a City official, from all of the matters which the Firm retains in accordance

Advisory Opinion No. 94-24
November 21, 1994
Page 7

with this opinion. Furthermore, the public servant's name may neither appear on the Firm's letterhead or other documents used in the Firm's dealings with the Agency, nor be invoked in any way regarding these matters. Also, the public servant may not share in the Firm's proceeds from these matters. Finally, the Firm may not accept any new matters which involve appearances before the Agency.

A handwritten signature in black ink, appearing to read 'Sheldon Oliensis', written in a cursive style.

Sheldon Oliensis
Chair

Beryl R. Jones

Jane W. Parver

Benito Romano

Shirley Adelson Siegel

Dated: November 21, 1994