

**November 26, 2019, Agenda – Open Meeting Matter**

October 25, 2019, Public Hearing  
September 17, 2019, Open Meeting  
July 9, 2019, Open Meeting

To: The Board  
From: Chad H. Gholizadeh *CHG*  
Date: November 15, 2019  
Re: Board Rules § 1-13(e): Work for Not-for-Profits

As directed by the Board at its September 2019 meeting, Staff published for public comment its proposed amendment clarifying which documents would be posted on the Board's website for the purposes of agency designations and Board approvals issued pursuant to Board Rules § 1-13(e). In accordance with the City's Administrative Procedures Act, the Board held a public hearing on October 25, 2019, to receive comments on the proposed amendment. No members of the public testified in person at the public hearing.

The Board received one written comment by email on the day of the public hearing. This comment does not address the subject matter of the proposed rule amendment, but rather expresses the commenter's opinions about which documents ought to be made public as part of the disposition of enforcement actions.

Staff recommends that the Board adopt the text of the rule amendment with stylistic edits to the commentary to reflect that the rule amendment is no longer a proposal and with one non-substantive change to the text of the rule amendment in order to maintain consistent terminology.

Attached are the following:

- 1) Minutes of the July 9, 2019, Open Meeting (**Exhibit 1**);
- 2) Minutes of the September 17, 2019, Open Meeting (**Exhibit 2**);

- 3) Proposed Board Rules and Commentary, as submitted for publication in the City Record on September 18, 2019 (**Exhibit 3**);
- 4) The written comment received by the Board on October 25, 2019 (**Exhibit 4**);
- 5) Proposed Notice of Adoption (Tracked Version) (**Exhibit 5**); and
- 6) Proposed Notice of Adoption (Clean Version) (**Exhibit 6**).

## **Minutes of the Open Meeting of the New York City Conflicts of Interest Board**

**Date:** July 9, 2019

**Location:** Conflicts of Interest Board, 2 Lafayette Street, Suite 1010, New York, New York

**Present:**

Board Members: Chair Richard Briffault and Members Fernando A. Bohorquez, Jr., Anthony Crowell, Jeffrey D. Friedlander, and Erika Thomas.

Board Staff: Ethan Carrier, Chad Gholizadeh, Christopher Hammer, Gavin Kendall, Julia Lee, Carolyn Miller, Katherine Miller, Ari Mulgay, Yasong Niu, Jeffrey Tremblay, Clare Wiseman, and Juliya Ziskina.

Guests: None

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The meeting was called to order by the Chair at approximately 9:37 a.m. The Chair stated that the meeting was being conducted pursuant to the New York State Open Meetings Law and designated the undersigned as the Recording Secretary for purposes of the meeting.

The Chair stated that the meeting was called to discuss proposed amendments to Title 53 of the Rules of the City of New York, Board Rules §§ 1-02 and 1-15, Board Rules § 1-13(c), and Board Rules §§ 1-13(e) and (f).

### **Board Rules §§ 1-02 and 1-15:**

After a brief introduction on the proposed amendments to Board Rules §§ 1-02 and 1-15, the Chair asked for any comments by the Board or Staff.

The following comments constitute the changes as agreed upon by the Board to the proposed amendments to the Statement of Basis and Purpose:

- page 2, lines 24 and 25: create new sentence by inserting period after “members” and starting the next sentence with “The Board”
- page 2, line 28: change language to read “these Board interpretations”
- page 4, line 4: change “are” to “is”
- page 4, line 6: insert “the” before “member’s interests”

Upon motion duly made and seconded, the Board unanimously voted to approve the proposed amendments incorporating the changes as discussed as the final rule.

### **Board Rules § 1-13(c):**

After a brief introduction on the proposed amendments to Board Rules § 1-13(c), the Chair asked for any comments by the Board or Staff.

The following comments constitute the changes as agreed upon by the Board to the proposed amendments to Board Rules § 1-13(c):

- Statement of Basis and Purpose, page 4, line 4: change “is” to “in” to read “engaged in business”

- Statement of Basis and Purpose, page 5, line 3: delete the letter “s” from “acts”
- § 1-13(c)(1)(i): add City title and City email accounts
- Staff to propose language clarifying ministerial exceptions to the not-for-profit entity’s business dealings as referenced in Board Rules § 1-13(c)(1)(ii)

Upon motion duly made and seconded, the Board unanimously voted to continue the discussion at a future Board meeting.

**Board Rules §§ 1-13(e) and (f):**

After a brief introduction on the proposed amendments to Board Rules § 1-13(e), the Chair asked for any comments by the Board or Staff. There were no comments. Upon motion duly made and seconded, the Board unanimously voted to adopt the proposed amendments to Board Rules § 1-13(e) as the final rule.

Discussion of proposed amendments to Board Rules § 1-13(f) was tabled for a future Board meeting.

The open meeting was adjourned at approximately 10:30 a.m.

Respectfully submitted,

Julia Lee  
Recording Secretary

## **Minutes of the Open Meeting of the New York City Conflicts of Interest Board**

**Date:** September 17, 2019

**Location:** Conflicts of Interest Board, 2 Lafayette Street, Suite 1010, New York, New York

**Present:**

Board Members: Chair Richard Briffault and Members Fernando A. Bohorquez, Jr., Anthony Crowell, Jeffrey D. Friedlander, and Erika Thomas.

Board Staff: Ethan Carrier, Christopher Hammer, Gavin Kendall, Julia Lee, Carolyn Miller, Katherine Miller, Ari Mulgay, Yasong Niu, Jeffrey Tremblay, Michele Weinstat, Clare Wiseman, and Juliya Ziskina.

Guests: None

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The meeting was called to order by the Chair at approximately 9:45 a.m. The Chair stated that the meeting was being conducted pursuant to the New York State Open Meetings Law and designated the undersigned as the Recording Secretary for purposes of the meeting.

The Chair stated that the meeting was called to discuss proposed amendments to Title 53 of the Rules of the City of New York, Board Rules § 1-13(e) and Board Rules Chapter 3.

### **Board Rules § 1-13(e):**

After a brief introduction on the proposed amendments to Board Rules § 1-13(e), the Chair asked for any comments by the Board or Staff.

There were no comments on the proposed amendments. Upon motion duly made and seconded, the Board unanimously voted to approve the proposed amendments as the final rule.

### **Board Rules Chapter 3:**

After a brief introduction on the proposed amendments to Board Rules Chapter 3, the Chair asked for any comments by the Board or Staff.

There were no comments on the proposed amendments. Upon motion duly made and seconded, the Board unanimously voted to approve the proposed amendments as the final rule.

The open meeting was adjourned at approximately 9:56 a.m.

Respectfully submitted,

Julia Lee  
Recording Secretary

## New York City Conflicts of Interest Board

### **Notice of Public Hearing and Opportunity to Comment on Proposed Rules Regarding Conduct Prohibited by City Charter § 2604(b)(2)**

**What are we proposing?** The Conflicts of Interest Board intends to amend Board Rules Section 1-13(e) by clarifying which documents will be publicly posted.

**When and where is the Hearing?** The Conflicts of Interest Board will hold a public hearing on the proposed rule. The public hearing will take place at 11:30 a.m. on Friday, October 25, 2019. The hearing will be at Spector Hall, 22 Reade Street, New York, New York.

This location has the following accessibility option(s) available: wheelchair accessible.

**How do I comment on the proposed rules?** Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the Conflicts of Interest Board through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to Chad H. Gholizadeh at [Rules@COIB.nyc.gov](mailto:Rules@COIB.nyc.gov).
- **Mail.** You can mail comments to Chad H. Gholizadeh, Assistant Counsel, Conflicts of Interest Board, 2 Lafayette Street, Suite #1010, New York, New York 10007.
- **Fax.** You can fax comments to the Conflicts of Interest Board at (212) 437-0705.
- **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 437-0730. You can also sign up in the hearing room before the hearing begins on October 25, 2019. You can speak for up to three minutes.

**Is there a deadline to submit comments?** Yes, you must submit written comments by October 25, 2019.

**Do you need assistance to participate in the hearing?** You must tell the Conflicts of Interest Board if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at (212) 437-0723. You must tell us by Wednesday, October 23, 2019.

**Can I review the comments made on the proposed rules?** You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available to the public at the Conflicts of Interest Board, 2 Lafayette Street, Suite #1010, New York, New York 10007.

**What authorizes the Conflicts of Interest Board to make this rule?** Sections 1043 and 2603(a) of the City Charter and authorize the Conflicts of Interest Board to make this proposed rule. This proposed

rule was not included in the Conflicts of Interest Board's regulatory agenda for this Fiscal Year because it was not contemplated when the Conflicts of Interest Board published the agenda.

**Where can I find the Conflicts of Interest Board's rules?** The Conflicts of Interest Board's rules are in Title 53 of the Rules of the City of New York.

**What rules govern the rulemaking process?** The Conflicts of Interest Board must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

### **STATEMENT OF BASIS AND PURPOSE**

The Conflicts of Interest Board (the "Board") is proposing to amend subdivision (e) of Board Rules § 1-13.

#### Proposed Revisions to Board Rules § 1-13(e)

The process set forth in subdivision (e) was recently incorporated into a rule that went into effect on March 10, 2019. This subdivision provides a mechanism for an agency to assign a public servant: (a) to use City time and City resources to perform work for a not-for-profit entity that serves a City purpose; and (b) to be involved, if approved by the Board, in that not-for-profit's City business. As part of this process, for each designation or request, the Board will post one document on its website; the proposed revisions would clarify which of two possible documents will be posted.

If the public servant is designated by an agency head pursuant to Board Rules § 1-13(e)(1) to use City time and City resources to perform work for a not-for-profit, but the public servant will not be involved in the not-for-profit's City business, then the Board will post only the agency head's letter making that designation. If the agency head's designation under Board Rules § 1-13(e)(1) also requests approval from the Board for the public servant to be involved in the City business dealings of a not-for-profit pursuant to Board Rules § 1-13(e)(2), then only the Board's letter approving that request will be posted by the Board on its website. The agency

head's letter to the Board requesting that approval pursuant to Section 1-13(e)(2) would remain confidential for two reasons: first, the Board would be treating these requests the same as it does similar requests from agency heads for waivers of the moonlighting restrictions for agency employees; second, the Board's determination would include all relevant information, including, of necessity, a statement of the agency head's designation made pursuant to Section 1-13(e)(1).

### **Text of the Proposed Rule**

New material is underlined.  
[Deleted material is in brackets.]

Section 1. Subdivision (e) of Section 1-13 of Chapter 1 of Title 53 of the Rules of the City of New York is amended to read as follows:

(e) (1) An agency head may designate a public servant to perform work on behalf of a not-for-profit corporation, association, or other such entity that operates on a not-for-profit basis, including serving as a board member or other position with fiduciary responsibilities provided that:

(i) there is a demonstrated nexus between the proposed [activity] work, the public servant's City job, and the mission of the public servant's agency; [and]

(ii) such work furthers the agency's mission and is not undertaken primarily for the benefit or interests of the not-for-profit;

[(ii)] (iii) the designated public servant takes no part in the entity's business dealings with the City at the entity or at his or her agency, except that Council Members may sponsor and vote on discretionary funding for the entity; and

[(iii)] (iv) within 30 days the written designation is disclosed to the Conflicts of Interest Board [and will be posted on the Board's website].



(2) A public servant designated in accordance with paragraph (1) of this subdivision may take part in such entity's business dealings with the City at the entity and/or at his or her agency if, after written approval [of] by the agency head, the Board determines that there is a demonstrated nexus between the proposed [participation] work, the public servant's City job, and the mission of the public servant's agency[;] and that such participation furthers the agency's mission and is not undertaken primarily for the benefit or interests of the not-for-profit entity.

(3) The Board will post designations of public servants made pursuant to paragraph (1) on its website. When an agency makes a request pursuant to paragraph (2) of this subdivision for a public servant both to perform work on behalf of a not-for-profit entity and be involved in that entity's City business, only the Board's determination will be posted on its website.

[(3)] (4) The designation made pursuant to paragraph (1) and approval made pursuant to paragraph (2) of this subdivision must be by the head of the agency served by the public servant, or by a deputy mayor if the public servant is an agency head. A public servant who is an elected official, including a district attorney, is the agency head for the public servants employed by the official's agency or office. A public servant who is an elected official, including a district attorney, may provide the designation pursuant to paragraph (1) and the agency head approval pursuant to paragraph (2) for him or herself.

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS**

**253 BROADWAY, 10<sup>th</sup> FLOOR  
NEW YORK, NY 10007  
212-788-1400**

**CERTIFICATION / ANALYSIS  
PURSUANT TO CHARTER SECTION 1043(d)**

**RULE TITLE: Publication of Documents Relating to Work by Public Servants in Support  
of Not-for-Profit Entities**

**REFERENCE NUMBER: COIB-11**

**RULEMAKING AGENCY: Conflicts of Interest Board**

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro  
Mayor's Office of Operations

August 16, 2019  
Date

**NEW YORK CITY LAW DEPARTMENT  
DIVISION OF LEGAL COUNSEL  
100 CHURCH STREET  
NEW YORK, NY 10007  
212-356-4028**

**CERTIFICATION PURSUANT TO  
CHARTER §1043(d)**

**RULE TITLE:** Publication of Documents Relating to Work by Public Servants in Support of Not-for-Profit Entities

**REFERENCE NUMBER:** 2019 RG 056

**RULEMAKING AGENCY:** Conflicts of Interest Board

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN  
Acting Corporation Counsel

Date: August 16, 2019

**From:** [Judy Villeneuve](#)  
**To:** [COIB Rules](#)  
**Subject:** Comment on Proposed Rules Regarding Conduct Prohibited by City Charter § 2604(b)(2)  
**Date:** Friday, October 25, 2019 1:45:16 PM

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Dear Chad H. Gholizadeh,

I am submitting the following comment in opposition to the proposed rules regarding conduct prohibited by City Charter that the Conflict of Interest Board intends to make public.

COIB decisions are permanent and therefore perpetually damaging to the public officials' career, which is an excessive consequence given the minor nature of the offense, especially if a fine has not been deemed warranted by the COIB.

In my case, I am only 5.5 years into my career and sent an email to exercise my right as a parent to request an appeal of a decision not to let my child graduate from 8th grade which the law permits when a child, has been identified with special needs. My child had been recently diagnosed with ADHD and in my haste to exercise my right as a parent so that my child could attend graduation the next day, I sent the appeal email from my phone through my office email that automatically populated my email signature.

In my case, COIB states that, "The Board has decided not to impose any fine for these violations, given that you sent only one email and the indirect manner in which you invoked your DOE title in connection with your personal request. The Board instead issues this letter to provide guidance to other servants in similar situations." Publically humiliating me and damaging my career is cruel and unusual punishment considering the nature of the offense and that nowhere in the decision are these facts stated. Therefore, the determination, taken at face value, create the impression that I am equal to anyone else whose violation is more grievous than my own.

Furthermore, where a COIB decision is intended "to provide guidance to other civil servants", it is only practical and just that the decision be complete and include quotes from the response to the allegations, COIB reasoning why past cases are distinguished from facts under review and COIB explanation as to why exception to the violation does not warrant dismissal of the allegation.

Again, specifically, I am opposed to all decisions against public officials being made public where the COIB has NOT:

- Issued a fine due to a COIB determination that the nature of the alleged offense is too minor to warrant a fine.
- Responded to the facts presented in the public official's response to the COIB allegation by both quoting the facts, distinguishing precedent and providing a legal-rational as to why the exception to the violation does not apply especially when precedent and the exception being raised.

For example, before making a COIB determination public, the determination must:

- Be provided for such a grievous act that a substantial fine is warranted.
- Include a clearly articulated explanation distinguishing all COIB decisions

raised by the public official in the response to the COIB allegations against them that will both provide the clarity and just precedent necessary for public officials to better understand the law as well as provide the standard practice of legal transparency, that determinations by Corporate Counsel and other judicial decisions customarily contain.

- Included a clearly articulated explanation of why the COIB exception to the culpability of the rules is not applicable when the public official both raises the exception in the response and provides facts to substantiate why that exception should be applied and relief from a negative determination should be granted in favor of the public servant.

Sincerely,  
Judy Villeneuve  
COIB Case No. 2019-437

**-New York City Conflicts of Interest Board**

**Notice of Public Hearing and Opportunity to Comment on Proposed Adoption of Final Rules  
Regarding Conduct Prohibited**

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE NEW YORK CITY CONFLICTS OF INTEREST BOARD by City Charter § 260-4(b)(2)

~~What are we proposing?~~ The Section 1043 of the City Charter and Section 3-907 of the New York City Administrative Code, that the Conflicts of Interest Board ~~intends to~~has adopted Board Rules that amend its rulesBoard Rules Section 1-13(e) by clarifying which documents will be publicly posted.

~~When~~The proposed Rules were published in the City Record on September 24, 2019, and where is the Hearing?a public hearing was held on October 25, 2019. No testimony was received and one comment was received. The Conflicts of Interest Board will hold a public hearing on the proposed rule. The public hearing will take place at [time] on [date]. The hearing will be at [location].

~~This location has now adopts the following accessibility option(s) available:~~ [  
]Rules.

~~How do I comment on the proposed rules?~~ Anyone can comment on the proposed rules by:

~~Website.~~ You can submit comments to the Statement of Basis and Purpose

- ~~• The Conflicts of Interest Board through the NYC rules website at http://rules.cityofnewyork.us.~~
- ~~• Email.~~ You can email comments to Chad H. Gholizadeh at Rules@COIB.nyc.gov.
- ~~• Mail.~~ You can mail comments to Chad H. Gholizadeh, Assistant Counsel, Conflicts of Interest Board, 2 Lafayette Street, Suite #1010, New York, New York 10007.
- ~~• Fax.~~ You can fax comments to the Conflicts of Interest Board at (212) 437-0705.
- ~~• By Speaking at the Hearing.~~ Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 437-0730. You can also sign up in the hearing room before the hearing begins on [date]. You can speak for up to three minutes.

~~Is there a deadline to submit comments?~~ Yes, you must submit written comments by [date].

~~Do you need assistance to participate in the hearing?~~ You must tell the Conflicts of Interest (the "Board) if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at (212) 437-0723. You must tell us by [date].

~~Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available to the public at the Conflicts of Interest Board, 2 Lafayette Street, Suite #1010, New York, New York 10007.~~

~~What authorizes the Conflicts of Interest Board to make this rule? Sections 10-13 and 2603(a) of the City Charter and authorize the Conflicts of Interest Board to make this proposed rule. This proposed rule was not included in the Conflicts of Interest Board's regulatory agenda for this Fiscal Year because it was not contemplated when the Conflicts of Interest Board published the agenda.~~

~~Where can I find the Conflicts of Interest Board's rules? The Conflicts of Interest Board's rules are in Title 53 of the Rules of the City of New York.~~

~~What rules govern the rulemaking process? The Conflicts of Interest Board must meet the requirements of Section 10-13 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 10-13 of the City Charter.~~

#### ~~STATEMENT OF BASIS AND PURPOSE~~

~~The Conflicts of Interest Board (the "Board") is proposing to amend") is amending subdivision (e) of Board Rules § 1-13.~~

#### Proposed Revisions to Board Rules § 1-13(e)

The process set forth in subdivision (e) was recently incorporated into a rule that went into effect on March 10, 2019. This subdivision provides a mechanism for an agency to assign a public servant: (a) to use City time and City resources to perform work for a not-for-profit entity that serves a City purpose; and (b) to be involved, if approved by the Board, in that not-for-profit's City business. As part of this process, for each designation or request, the Board will post one document on its website; the proposed revisions ~~would clarify~~clarifies which of two possible documents will be posted.

If the public servant is designated by an agency head pursuant to Board Rules § 1-13(e)(1) to use City time and City resources to perform work for a not-for-profit, but the public servant will not be involved in the not-for-profit's City business, then the Board will post only the agency head's letter making that designation. If the agency head's designation under Board Rules § 1-13(e)(1) also requests approval from the Board for the public servant to be involved in the City business dealings of a not-for-profit pursuant to Board Rules § 1-13(e)(2), then only the Board's letter approving that request will be posted by the Board on its website. The agency head's letter to the Board requesting that approval pursuant to Section 1-13(e)(2) ~~would remain~~ confidential for two reasons: first, the Board ~~would be treating~~will treat these requests the same as it does similar requests from agency heads for waivers of the moonlighting restrictions for agency employees; second, the Board's determination ~~would~~will include all relevant

information, including, of necessity, a statement of the agency head's designation made pursuant to Section 1-13(e)(1).

### Text of the Proposed Rule

New material is underlined.

[Deleted material is in brackets.]

Section 1. Subdivision (e) of Section 1-13 of Chapter 1 of Title 53 of the Rules of the City of New York is amended to read as follows:

(e) (1) An agency head may designate a public servant to perform work on behalf of a not-for-profit corporation, association, or other such entity that operates on a not-for-profit basis, including serving as a board member or other position with fiduciary responsibilities provided that:

—{

(i) there is a demonstrated nexus between the proposed [activity] work, the public servant's City job, and the mission of the public servant's agency; [and]

(ii) such work furthers the agency's mission and is not undertaken primarily for the benefit or interests of the not-for-profit;

—{

[(ii)] (iii) the designated public servant takes no part in the entity's business dealings with the City at the entity or at his or her agency, except that Council Members may sponsor and vote on discretionary funding for the entity; and

—{

[(iii)] (iv) within 30 days the written designation is disclosed to the Conflicts of Interest Board [and will be posted on the Board's website].

—{

(2) A public servant designated in accordance with paragraph (1) of this subdivision may take part in such entity's business dealings with the City at the entity and/or at his or her agency if, after written approval [of] by the agency head, the Board determines that there is a demonstrated nexus between the proposed {participation} work, the public servant's City job, and the mission of the public servant's agency[;] and that such participation furthers the agency's mission and is not undertaken primarily for the benefit or interests of the not-for-profit entity.

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(3) The Board will post designations of public servants made pursuant to paragraph (1) on its website. When an agency makes a request pursuant to paragraph (2) of this subdivision for a public servant both to perform work on behalf of a not-for-profit entity and be involved in that entity's City business, only the Board's determination will be posted on its website.

[(3)] (4) The designation made pursuant to paragraph (1) and approval made pursuant to paragraph (2) of this subdivision must be by the head of the agency served by the public



servant, or by a deputy mayor if the public servant is an agency head. A public servant who is an elected official, including a district attorney, is the agency head for the public servants employed by the official's agency or office. A public servant who is an elected official, including a district attorney, may provide the designation pursuant to paragraph (1) and the agency head approval pursuant to paragraph (2) for him or herself.

## **New York City Conflicts of Interest Board**

### **Notice of Adoption of Final Rules**

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE NEW YORK CITY CONFLICTS OF INTEREST BOARD by Section 1043 of the City Charter and Section 3-907 of the New York City Administrative Code, that the Conflicts of Interest Board has adopted Board Rules that amend Board Rules Section 1-13(e) by clarifying which documents will be publicly posted.

The proposed Rules were published in the City Record on September 24, 2019, and a public hearing was held on October 25, 2019. No testimony was received and one comment was received. The Conflicts of Interest Board now adopts the following Rules.

### **Statement of Basis and Purpose**

The Conflicts of Interest Board (the “Board”) is amending subdivision (e) of Board Rules § 1-13.

#### **Proposed Revisions to Board Rules § 1-13(e)**

The process set forth in subdivision (e) was recently incorporated into a rule that went into effect on March 10, 2019. This subdivision provides a mechanism for an agency to assign a public servant: (a) to use City time and City resources to perform work for a not-for-profit entity that serves a City purpose; and (b) to be involved, if approved by the Board, in that not-for-profit’s City business. As part of this process, for each designation or request, the Board will post one document on its website; the proposed revisions clarifies which of two possible documents will be posted.

If the public servant is designated by an agency head pursuant to Board Rules § 1-13(e)(1) to use City time and City resources to perform work for a not-for-profit, but the public servant will not be involved in the not-for-profit’s City business, then the Board will post only the agency head’s letter making that designation. If the agency head’s designation under Board Rules § 1-13(e)(1) also requests approval from the Board for the public servant to be involved in the City business dealings of a not-for-profit pursuant to Board Rules § 1-13(e)(2), then only the Board’s letter approving that request will be posted by the Board on its website. The agency head’s letter to the Board requesting that approval pursuant to Section 1-13(e)(2) remain confidential for two reasons: first, the Board will treat these requests the same as it does similar requests from agency heads for waivers of the moonlighting restrictions for agency employees; second, the Board’s determination will include all relevant information, including, of necessity, a statement of the agency head’s designation made pursuant to Section 1-13(e)(1).

### **Text of the Proposed Rule**

New material is underlined.

[Deleted material is in brackets.]

Section 1. Subdivision (e) of Section 1-13 of Chapter 1 of Title 53 of the Rules of the City of New York is amended to read as follows:

(e) (1) An agency head may designate a public servant to perform work on behalf of a not-for-profit corporation, association, or other such entity that operates on a not-for-profit basis, including serving as a board member or other position with fiduciary responsibilities provided that:

(i) there is a demonstrated nexus between the proposed [activity] work, the public servant's City job, and the mission of the public servant's agency; [and]

(ii) such work furthers the agency's mission and is not undertaken primarily for the benefit or interests of the not-for-profit;

[(ii)] (iii) the designated public servant takes no part in the entity's business dealings with the City at the entity or at his or her agency, except that Council Members may sponsor and vote on discretionary funding for the entity; and

[(iii)] (iv) within 30 days the written designation is disclosed to the Conflicts of Interest Board [and will be posted on the Board's website].

(2) A public servant designated in accordance with paragraph (1) of this subdivision may take part in such entity's business dealings with the City at the entity and/or at his or her agency if, after written approval [of] by the agency head, the Board determines that there is a demonstrated nexus between the proposed participation, the public servant's City job, and the mission of the public servant's agency[:] and that such participation furthers the agency's mission and is not undertaken primarily for the benefit or interests of the not-for-profit entity.

(3) The Board will post designations of public servants made pursuant to paragraph (1) on its website. When an agency makes a request pursuant to paragraph (2) of this subdivision for a public servant both to perform work on behalf of a not-for-profit entity and be involved in that entity's City business, only the Board's determination will be posted on its website.

[(3)] (4) The designation made pursuant to paragraph (1) and approval made pursuant to paragraph (2) of this subdivision must be by the head of the agency served by the public servant, or by a deputy mayor if the public servant is an agency head. A public servant who is an elected official, including a district attorney, is the agency head for the public servants employed by the official's agency or office. A public servant who is an elected official, including a district attorney, may provide the designation pursuant to paragraph (1) and the agency head approval pursuant to paragraph (2) for him or herself.