

New York City Conflicts of Interest Board

Notice of Public Hearing and Opportunity to Comment on Proposed Rules Regarding the Use of City Time and City Resources and Accomplice Liability

What are we proposing? The Conflicts of Interest Board proposes to amend its rules regarding a public servant's use of City time and City resources and regarding accomplice liability.

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 10:30 a.m. on Monday, May 18, 2020. The hearing will be conducted by video conference and is accessible by:

- **Internet Video and Audio.** For access, visit:
<https://zoom.us/j/367205305?pwd=YVBacDVyUTM1QVhmL01Eb0JIZE5iUT09>
- **Phone.** For access, dial (929) 436-2866. When prompted, use the Meeting ID 367-205-305 and the password 471951.

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 Rules@COIB.nyc.gov.
- **Mail.** You can mail comments to Christopher M. Hammer, Deputy General 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 rules at the public hearing may speak for up to three minutes. Please access the public hearing by Internet Video and Audio or by Telephone using the instructions above.

Is there a deadline to submit comments? Yes, you must submit written comments by Monday, May 18, 2020.

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) 437-0730. You must tell us by Thursday, May 14, 2020.

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 these proposed rules. This proposed rule was included in the Conflicts of Interest Board's regulatory agenda for this Fiscal Year.

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 of the Proposed Rules

The Board adopted Board Rules § 1-13 in 1998 to provide broad guidance regarding City Charter § 2604(b)(2), Chapter 68's "catch-all" provision, which prohibits a public servant from engaging in "any business, transaction or private employment, or hav[ing] any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties." Pursuant to Board Rules § 1-13, City Charter § 2604(b)(2) prohibits the use of City time and City resources for non-City purposes and establishes accomplice liability for Chapter 68 violations by others.

When initially drafted, § 1-13 was the only rule of the Board that interpreted City Charter § 2604(b)(2). Since then, the Board has adopted other rules that construe various aspects of City Charter § 2604(b)(2), including § 1-14 (Official Fundraising) and § 1-15 (Community Board Members). The Board has also adopted two provisions as part of § 1-13 that govern the permissible use of City time and City resources: existing Board Rules § 1-13(c) permits a public servant to use a limited amount of City time and City resources to pursue a personal and private activity, upon the approval of the public servant's agency head and the Board's determination that the activity

further the purposes and interests of the City; and Board Rules § 1-13(e) establishes parameters by which public servants may perform work on behalf of not-for-profit organizations as part of their City jobs.

Given these intervening additions and to improve the overall organizational structure of the Board Rules, the Board now proposes (1) to reorganize Board Rules § 1-13 into a rule that focuses exclusively on the use of City time and City resources, and (2) to move the provisions regarding accomplice liability into a new Board Rules § 1-17.

The Board also proposes amendments to Board Rules § 1-13 to codify advice given in two Advisory Opinions that reflect the Board's practice regarding the use of City time and City resources:

- Proposed Board Rules § 1-13(d), a new provision, would clarify that a public servant may use his or her City title in connection with the non-City authorship of print or online published work, teaching, and paid speaking engagements under circumstances where it is clear that the public servant is not speaking on behalf of the City. This proposed amendment would codify, in part, advice given in Advisory Opinion No. 1999-4 permitting a public servant who engages in teaching to list his or her title as part of biographical information about the public servant. See A.O. No. 1999-4 at 7.
- Proposed Board Rules § 1-13(f) would be revised to codify the advice given in Advisory Opinion No. 2009-5 permitting an elected official, including a District Attorney, to use his or her City title in endorsing a candidate for public office. See A.O. No. 2009-5 at 3 n. 1. The proposed new text in subdivision (f) would clarify that other public servants (that is, not elected officials) may not use their titles in endorsing candidates for public office but it would not otherwise prohibit them from disclosing that they are public servants when engaging in political speech—such as the biography of a candidate for City Council identifying the candidate as a community board member, among the candidate's other qualifications, or a participant at a political rally identifying themselves as a public school teacher.

The Board also proposes the following clarifications consistent with the Board's previous confidential advice and enforcement dispositions:

- Proposed Board Rules § 1-13(b) would clarify that a public servant’s City title as well as City technology assets (such as e-mail, official social media accounts, and internet access) are City resources for purposes of City Charter § 2604(b)(2).
- Proposed Board Rules § 1-13(c) would permit the Board to authorize, after a public servant receives approval from their agency head, the use of City time and City resources to perform non-City work on behalf of not-for-profit entities where the Board determines that at least one of the following circumstances exists: the work advances the professional development of the public servant, it furthers the purposes and interests of the City, or it benefits the public at large. As a result of these revisions, this subdivision (c) would be harmonized with the provisions of Board Rules § 1-13(e), and each of its provisions would apply only to activities performed on behalf of not-for-profit entities.

Text of the Proposed Rule

New material is underlined.

[Deleted material is in brackets.]

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

§ 1-13 [Conduct Prohibited by City Charter § 2604(b)(2)] Use of City Time and City Resources.

- (a) Except as provided in subdivision (c) of this section, it shall be a violation of City Charter § 2604(b)(2) for any public servant to pursue personal and private activities during times when the public servant is required to perform services for the City.
- (b) Except as provided in [subdivision (c) of] this section, it shall be a violation of City Charter § 2604(b)(2) for any public servant to use City letterhead, title, personnel, equipment, resources, [or] supplies, or technology assets for any non-City purpose. For purposes of this subdivision “technology assets” includes but is not limited to e-mail accounts, internet access, and official social media accounts.

(c) (1) A public servant may [pursue a personal and private activity during normal business hours] perform volunteer services on behalf of a not-for-profit entity during times when such public servant is required to perform work for the City and may use City personnel, equipment, resources, [personnel, and] supplies, and technology assets, but not City letterhead, [if] their title or City email account(s), provided that

(i) [the type of activity has been previously approved for employees of the public servant's agency by the Conflicts of Interest Board, upon application by the agency head and upon a determination by the Board that the activity furthers the purposes and interests of the City] the public servant's agency head approves in writing the proposed volunteer services; and

(ii) [the public servant shall have received approval to pursue such activity from the head of his or her agency] the Board determines that the proposed volunteer services advance the public servant's professional development, further the purposes and interests of the City, or benefit the public at large.

(2) [In any instance where a particular activity may potentially directly affect another City agency, the employee must obtain approval from his or her agency head to participate in such particular activity. The agency head shall provide written notice to the head of the potentially affected agency at least 10 days prior to approving such activity.] The agency head approval required by paragraph (1) 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 elected official's agency or office. Public servants who are elected officials, including District

Attorneys, may approve their own activities as agency heads pursuant to paragraph (1).

(d) [It shall be a violation of City Charter § 2604(b)(2) for any public servant to intentionally or knowingly:] A public servant engaging in a personal and private activity may use, or permit the use of, their City title in connection with print or online published work, teaching, or paid speaking engagements, under either of the following circumstances:

(1) [solicit, request, command, importune, aid, induce or cause another public servant to engage in conduct that violates any provision of City Charter § 2604] their City title is one of several biographical details used to identify such public servant; or

(2) [agree with one or more persons to engage in or cause the performance of conduct that violates any provision of City Charter § 2604] their City title is used to demonstrate such public servant's relevant professional qualifications provided that their City title is accompanied by a reasonably prominent disclaimer stating that the views expressed in the work, teaching, or speaking engagement do not necessarily represent the views of the agency or the City.

(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, the public servant's City job, and the mission of the public servant's agency; and such work furthers the agency's mission and is not undertaken primarily for the benefit or interests of the not-for-profit;

- (ii) 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) 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 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 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] 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] District Attorney, may provide the designation pursuant to paragraph (1) and the agency head approval pursuant to paragraph (2) for him or herself.
- (f) [Nothing contained in this section shall preclude the Conflicts of Interest Board from finding that conduct other than that proscribed by subdivisions (a) through (d) of this section violates City Charter § 2604(b)(2), although the Board may impose a fine for a

violation of City Charter § 2604(b)(2) only if the conduct violates subdivision (a), (b), (c), or (d) of this section. The Board may not impose a fine for violation of subdivision (d) where the public servant induced or caused another public servant to engage in conduct that violates City Charter § 2604(b)(2), unless such other public servant violated subdivision (a), (b), or (c) of this section] An elected official, including a District Attorney, may use or permit the use of their City title in an endorsement of a candidate for elective office. No other public servant may use, or permit others to use, their City title to endorse another person’s campaign for elective office.

Section 2. Title 53 of the Rules of the City of New York is amended by adding a new section 1-17, to read as follows:

§ 1-17 Accomplice Liability.

(a) It shall be a violation of City Charter § 2604(b)(2) for any public servant to intentionally or knowingly:

(1) solicit, request, command, importune, aid, induce, or cause another public servant to engage in conduct that violates any provision of City Charter § 2604; or

(2) agree with one or more persons to engage in or cause conduct that violates any provision of City Charter § 2604.

(b) For the purposes of this section, “any provision of City Charter § 2604” shall not include a violation of City Charter § 2604(b)(2) that does not also violate a rule of the Board.

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

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

RULE TITLE: Amendment of Rules Governing Accomplice Liability and Use of City Time and Resources

REFERENCE NUMBER: 2020 RG 004

RULEMAKING AGENCY: NYC Conflicts of Interests 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/ Kahini Ranade
Mayor's Office of Operations

February 19, 2020
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: Amendment of Rules Governing Accomplice Liability and Use of City Time and Resources

REFERENCE NUMBER: 2020 RG 004

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: February 19, 2020