



Darcel D.
Clark

District
Attorney



Eric
Gonzalez

District
Attorney



Melinda
Katz

District
Attorney



Michael E.
McMahon

District
Attorney

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New York City Conflicts of Interest Board
2 Lafayette Street
New York, NY 10007

By email to hammer@coib.nyc.gov

Re: Comments on COIB Proposed Rule Changes Regarding Donations and Gifts to the City

To the New York City Conflict of Interest Board:

The undersigned District Attorneys wish to thank the Board for its efforts to improve transparency by amending its rules regarding travel-related expenses paid by third parties. We agree that transparency in this area is an important objective for the Board and for government agencies generally. With this in mind, we have carefully reviewed the proposed amendments, leading us to ask for a clarification and to make a request regarding a specific category of reimbursed expenses that, we believe, would erroneously be reported as “gifts” under the rule as amended, thereby undermining critical agency objectives and vital professional development within our offices.

By way of background, our attorneys, as experts in many legal fields, are often asked to provide Continuing Legal Education training to other attorneys or trainings for members of law enforcement. These trainings often involve travel, and the host will often pay or reimburse our attorneys for the expenses our ADAs incur to deliver the requested training. The host is often another non-profit or governmental agency. Reimbursements in these situations are not gifts, however, they may fall within the ambit of the newly proposed rule, and it may discourage participation by our lawyers in these important trainings. This would be deeply unfortunate; their voices are important and valuable voices to have at the table for the trainings in their respective areas of expertise.

Describing travel expenses paid in exchange for CLE programs as “gifts” would be, we believe, misleading to the public. Gifts, not only in ordinary parlance but under any legal definition, are items of value conferred upon a person or party without anything of value being provided in return. Both

Merriam-Webster and Black's Law Dictionary define a "gift" as "something voluntarily transferred by one person to another without compensation." Members of the public, then, would regard paid expenses reported as gifts as just that, gifts in the form of travel provided to the office or to members of the office with nothing provided in exchange. But where Continuing Legal Education presentations are offered to the third party in exchange for payment or reimbursement of expenses, they are not in fact gifts at all. Unfortunately, mislabeling these paid expenses leads to confusion, not to transparency.

Adding to the potential confusion is that the payment of these expenses in exchange for valuable services would be described as "gifts" in much the same way as the rules describe true "gifts" from third parties to individual employees. The Board's rules against taking outright "gifts" from third parties who do business with the City in excess of \$50 are laudable and implicate significant concerns about undue influence in the performance of City duties. But these "gifts" are not comparable to the travel expense reimbursements for a valuable CLE program legitimately provided to a third party. Also lumped into the same category are other true gifts, such as third-party donations to the office in the form of gift cards or iPad for distribution at gun buy-backs. While the latter are accurately described as gifts, as they are provided without any consideration in exchange, they are not similar to payments for expenses allowing valuable CLE services to be provided to the third party. Still further, while travel expense payments are technically denominated under the amendments as "gifts" to the City, they must also be reported by annual financial disclosure filers as gifts to them as individuals, again blurring the meaning of the word "gift" for members of the public struggling to understand the very different types of "gifts" being reported.

Also of substantial concern is that the amendments would require identifying the individual member of the office that provided these services. In so doing, the amendments will not only again suggest that the "gift" is to the individual employee, they will, even more importantly, also discourage staff participation in providing much-sought-after CLE content. We believe that ADAs would choose to forego participation in these CLE programs rather than be singled out as the recipient of what might be perceived by the public as unnecessary "gifts." This is all the more likely because these ADAs are, by and large, individuals who are not required to file annual financial disclosure reports and who would be highly reluctant to engage for the first time in this form of reporting.

By disincentivizing participation in these valuable programs, the amendments would undermine interests critical to our public safety mission and discourage professional development. Sharing insights into criminal organizations and behavior helps third parties protect themselves against victimization. Sharing experiences providing alternative dispositions advances the development of new and even more successful programs helping offenders avoid re-offending. And sharing critical legal content and updates advances the proper administration of justice in our courts. Moreover, those providing CLE content, as well as those attending those CLE's, obtain the benefit of professional development, necessary for our offices to thrive. For these reasons, we are concerned that, to the extent that the rules misuse the label "gifts" and discourage participation in these programs, important interests of our offices and the City will be undermined.

To be clear, the District Attorneys do not oppose the reporting of gifts that are accurately described or understood as such. We respectfully request an exemption for travel reimbursement for training delivered to other governmental agencies or non-profits.

We note as well that other aspects of the rule are not entirely clear. While the rule sets a threshold of \$1000, it does not explicitly say whether the threshold is per trip or aggregated over the course of a year for the particular third party paying expenses. Similarly, the amendments do not expressly state whether travel-related expenses paid by an agency or arm of a different government must be reported. Clarification on these points would assist in understanding and implementing the amendments.

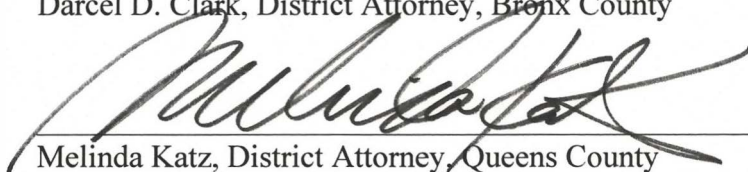
Finally, the \$1000 threshold for reporting travel-related raises additional questions. While that threshold is presumably designed to mirror the \$1000 threshold for individual filers reporting travel-related expenses, this is a false equivalency. The \$1000 for individuals, for example, will ordinarily not be met for providing a CLE in Albany to a not-for-profit agency. But, if those payments are aggregated over the course of a year by different employees assisting a single not for profit, the threshold will routinely be met and routinely require reporting well beyond the individual-filer rule. That these seemingly similar thresholds operate in very different ways sows additional confusion. Raising the threshold on aggregated expense payments would more properly reflect potential concerns over office-wide reimbursement of travel expenses by third parties.

In closing, we again wish to commend the Board on its continuing efforts to increase transparency for city agencies. Robust, and accurate, reporting is essential to foster public accountability of city agencies and public trust in our city government.

Sincerely,



Darcel D. Clark, District Attorney, Bronx County



Melinda Katz, District Attorney, Queens County



Michael E. McMahon, District Attorney, Richmond County



Eric Gonzalez, District Attorney, Kings County