

June 12, 2019, Agenda – Open Meeting Matter

To: The Board

From: Clare Wiseman

Date: June 6, 2019

Re: Proposed Amendments to Board Rules § 1-13(c): Volunteer Activities

As part of its review of the Board's existing rules, practices, and advisory opinions, Staff has identified public servants' volunteer activities, either on their own time or during their City work hours, as an area where the Board can codify its current thinking and practice into a revised Board Rules § 1-13(c). Staff has consulted informally with the New York City Law Department about the proposed Board Rule and, with the Board's approval, will formally submit the Rule to the Law Department and Mayor's Office of Operations, as required by the City Administrative Procedure Act. See Charter § 1043(d).

Attached are the following:

- 1) Advisory Opinion No. 98-8 (Exhibit 1); and
- 2) Draft Notice of Public Hearing (Exhibit 2).

ANALYSIS AND RECOMMENDATIONS

The current Board Rules § 1-13(c) was enacted to allow the use of limited City time and City resources for certain volunteer activities. The proposed amendments would bring this Rule in line with current Board practice and codify the Board's guidance on volunteer activities not addresses by City Charter § 2604(c)(6).¹

¹ City Charter § 2604(c)(6), provides that a public servant may act as attorney, agent, broker, employee, officer, director or consultant for a not-for-profit organization that has or is interested in business dealings with the city, provided that such public servant takes no direct or indirect part in such business dealings; the not-for-profit organization has no business dealings with the City agency served by the public servant and is not subject to supervision, control, or regulation by such agency, except where the head of the public servant's agency, or the

Currently, there is no regulatory structure for volunteer activities that do not qualify as a position as defined in Charter §§ 2601(18) and 2604(c)(6). In Advisory Opinion No. 1998-8, the Board made public the guidance it provided to public servants seeking to engage in volunteer activities: one who was serving on the board of a not-for-profit; the other a group seeking to provide volunteer services directly to the constituent population of various not-for-profits. In making public its advice, the Board suggested that there was a third category of non-position volunteer activities, “policy-making”, which was not the subject of any prior request for advice. In the Advisory Opinion, the Board did not define a policy-making volunteer who does not hold a position enumerated in Charter § 2604(c)(6) or provide standards to determine when such a volunteer would need a waiver from the Board, although it implied that one might be required. This additional category is not necessary under the law and has proven to be difficult for public servants to understand and for Board Staff to apply. Proposed Board Rules § 1-13(c) would eliminate the ambiguity created by Advisory Opinion No. 1998-8 by reducing the types of volunteer activities to two: those addressed by Charter § 2604(c)(6) and all other types of volunteer activity, which would be addressed by proposed Board Rules § 1-13(c)(1).

The proposed Rule would also update and streamline the current Board Rules § 1-13(c), which allows certain volunteer work to be conducted on City time and using limited City resources. The proposed amendments do the following: (a) make explicit that the only activities permitted under the Rule are volunteer activities for not-for-profit organizations; (b) reflect the wide variety of volunteer work the Board has approved; (c) add City title and City email

mayor where the public servant is an agency head, determines that such service furthers the purposes and interests of the City; all work for the not-for-profit organization is performed at times during which the public servant is not required to perform services for the City; and the public servant receives no salary or other compensation in connection with such activities.

accounts to the Rule's prohibition on using City letterhead for approved volunteer work; and (e) eliminate unnecessary language.

New York City Conflicts of Interest Board

Notice of Public Hearing and Opportunity to Comment on Proposed Rule Regarding Work for Not-For-Profit Entities

What are we proposing? The Conflicts of Interest Board intends to establish a rule governing volunteer activities and to revise its rule on the use of City time and City resources in connection with volunteer activities.

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 [time] on [date]. The hearing will be at [location].

This location has the following accessibility option(s) available: []

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 at 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 rule at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 437-xxxx. 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 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 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

In 1998, the Board enacted its current rule governing the permissible use of City time and City resources for non-City purposes, § 1-13(c) of Title 53 of the Rules of the City of New York ("Board Rules"). With twenty years of experience interpreting and applying this Rule, the Board proposes to revise and expand the Rule to provide guidance to City employees who wish to engage in volunteer activities, either on their own time or during their City work hours.

1. Volunteer Activities by City Employees on their Own Time

The City has an interest in encouraging participation in volunteer activities that benefit the public. Since its adoption, Chapter 68 of the City Charter has allowed for City employees to engage in volunteer activities. Charter § 2604(c)(6) permits public servants to hold certain volunteer positions with not-for-profit organizations engaged in business dealings with the City, provided the public servant: (1) does not take part in the not-for-profit's City business dealings; (2) does not use City time to perform the volunteer work; and (3) receives agency head approval if the not-for-profit has business dealings with the public servant's City agency. However, there is no parallel provision in Chapter 68 for public servants whose volunteer activities do not rise to the level of having a position with a not-for-profit as defined in Charter §§ 2601(18) and 2604(c)(6).

Proposed Board Rules § 1-13(c)(1) would fill this void. Proposed § 1-13(c)(1)(i) would codify the Board's longstanding advice to public servants that they are permitted to engage in volunteer activities, provided that they do so on their own time and without using City resources. Proposed § 1-13(c)(1)(ii) also would codify longstanding advice that a public servant may not be involved in the not-for-profit's business dealings with the City, either in connection with service for the not-for-profit or in connection with his or her employment with the City. Proposed § 1-13(c)(1)(iii) would make a minor modification to the Board's prior advice: it would limit the prohibited communications on behalf of the not-for-profit to the public servant's City agency only, and not to other City agencies or personnel. In proposing this change, the Board has determined that there is no actual conflict, and little potential for conflict, when a City employee volunteering in a non-position role with a not-for-profit communicates with a City agency other than his or her own. For example, there is little potential that a conflict is created by a Child Protective Specialist at the New York City Administration for Children's Services seeking a permit from the New York City Department of Parks and Recreation for the youth baseball league where the Child Protective Specialist volunteers as a weekend umpire.

In this proposed Rule, the Board would decline to adopt as a rule the impractical distinction between policy-making and non-policy making volunteer activities created in Advisory Opinion No. 98-8. In that Opinion, the Board answered a request from a public servant having a board position at a not-for-profit and another from a group of public servants seeking to volunteer their time to various not-for-profits in ways that would not give them policy-making authority at those entities. The Board determined that the first public servant would have a "position" at the not-for-profit, while the second group would not, and left open the possibility that there could be a third group of volunteers having policy-making authority without holding

one of the positions enumerated in Charter § 2604(c)(6). Instead, the proposed Rule would establish two categories of volunteer activities: the first is already addressed by Charter § 2604(c)(6) and consists of public servants who hold volunteer positions with not-for-profits engaged in business dealings with the City; the second category would cover all other types of volunteer activity and would be regulated by Board Rules § 1-13(c)(1).

2. Volunteer Activities by City Employees on City Time and Using City Resources

The current Board Rules § 1-13(c) was originally adopted in 1998 in recognition of the fact that “certain public service activities, such as volunteering one’s services for a professional organization, may in some instances further the City interests.” Notice of Adoption of Rule Identifying Certain Conduct Prohibited by Charter § 2604(b)(2), Statement of Basis and Purpose for Board Rules § 1-13 at 3. Accordingly, the current Board Rules § 1-13(c) allows public servants to use limited City time and City resources for volunteer activities “upon application by the agency head and upon a determination by the Board that the activity furthers the purposes and interest of the City.”

However, the current Board Rules § 1-13(c) is both overbroad in its language and under-inclusive in its intent. First, as to its language, the Rule leaves undefined the type of “personal and private activity” that would be permitted. Second, as to its intent, the current Rule was promulgated with the narrow and limited purpose of allowing City attorneys to volunteer for professional bar associations during normal business hours, which work might necessitate the use of City time and resources. See Notice of Adoption of Rule Identifying Certain Conduct Prohibited by Charter § 2604(b)(2), Statement of Basis and Purpose of Rule at 3-4. However, the Board has routinely made determinations permitting public servants to use a limited amount of

City time and City resources for a wide range of volunteer activities beyond bar association activities. For example, agency heads have requested, and the Board has approved, the use of City time and City resources for New York City Campaign Finance Board staff to acts as mentors to unemployed City residents; for the head of the Office of the Actuary to serve on the disciplinary committee of the Society of Actuaries; and for a New York City Department of Health and Mental Hygiene physician to volunteer supervising residents in the Internal Medicine Clinic at Columbia Presbyterian Hospital.

To reflect the variety of volunteer activities the Board has approved in the past twenty years, proposed Board Rules § 1-13(c) would change “personal and private activity” to “volunteer services,” as was always intended by the Rule, and would describe those permissible activities to include those that advance the professional development of the public servant and activities that benefit the public at large.

Proposed Board Rules § 1-13(c)(2) would make four additional changes to the current Rule. First, the proposed Rule would add the use of a public servant’s City title and City email account to the existing prohibition on the use of City letterhead for approved volunteer activities. Like the use of City letterhead, the use of public servant’s City title or City email account conveys that there is an official City purpose and, therefore, should not in this context be used for any non-City purpose.

Second, the proposed Rule would remove the redundant “pre-approval” language in the current Rule. That language was intended to be a mechanism for an agency to establish formal pro bono programs without the need to seek Board approval for individual agency employees. This mechanism for pre-approval already exists; an agency head may seek a blanket waiver for

agency employees to participate in an agency-established volunteer program, pursuant to Charter § 2604(e).

Third, the proposed Rule would remove the requirement that an agency head provide prior notice to the head of any other agency that would be impacted by a public servant's proposed volunteer activities. To the Board's knowledge, no such notice has ever been provided to the head of another agency nor has any problem ever resulted from the lack of notice. Certainly nothing in the proposed rule would preclude an agency head from providing such notice if the agency head deemed it to be appropriate.

Finally, because the definition of "elected official" in Charter § 2601(10) does not include district attorneys, proposed Board Rules § 1-13(c)(3) would specify that district attorneys have the same role and responsibility under this Rule as other City elected officials.

Text of the Proposed Rule

New material is underlined.

[Deleted material is in brackets.]

§ 1-13. Conduct Prohibited by City Charter § 2604(b)(2).

* * *

(c) (1) [A public servant may pursue a personal and private activity during normal business hours and may use City equipment, resources, personnel, and supplies, but not City letterhead, if

(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; and

(ii) the public servant shall have received approval to pursue such activity from the head of his or her agency.

(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.] A public servant who does not hold a position with a not-for-profit entity as referenced in City Charter §§ 2601(18) and 2604(c)(6) may perform volunteer services on behalf of such not-for-profit entity provided that:

(i) The public servant does not perform volunteer services for the not-for-profit entity during times he or she is required to perform services for the City, nor shall such public servant use City letterhead, personnel, equipment, resources, or supplies to in the course of providing such volunteer services.

(ii) The public servant takes no part in the not-for-profit entity's business dealings with the City in the course of providing volunteer services to the not-for-profit entity or in connection with such public servant's work at his or her City agency; and

(iii) The public servant does not communicate with his or her own City agency on behalf of the not-for-profit entity.

(2) An agency head may permit a public servant to perform volunteer services on behalf of a not-for-profit entity during times when the public servant is required to perform services for the City and to use City personnel, equipment, resources, and supplies, but not City letterhead, title, or email accounts as part of that volunteer service provided that, after written approval by the agency head, the Board determines that the proposed volunteer services by the public servant

on behalf of the entity advances the professional development of such public servant, furthers the purposes and interests of the City, or benefits the public at large.

(3) The approval provided 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 agency head approval pursuant to paragraph (2) for himself or herself.