

## **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 Sections 1043 and 2603(a) of the City Charter, that the Conflicts of Interest Board has amended its rules governing the use of City time and City resources and accomplice liability.

The proposed Rules were published in the City Record on April 17, 2020, and a public hearing was held on May 18, 2020. No comments were received. The Conflicts of Interest Board now adopts the following Rules.

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

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 furthers 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 (1) reorganizes Board Rules § 1-13 into a rule that focuses exclusively on the use of City time and City resources; (2) moves the provisions regarding accomplice liability into a new Board Rules § 1-17; and (3) renumbers the existing Board Rules § 1-17 (Procedures to Appeal a Designation as a Required Filer of a Financial Disclosure Report) as Board Rules § 4-06, to place it in Chapter 4 with the other Board Rules relating to Annual Disclosure.

The Board also amends 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:

- Board Rules § 1-13(d), a new provision, clarifies 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 amendment codifies, 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.
- Board Rules § 1-13(f) codifies 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 new text in subdivision (f) clarifies that other public servants (that is, not elected officials) may not use their titles in endorsing candidates for public office but it does 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 adopts the following clarifications consistent with the Board's previous confidential advice and enforcement dispositions:

- Board Rules § 1-13(b) clarifies 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).
- Board Rules § 1-13(c) permits 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) is harmonized with the provisions of Board Rules § 1-13(e), and each of its provisions applies only to activities performed on behalf of not-for-profit entities.

**Text of the 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.

§ 2. Section 1-17 of Title 53 of the Rules of the City of New York is renumbered as Section 4-06 and a new Section 1-17 is added 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.