APPELLATE DIVISION OF THE NEW YORK STATE SUPREME COURT,
1ST JUDICIAL DEPARTMENT

---------- X

In the Matter of the Application of
BILL DE BLASIO,

Petitioner,

For a Judgment Pursuant to N.Y. C.P.L.R. Article 78

-against-

NEW YORK CITY CONFLICTS OF INTEREST BOARD
and
CITY OF NEW YORK,

Respondents.

---------- X

STIPULATION OF SETTLEMENT AND DISCONTINUANCE

Index No. 155404/2023

WHEREAS, Petitioner Bill de Blasio was the Mayor of the City of New York from January 1, 2014, to December 31, 2021; and

WHEREAS, on April 22, 2022, Respondent the New York City Conflicts of Interest Board (the "Board") served on Petitioner a Notice of Initial Determination of Probable Cause alleging that Petitioner had violated provisions of Chapter 68 of the New York City Charter ("Chapter 68"), the City's conflicts of interest law, specifically City Charter § 2604(b)(2) and City Charter § 2604(b)(2), pursuant to § 1-13(b) of the Rules of the Board; and

WHEREAS, a hearing was held at the New York City Office of Administrative Trials and Hearings ("OATH") on December 20, 2022; and

WHEREAS, on May 4, 2023, OATH Administrative Law Judge Kevin Casey issued a Report and Recommendation sustaining the Board's charges and recommending that the Board order Petitioner to pay $319,794.20 in restitution and a fine of $155,000; and

WHEREAS, on June 15, 2023, the Board issued an Order ordering Petitioner to

pay $319,794.20 in restitution and a fine of $155,000; and

WHEREAS, by Notice of Petition and Verified Petition, dated June 15, 2023, Petitioner commenced the instant proceeding pursuant to Article 78 of the New York Civil Practice Law and Rules challenging the Order; and

WHEREAS, on January 13, 2025, New York Supreme Court Justice Shahabuddeen Abid Ally issued a Decision, Order & Judgment granting the Board's motion to dismiss this proceeding and rejecting Petitioner's arguments in their entirety; and

WHEREAS, on January 29, 2025, Petitioner filed a Notice of Appeal of Justice Ally's decision; and

WHEREAS, the parties now wish to resolve this matter without further proceedings;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, the attorneys of record for the parties, as follows:

1. This proceeding is discontinued in its entirety, with prejudice, with each side bearing its own costs, expenses, and fees as set forth below.

2. Petitioner admits the following:

   a. Between May and September 2019, while I was serving as Mayor of the City of New York, I ran for President of the United States.

   b. As part of my preparation for the campaign, I directed the Counsel to the Mayor to reach out to the Board to determine whether the City's conflicts of interest law would permit me to have the City pay the travel costs associated with my NYPD security detail accompanying me on an out-of-state political campaign.

c. On May 15, 2019, the Board advised my counsel, in writing, that it would violate the City's conflicts of interest law for me to have the City pay for such costs. I was made aware of and understood the Board's guidance.

d. The day after the Board sent its letter, I announced that I was running for President. During my campaign, my wife and I were accompanied by my NYPD security detail on 31 out-of-City trips for my presidential campaign. The City paid $319,794.20 for the travel expenses incurred by members of my security detail on those campaign trips. In contradiction of the written guidance I received from the Board, I did not reimburse the City for these expenses.

e. I acknowledge that, by having the City pay for the travel expenses incurred as a result of my security detail traveling with my wife and me during my presidential campaign, and by failing to reimburse the City for these expenses, I acted in conflict with my official duties in violation of City Charter § 2604(b)(2) and used City funds for a non-City purpose in violation of City Charter § 2604(b)(2), pursuant to Board Rules § 1-13(b). I made a mistake and I deeply regret it.

f. I no longer challenge the factual findings or legal conclusions contained in the Report and Recommendation issued by Judge Kevin Casey, the Order issued by the Board, or the Decision, Order & Judgment issued by Justice Ally. I recognize that the Board has

the legal authority to order me to pay the City $319,794.20—the value of the benefit I obtained as a result of my violations—and an additional $155,000.00 fine.

3. In full settlement of this matter, Petitioner agrees to pay $319,794.20 in restitution and an additional $10,000.00 fine, for a total of $329,794.20 (the "Resolution Amount"). Petitioner will pay $100,000.00 of this sum immediately and the remaining debt of $229,794.20 over the next four years.

4. Petitioner agrees to immediately withdraw his appeal of Justice Ally's Decision, Order & Judgment.

5. The Board agrees to accept as a resolution of this matter Petitioner's payment of $319,794.20 in restitution to the City and an additional $10,000.00 fine payable on the schedule listed in Paragraph 6 below, thereby foregoing $145,000.00 to which the Board is legally entitled. In agreeing to this settlement, the Board took into account Petitioner's representation that his financial situation does not enable him to pay the $319,794.20 in restitution and $155,000.00 fine imposed by the Board.

6. Within ten (10) days of signing this Stipulation, Petitioner shall pay the sum of one hundred thousand dollars ($100,000.00) to the Board. Petitioner shall also pay quarterly installments to the Board due on the first date of each fiscal quarter—starting on July 1, 2025—of Fiscal Years 2026, 2027, 2028, and 2029 until the remaining sum of $229,794.20 has been fully paid. Petitioner's first installment payment will be $14,394.20, and all remaining installment payments will be $14,360.00. Payment shall be made by certified check, attorney's check, or money order made payable to the New York City Conflicts of Interest Board. Payment shall be mailed or delivered to the Board at the following address:

NYC Conflicts of Interest Board
2 Lafayette Street, Suite 1010
New York, New York 10007
Attention: Director of Enforcement

7. If Petitioner fails to make an installment payment by its due date, or if the check or checks that are tendered are returned for insufficient funds or for any other reason, the Board will notify Petitioner's counsel, Andrew G. Celli, Jr. or his successor, in writing by email of Petitioner's failure to make a timely payment. If Petitioner does not make the outstanding installment payment(s) within thirty (30) days of the Board sending notice to Petitioner's counsel, Petitioner will be deemed to be in default of his obligations ("Default"), subject to the terms of Paragraph 8 below.

8. In the event of a Default, an amount equal to: (i) the full payment ordered in the Board Order—$474,794.20; *less* (ii) the amount of any payments made by Petitioner under Paragraph 6 above prior to Default ("Pre-Default Payments") (all, the "Remaining Payment Amount"), shall become immediately due and payable. Furthermore, if a Default occurs, the City of New York and/or the Board will be entitled to take any and all action provided by law for collection, including, but not limited to, (i) seeking a contempt order to enforce this Stipulation against Petitioner or (ii) having judgment entered, pursuant to CPLR 3215(i) in the Office of the Clerk of the County of Kings, without further notice to Petitioner, for an amount equal to the Remaining Payment Amount. Subject to Paragraph 9 below, nothing herein shall be construed to prevent the Board or the City of New York from seeking entry of judgment against Petitioner in the event he fails to comply with this Stipulation.

9. In the event that Petitioner dies before making all of the payments due under Paragraph 6 above, and there having been no Default prior to Petitioner's death, the City of New York and the Board agree not to seek, accept, or to obtain from Petitioner's estate,

spouse, heirs, successors, or assigns payment of any outstanding balance of the Resolution Amount, whether by judgment, enforcement action, replevin, or otherwise, and to deem that the payments made by Petitioner prior to his death to be in full satisfaction of Petitioner's obligations under this Stipulation. .

10. In consideration of the foregoing and upon full compliance with the terms of this Stipulation, Bill de Blasio, the City of New York, and the Board, as well as their attorneys and agents in their respective capacities as such, any other persons acting on their behalf or under their authority or control, and the heirs, executors, administrators, successors and assigns of each of them, hereby release each other, and any of their present or former employees or agents from any and all liability, claim, or right of action arising from, and/or relating to, any claims relating to the expenses incurred in litigating this matter, including, but not limited to, any claims for costs, expenses and/or attorneys' fees.

11. Nothing contained herein shall be deemed to be an admission of liability or responsibility by the City of New York, the Board, and/or any of their employees or agents that they have acted unlawfully or in any way violated any of Bill de Blasio's rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, or the City, or any other rules, regulations or bylaws of any department or subdivision of the City of New York.

12. Nothing contained herein shall be deemed to constitute a policy or practice of the City of New York or the Board.

13. This Stipulation shall not be admissible in, nor is it related to, any other litigation or settlement negotiations, except in an action or proceeding to enforce the terms of this Stipulation.

14. This Stipulation contains all of the terms and conditions agreed upon by the Parties, and no oral agreement entered into at any time, nor any written agreement entered into prior to the execution of this Stipulation regarding the subject matter of this Stipulation shall be deemed to exist, or to bind the Parties, or to vary the terms and conditions contained herein.

15. The Parties acknowledge that they enter into this Stipulation freely and without coercion or duress.

16. Counsel for the Parties have reviewed this Stipulation and any rule of construction, by which any ambiguities are to be resolved against the drafting party, shall not be applied in the interpretation of this Stipulation.

17. If any of the provisions of this Stipulation are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions shall not be affected thereby.

18. This Stipulation shall be binding on, and shall inure to the benefit of, the Parties hereto and their respective administrators, representatives, successors, and assigns.

19. This Stipulation shall be governed by the laws of the State of New York and any question arising hereunder shall be construed or determined according to such law.

20. This Stipulation shall take effect as of the date it is fully executed by the undersigned counsel for the Parties.

21. This Stipulation may be executed by way of facsimile, scanned, electronic or conformed signatures, each of which shall be deemed to be an original, and/or in counterparts, each of which shall be deemed to be an original and all of which, collectively, shall be deemed to be one and the same instrument.

Dated: May 9, 2025

BILL DE BLASIO
Petitioner

Dated: May 12, 2025

MILTON L. WILLIAMS JR.
Chair
New York City Conflicts of Interest Board

Dated: May 12, 2025

ANDREW G. CELLI, JR.
Emery Celli Brinckerhoff Abady Ward & Maazel
Attorney for Petitioner
1 Rockefeller Plaza, 8th Floor
New York, New York 10020
Tel: (212)763-5040
Email: acelli@ecbawm.com

Dated: May 12, 2025

MURIEL GOODE-TRUFFAUNT
Corporation Counsel of the City of New York
Attorney for Respondents
100 Church Street
New York, New York 10007
Tel: (212) 356-2100
Email: mgoodetr@law.nyc.gov

THE CITY OF NEW YORK
CONFLICTS OF INTEREST BOARD

_____x

In the Matter of

BILL DE BLASIO

COIB Case No. 2019-503

OATH Index No. 587/23

Respondent.

_____x

FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Upon consideration of all the evidence presented in this matter, and of the full record, and all papers submitted to, and rulings of, the Office of Administrative Trials and Hearings ("OATH"), including the annexed Report and Recommendation (the "Report") of OATH Administrative Law Judge ("ALJ") Kevin F. Casey dated May 4, 2023, in the above-captioned matter, the Board hereby adopts in full the findings of fact and conclusions of law contained in the Report, which finds that Respondent violated Charter Section 2604(b)(2), pursuant to Board Rules Section 1-13(b). The Report recommends the Board impose a fine of $155,000 pursuant to Charter Section 2606(b) and, in addition, order payment to the City of $319,794.20 pursuant to Charter Section 2606(b-1), which recommendation the Board adopts.

Both parties were reminded of their right, pursuant to Board Rules Section 2-03(h), to submit a post-hearing comment on the Report; neither party submitted such a comment within the time period provided for in the rule.

Without limiting the foregoing, and in summary of its findings and conclusions, the Board notes the following:

Between May 2019 and September 2019, while serving as Mayor, Respondent was a candidate for President of the United States. During this time, Respondent had the City pay the travel expenses for an NYPD security detail to accompany Respondent or his spouse on 31 out-of-state trips in connection with his presidential campaign. This NYPD security detail incurred $319,794.20 in travel costs, excluding NYPD salary and overtime, during these 31 trips.

The City's conflicts of interest law, codified in Chapter 68 of the City Charter, exists to "preserve the trust placed in the public servants of the city, to promote public confidence in government, to protect the integrity of government decision-making and to enhance government efficiency." Charter Section 2600. Charter Section 2604(b)(2), as implemented in Board Rules Section 1-13(b), forwards this critical purpose by prohibiting public servants from using City resources for any non-City purpose. When a public servant uses City resources for private purposes, it erodes the public's trust and makes City government less efficient. For this reason, the Board has routinely enforced this prohibition, particularly where a public servant uses City resources for the non-City purpose of advancing a campaign for elective office or other political activity.[1]

Respondent's conduct plainly violates this prohibition. Although there is a City purpose in the City paying for an NYPD security detail for the City's Mayor, including the security detail's salary and overtime, there is no City purpose in paying for the extra expenses incurred by that NYPD security detail to travel at a distance from the City to accompany the Mayor or his family on trips for his campaign for President of the United States. The Board advised Respondent to this effect prior to his campaign; Respondent disregarded the Board's advice.

Having found the above-stated violations of the City Charter, and for the reasons set forth in the Report, the Board adopts the Report's recommended fine of $5,000 for each of Respondent's 31 violations of Chapter 68, for a total fine of $155,000 pursuant to Charter Section 2606(b), and payment to the City of $319,794.20 pursuant to Charter Section 2606(b-1), the value of the gain or benefit obtained by the Respondent as a result of the violation.

Respondent claims that the Board cannot impose a penalty upon Respondent because of the requirement, contained in Charter Section 2606(b), that the Board consult "with the head of the agency involved, or in the case of an agency head, with the mayor" before imposing a fine for violations of Charter Section 2604. Charter Section 2603(h)(3) contains a similar provision. As discussed in the Report, and as the Board has held previously, because Respondent was an executive branch elected official, this requirement does not apply here. *Report* at 19-20. *See COIB v. Holtzman*, COIB Case No. 93-121 (1996), OATH Index No. 581/94 at 41 n. 3, *aff'd Holtzman v. Oliensis*, 91

[1] *See*, *e.g.*, *COIB v. Oberman*, COIB Case No. 2013-609, OATH Index No. 1657/14 (2014), affirmed 148 A.D.3d 598 (1st Dept., 2017) (imposing $7,500 fine against former Executive Agency Counsel at the New York City Taxi and Limousine Commission who used his City phone during business hours to work on his campaign for the New York City Council); *COIB v. Hynes*, COIB Case No. 2013-771 (2018) (imposing $40,000 fine against District Attorney who used City computers, email, and personnel for his re-election campaign); *COIB v. Mosley*, COIB Case No. 2013-004 (2013) (imposing $2,500 fine against an administrative manager at the New York City Office of the Comptroller who used her City computer and email account to perform campaign work for a candidate for the New York State Assembly).

N.Y.2d 488 (1998); *COIB v. Markowitz*, COIB Case No. 2009-181, OATH Index No. 1400/11 at 4.

WHEREFORE, IT IS HEREBY ORDERED that Respondent be assessed a fine of $155,000 pursuant to Charter Section 2606(b) and payment to the City of $319,794.20 pursuant to Charter Section 2606(b-1), a total of $474,794.20, to be paid to the Conflicts of Interest Board within 30 days of service of this Order.

Respondent has the right to appeal this Order to the Supreme Court of the State of New York by filing a petition pursuant to Article 78 of the Civil Practice Law and Rules.

The Conflicts of Interest Board

By: Milton L. Williams Jr., Chair

Fernando A. Bohorquez Jr.
Wayne G. Hawley
Ifeoma Ike

Georgia M. Pestana did not participate in the consideration or decision of this matter.

Dated: June 15, 2023

Attachment

cc: Laurence D. Laufer, Esq.
Counsel for Respondent
49 Mount Pleasant Rd.
Mount Tremper, New York 12457

Arthur L. Aidala, Esq.
Aidala, Bertuna & Kamins PC
Counsel for Respondent
546 Fifth Avenue
New York, New York 10036

Administrative Law Judge Kevin F. Casey
Office of Administrative Trials and Hearings
100 Church Street
New York, New York 10007

Conflicts of Interest Bd. v. De Blasio

OATH Index No. 587/23 (May 4, 2023)

Petitioner proved that respondent violated the City Charter and petitioner's rules by using City funds for campaign-related travel expenses. Fine of $155,000 and restitution of $319,794.20 recommended.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
CONFLICTS OF INTEREST BOARD
Petitioner
- against –
BILL DE BLASIO
Respondent

REPORT AND RECOMMENDATION

KEVIN F. CASEY, *Administrative Law Judge*

Petitioner, the Conflicts of Interest Board ("the Board"), brought this proceeding against respondent Bill de Blasio, former Mayor of New York City, under Chapter 68 of the New York City Charter and Title 53 of the Rules of the City of New York. The petition alleges that respondent violated section 2604(b)(2) of the City Charter and section 1-13(b) of the Board's rules by having the City pay the out-of-state travel expenses incurred by respondent's New York City Police Department ("NYPD") security detail in 2019, during respondent's presidential campaign (ALJ Ex. 1). Respondent denies any wrongdoing (ALJ Ex. 2).

At trial on December 20, 2022, held remotely via videoconference, petitioner relied on testimony from two witnesses and documentary evidence, including a transcript of an interview with respondent. Respondent offered documentary evidence and testimony from two witnesses. The record was closed on February 2, 2023, following receipt of post-trial submissions.

For the reasons below, I find that petitioner proved the charges and recommend that respondent be fined $155,000 and ordered to reimburse the City for $319,794.20.

BACKGROUND

The material facts are undisputed. When respondent was Mayor, from 2014 through 2021, NYPD provided him and his immediate family with police security. From May 2019 to September 2019, NYPD security accompanied respondent or his wife on 31 out-of-state trips in connection with respondent's presidential campaign. Neither respondent nor his presidential campaign reimbursed the City for $319,794.20 in travel costs incurred by NYPD for those campaign trips.

Petitioner, the independent agency responsible for interpreting and enforcing the City's conflicts of interest laws, contends that requiring the City to pay out-of-state travel expenses incurred by NYPD for respondent's presidential campaign violates the ban against using City resources for a non-City purpose (ALJ Ex. 1). Respondent disagrees and contends that the travel costs were for a City purpose (ALJ Ex. 2). Because out-of-state travel costs incurred by NYPD for respondent's presidential campaign were not for a City purpose, respondent violated the Charter and petitioner's rules by failing to reimburse the City for those costs.

Petitioner's Evidence

The Board's May 15, 2019, advisory letter

On May 8, 2019, Kapil Longani, Counsel to the Mayor, wrote to the Board and stated that "we would greatly appreciate" guidance on two questions based on "the assumption that NYPD has determined that security is required" (Pet. Ex. 1). First, "[C]an the City pay all costs associated with providing NYPD-approved security for the Mayor on a political trip?" (*Id.*). Second, "[C]an the City pay all costs associated with providing security for the Mayor's immediate family members on a political trip?" (*Id.*).

On May 15, 2019, the Board sent a written response to Longani (Pet. Ex. 2). The Board stated that section 2604(2) of the Charter, as interpreted by section 1-13 of petitioner's rules, "prohibits a public servant's use of City time or City resources for any non-City purpose, including to advance a political campaign" (*Id.* at 1). After noting that Longani's questions were of "first impression" and "not clearly covered by any Board Rules or prior advisory opinions," the Board said that Advisory Opinion No. 2009-1 was the closest that it had come to addressing this issue (*Id.* at 2). Summarizing the 2009 opinion, the Board stated, where NYPD determines that a car and security personnel are required to protect an elected official, the elected official could use the car and NYPD personnel for any lawful purpose, "including pursuit of outside business and

political activities, without any reimbursement to the City, provided that the Elected Official is in the vehicle for all such use" (*Id.*, quoting Conflicts of Interest Bd. Advisory Opinion No. 2009-1 at 17 (Mar. 12, 2009)).

The Board cautioned, however, that the 2009 Advisory Opinion addressed the proper use of official City vehicles and accompanying personnel, "and the kind of travel that could be accomplished by using a City vehicle, that is, presumably travel within driving distance of the City" (Pet. Ex. 2 at 2). Recognizing the need to protect the Mayor at official, private, or political events, wherever they occur, the Board found that the City was obligated to pay for the salaries and overtime for NYPD security personnel (*Id.* at 3).

According to the Board, "the more difficult question" was whether the City must pay the additional costs associated with travel at a distance from the City in connection with a Mayor's campaign for a non-City office (*Id.*). The Board observed that the extra costs of providing police security at a distance from the City differ from a local event and "may require substantial public expenditure to support purely political activity" (*Id.*). In the Board's view, requiring the City to pay those additional non-salary costs would be using City resources for a non-City purpose and using an official position for financial gain or "personal or private" advantage in violation of the petitioner's rules and the Charter (*Id.*). The Board concluded that, when the Mayor or the Mayor's family travels outside of the City seeking non-City elective office on behalf of the Mayor, the City may pay for the salary and overtime of NYPD security personnel, but "[a]ll other costs associated with such travel—such as airfare, rental cars, overnight accommodations, meals, and other reasonable incidental expenses—must not be borne by the City. Rather, these costs must be paid or reimbursed by the Mayor's campaign committee" (*Id.* at 4-5).

On May 16, 2019, the day after the Board responded to Longani's request for guidance, respondent announced his campaign for President of the United States (ALJ Ex. 1 ¶ 6). During respondent's four-month campaign, NYPD paid $319,794.20 for travel-related expenses associated with providing security details for respondent and his wife on their out-of-town campaign trips (Pet. Ex. 18 at 5). Those expenses included airfare, car rentals, overnight accommodations, meals, and other incidentals (*Id.* at 1). Members of the security detail used NYPD credit cards, submitted expense reports and receipts, and received approval for all expenses, which NYPD deemed "for official NYPD business" (Pet. Ex. 5 at 2).

Department of Investigation ("DOI") investigation

A few months after respondent launched his presidential campaign, petitioner asked DOI to investigate the costs of cars, hotels, food, and ancillary items incurred by the NYPD's security detail for respondent's presidential campaign (Tr. 38). DOI Senior Inspector General Eleonora Rivkin and Inspector General Juve Hippolyte testified about their investigation (Rivkin: Tr. 38; Hippolyte: Tr. 56-57, 71-72). Because DOI was already investigating reports regarding respondent's use of NYPD security personnel, and the inquiries involved many of the same witnesses, DOI combined petitioner's request with the existing investigations (Tr. 38).

From September 2019 to April 2020, NYPD sent DOI hundreds of documents related to travel expenditures (Tr. 42, 44; Pet. Ex. 6). As of April 2020, when NYPD redeployed staff due to the COVID pandemic, DOI was still missing information about a few campaign trips in September 2019 (Tr. 45-47, 50-52, 77, 81-82). In July and October 2020, an attorney for respondent's presidential campaign provided DOI with a list of all of respondent's campaign trips, stated that respondent's campaign had not reimbursed or made any payments to NYPD, and referred DOI to public disclosure reports that the campaign filed with the Federal Elections Commission ("FEC") (Pet. Ex. 19). In January and April 2021, DOI sent follow-up emails to NYPD regarding outstanding document requests (Tr. 52). By May 28, 2021, DOI received all the documents that it had requested from NYPD (Tr. 54-55, 78, Pet. Exs. 9, 10). DOI also interviewed 15 to 20 people, including each member of respondent's security detail, NYPD supervisors, City Hall staff, and federal security officials (Tr. 56-57).

In July 2021, DOI interviewed respondent and his wife (Tr. 96).[1] Petitioner introduced transcripts of those interviews at trial (Pet. Exs. 3, 4). During her interview, respondent's wife stated that she went on three or four campaign trips, including two trips without respondent, to South Carolina (Pet. Ex. 4 at 73-75). She acknowledged that she was repeatedly told and it was "commonly known" that "government resources are not to be used for campaign purposes" (*Id.* at 77-78). However, she said that she did not know whether the campaign was obligated to reimburse the City for the NYPD security detail's travel costs and she asserted that neither she nor respondent received guidance regarding reimbursement for those costs (*Id.* at 78).

---

[1] On July 22, 2021, one week before DOI interviewed respondent and his wife, Longani wrote to the Board asking it to reconsider its May 2019 advisory letter (Resp. Ex. 5). The Board declined the request for reconsideration because it was untimely (Resp. Ex. 9). *See* Charter § 2603(c)(2) ("Advisory opinions shall be issued only with respect to proposed future conduct or action by a public servant.").

During respondent's DOI interview, he stated that NYPD Inspector Howard Redmond and Deputy Commissioner John Miller advised him about security issues (Pet. Ex. 3 at 8, 27, 36, 78). Threats to respondent and his family increased after President Trump commented on respondent's campaign (*Id.* at 69). Respondent deferred to NYPD regarding the amount of security to be provided (*Id.* at 8-9, 31).

Respondent told the interviewers that if he had questions about the City's conflicts of interest laws, he checked with the Corporation Counsel or Mayor's Counsel Longani (*Id.* at 11). As for using his NYPD security detail on campaign trips, respondent repeatedly told the interviewers that he had received conflicting advice and he suggested that it was an issue for others to resolve. For example, when asked if he received any guidance on how to use the security detail in connection with his presidential campaign, respondent replied, "I certainly talked to my counsel, [Kapil] Longani," and possibly the Corporation Counsel, and "it was obviously incumbent upon my counsel to advise what steps were appropriate" (*Id.* at 66-67).

After clarifying that he was referring to Mayor's Counsel Longani as "my counsel," respondent said that there were many conversations between Longani and the attorney for the presidential campaign and "other members of the campaign team" regarding the security detail's travel (*Id.* at 67). Respondent said that Longani reported having a "very clear" conversation with the Board's counsel and that Longani reported "what he viewed as absolutely contradictory or different" guidance (*Id.* at 67-68). At that point, respondent's personal attorney, Jonathan Bach, interrupted the interview and said that he wanted to be careful that no privilege was being waived (*Id.*).

Respondent continued and said that, as far as he could tell, there was "very different guidance" and "an unresolved issue" (*Id.* at 68). DOI's Commissioner told respondent, that unlike privileged communications between respondent and his personal or campaign attorneys, any privilege regarding conversations between respondent and Longani "belongs to the City" (*Id.*). Conversations between respondent and Longani could not be disclosed to the public or a third party without Corporation Counsel's approval; however, respondent was authorized to disclose those conversations during the DOI interview (*Id.*). Bach expressed his appreciation for that explanation and asked for a brief break to confer with respondent (*Id.*).

When the interview resumed, an interviewer asked respondent about the guidance that Mayor's Counsel had received and respondent replied that he "obviously" remembered "broad

discussions" about security (*Id.* at 69). The interviewer followed up and asked respondent, "Did you seek any guidance about the cost of traveling with a security detail on your presidential campaign?" (*Id.*). Respondent replied that it was the job of campaign staff and campaign counsel "to figure out everything that would be entailed and how to handle it" (*Id.*). After acknowledging that there were "efforts to get clarity on that front," respondent stated, "[F]rom my point of view that was something that lawyers obviously had to work out" (*Id.* at 69-70). Respondent said that, in addition to his campaign's attorney, the "specific role" of Mayor's Counsel was to "liaise" with the Board and "to understand in this unusual situation what was appropriate" (*Id.* at 70). According to respondent, he did not receive what he "felt was a fully clear understanding," he still did "not have a 100% clear understanding," and it remained "an unresolved issue" (*Id.*).

Asked whether he was aware of any correspondence between Longani and the Board regarding the travel costs of the security detail, respondent said that he was aware of a "dialogue," but he did not know what was written (*Id.* at 74-75). When the DOI interviewer showed respondent the Board's May 2019 letter to Longani, respondent said that he was unsure whether he recognized the document, but he knew that there was written guidance and he had discussed it with NYPD (*Id.* at 75, 77-78). Asked if he was aware the Board had advised Longani that NYPD had to be reimbursed for the security detail's travel costs, respondent replied that it was his understanding that there was "more than one type of guidance provided" and it was "still an open question" (*Id.* at 76). Respondent said that he had received "multiple points of information from multiple agencies, plus a historic record, wherein different pieces were in conflict. Including how previous mayors had been treated" (*Id.* at 77).

Based on information provided by NYPD and respondent or his campaign, DOI prepared a spreadsheet with all of the travel costs incurred by NYPD's security detail on trips to Iowa, South Carolina, and other destinations for respondent's presidential campaign (Tr. 101-02; Pet. Ex. 18). It is unrebutted that the total travel cost of the security detail for the campaign was $319,794.20 (Pet. Ex. 18 at 5).

Respondent's evidence

Respondent did not testify at trial. Instead, he called two witnesses: John Miller and Henry Berger. Miller, who previously worked as an assistant director for the FBI and NYPD Deputy Commissioner for Intelligence and Counterterrorism, oversaw respondent's security detail in 2019 and testified about those security arrangements (Tr. 131-32). According to Miller, NYPD made ongoing threat assessments for mayors and other elected officials (Tr. 134). Those elected officials never received a bill from NYPD for security details (Tr. 145). Miller emphasized that mayors are always on duty and expected to conduct the City's business wherever they travel (Tr. 140-41). For example, when respondent and his family traveled to Italy in 2014, NYPD paid the salaries and travel expenses of the security detail (Tr. 136). Miller recalled that in 2019 threats across the country were "extraordinarily high" from militias and other groups (Tr. 136). In Miller's view, requiring an elected official to pay the costs associated with security would create a risk that the official would ignore NYPD's advice and forego security (Tr. 142-43). That, in turn, would pose a threat to safety and continuity of government (Tr. 143, 145).

Berger, an attorney who previously served as chair of the State's Commission on Judicial Conduct, a member of the City Council, an attorney for numerous campaigns, and Special Counsel to the Mayor from February 2014 to July 2018, testified about other campaigns and respondent's travel (Tr. 149-51). For example, he recalled that he was an attorney on then Council Speaker Vallone's campaigns for New York Governor in 1998 and New York City Mayor in 2001, and Vallone had the same security personnel for each campaign (Tr. 164-66). According to Berger, the Board did not distinguish between those state and city campaigns when it came to the use of city resources (*Id.*).

Prior to 2019, Berger served as Mayor's Counsel and he spoke with the Board's general counsel if there were questions regarding compliance with the City's conflicts of interest laws (Tr. 151). When respondent and his family vacationed in Italy in 2014, Berger and the Board's general counsel had a general discussion regarding staffing and security (Tr. 152). Respondent and his family paid their own expenses for that trip and the City paid all of the costs for the NYPD security detail, a press secretary, and two other aides (Tr. 158; Resp. Ex. 5).

Berger acknowledged that the City's conflicts of interest laws restricted the use of City resources and personnel for political activity (Tr. 163). He said that there was a "bright line test" regarding political activity and respondent had received "a couple" of warning letters, including

one regarding the use of his Blackberry to comment on political issues (Tr. 164). According to Berger, the only exception to that rule related to security (*Id.*). In his view, the Board's rules and prior advisory opinions were "fairly clear" and the Board's 2009 advisory opinion authorizes security for respondent's political activity and campaigning outside of the City (Tr. 152-53, 156). He recalled that respondent went on political trips to England in 2014, Iowa in 2015, Wisconsin in 2016, and the Democratic National Convention in Philadelphia in 2016, and there was never any issue about the cost of the security detail (Tr. 152, 154, 156-57, 159-162).[2]

The Charges

New York City's conflicts of interest laws prohibit any public servant from engaging "in any business, transaction or private employment" or having "any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties." Charter § 2604(b)(2) (Lexis 2023). Petitioner's rules state that the use of City personnel or resources for a non-City purpose violates the Charter. 53 RCNY 1-13 (Lexis 2023); *see* NY Const., art. VIII, § 1 (prohibiting local governments from using public funds for a "private undertaking"); *see also Stern v. Kramarsky*, 84 Misc. 2d 447, 452-53 (Sup. Ct. N.Y. Co. 1975) ("Public funds are trust funds" and they may only be used for government operations).

Petitioner alleges that, by requiring the City to pay for travel expenses incurred by NYPD's security detail on 31 campaign-related trips, respondent violated the City's conflicts of interest laws (ALJ Ex. 1 at 3). First, petitioner contends that respondent acted in conflict with the proper discharge of his duties, in violation of section 2604(b)(2) of the Charter. Second, petitioner alleges that respondent used City resources for a non-City purpose, in violation of section 2604(b)(2) of the Charter, pursuant to section 1-13(b) of the Board's rules. Petitioner proved both charges.

The Mayor is responsible for the "effectiveness and integrity of city government operations" (Pet. Mem. at 9, citing Charter § 8(a)). Respondent violated section 2604(b)(2) of the Charter because his failure to reimburse the City for his security team's travel expenses conflicted with his duty to prevent the misuse of City resources. Respondent also violated section 2604(b)(2)

---

[2] Two days before trial, respondent sought to adjourn the proceedings because one of his witnesses, Longani, was out of town (Tr. 166). I denied respondent's request to adjourn the trial for one witness and offered to schedule a second day of trial to accommodate Longani's schedule, but respondent rested after calling two witnesses and declined to call Longani as a witness (Tr. 166-67).

of the Charter, pursuant to section 1-13(b) of the Board's Rules by using City resources for a non-City purpose: his presidential campaign.

In its May 2019 advisory letter, responding to the request for guidance, the Board agreed that salaries and overtime for NYPD's security detail serve the City's purpose of protecting the Mayor. However, the Board explained that requiring the City to pay additional out-of-town travel costs incurred by NYPD's security detail for respondent's presidential campaign, would be a use of City resources for a non-City purpose, within the meaning of section 1-13(b) of the Board's Rules (Pet. Ex. 2 at 4). The Board's conclusion turned on three factors: 1) salaries and overtime for the NYPD security detail would generally be the same wherever the Mayor and the Mayor's immediate family were located; 2) additional costs to put security in place at a distance from the City (including airfare, hotels, rental cars) may require substantial public expenditure to support purely political activity; and 3) ordinarily, those additional costs would not be incurred for political travel within the City, "but would be incurred as part of the Mayor's campaign for non-City elective office for himself" (*Id.*).

Despite the Board's clear guidance, respondent failed to reimburse the City for $319,794.20 in travel costs incurred by his security detail for 31 campaign trips. As a result, he used City resources for a non-City purpose, in violation of the Charter and the Board's rules. *See, e.g., Conflicts of Interest Bd. v. Peterson*, OATH Index No. 2275/19 (May 14, 2020), *modified on penalty*, COIB Case No. 2016-126 (Jan. 29, 2021) ($2,500 fine imposed for using City resources to operate an unauthorized senior trip program); *Conflict of Interest Bd. v. Kuczinski*, OATH Index No. 1305/19 (Apr. 20, 2020), *adopted*, COIB Case No. 2017-156c (Mar. 12, 2021) ($15,500 fine imposed where a Department of Correction deputy commissioner used a City vehicle for personal trips that were unrelated to his commute or City work, in violation of section 2604(b)(2) of the Charter and section 1-13(b) of the Board's rules); *see also Matter of Hynes*, COIB Case No. 2013-771 (Mar. 23, 2018) ($40,000 fine imposed for violating section 2604(b)(2) of the Charter and section 1-13(b) of the Board's rules, where District Attorney used City resources for a non-City purpose by using office computers, email, and personnel for his re-election campaign).

Among other claims, respondent contends that the charges should be dismissed because the Board acted too hastily and failed to engage in formal rulemaking (Resp. Mem. at 8, 12, 16, 18); the Board's May 2019 advisory letter is contrary to its 2009 Advisory Opinion (*Id.* at 2, 8); the Board failed to defer to NYPD expertise (*Id.* at 12, 33); and this proceeding is barred by the

doctrine of laches because the Board acted too slowly by not commencing this action while he was still in office (*Id.* at 42). Respondent's claims are unavailing.

The Board is not required to engage in additional rulemaking

Respondent contends that the Board seeks to "enforce the May 2019 advice letter" without first conducting required rulemaking (*Id.* at 12). On the contrary, the Board already has a rule prohibiting respondent's conduct. No additional rulemaking is required.

Section 1-13(b) of the Board's rules prohibit public servants from using City resources "for any non-City purpose." That provision covers a wide range of conduct. *See, e.g., Conflicts of Interest Bd. v. Allen*, OATH Index No. 1791/07 at 5 (June 12, 2017), *adopted*, COIB Case No. 2006-411 (Sept. 11, 2017) (excessive use of a City vehicle for personal business violates section 1-13(b) of the Board's rules); *Conflicts of Interest Bd. v. Oberman*, OATH Index No. 1657/14 (Sept. 4, 2014), *adopted*, COIB Case No. 2013-609 (Nov. 6, 2014), *aff'd*, 148 A.D.3d 598 (1st Dep't 2017) (using work phone to solicit donations for political campaign violates section 1-13(b) of the Board's rules); *see also Conflicts of Interest Bd. v. Powery*, COIB Case No. 2004-466 (Apr. 7, 2005) (school custodian violated section 1-13(b) of the Board's rules by directing a secretary to type and edit private business documents on City time, using City equipment); *Dep't of Parks & Recreation v. Softleigh*, OATH Index No. 1545/15 at 12 (July 24, 2015) (park worker violated Rule 1-13(b) by using City truck to pick up wood from a private residence without authorization). The Board is not required to issue a new rule to address every possible scenario where a public servant misuses City resources for a non-City purpose. Public servants can seek guidance from the Board, which will provide advice based on the facts presented. *See* Charter § 2603(c). That is what happened here.

The City's Administrative Procedure Act ("CAPA") requires agencies to provide public notice and an opportunity to comment on new rules before they are issued. Charter 1043[b]. CAPA defines a rule as "any statement or communication of general applicability that (i) implements or applies law or policy, or (ii) prescribes the procedural requirements of an agency." Charter 1041(5). However, the public notice and comment requirement does not apply to a statement or communication of "general policy, which in itself has no legal effect but is merely explanatory." *Id.* at 1041[5][b][i]-[ii].

In its confidential May 2019 advisory letter, the Board made clear that it was addressing the specific questions before it.[3] It was not creating a new rule of general applicability. *See* Charter § 2603(2)(c)(1) (the Board's advisory opinions only apply to the public servant who requested advice). After reviewing the facts presented and analyzing a prior advisory opinion, the Board interpreted its existing rule [1-13(b)] as it applied to respondent's prospective conduct. The Board was not required to engage in rulemaking. *See De Jesus v. Roberts*, 296 A.D.2d 307, 310 (1st Dept. 2002) (CAPA rulemaking process only required when an agency establishes precepts that remove its discretion by dictating specific results in specific circumstances; rulemaking is not mandated for "ad hoc decisions based on individual facts and circumstances").

Advisory Opinion No. 2009-1 does not require a different result

Respondent claims that the Board's May 2019 response to Longani, "ignores and essentially reverses" the 2009 Advisory Opinion (Resp. Mem. at 10). The Board did not ignore the 2009 Advisory Opinion. Indeed, the Board's May 2019 advisory letter explains at length how the 2009 Advisory Opinion, entitled "Use of City-owned Vehicles," addressed a limited and different issue. The 2009 Advisory Opinion states, where NYPD determines that security "in the form of a car and security personnel is required," an elected official "may make any lawful use of the official vehicle and personnel prescribed by the NYPD for personal purposes that are not otherwise a conflict of interest, including pursuit of outside business and political activities, without reimbursement to the City" as long as the elected official is in the vehicle (Resp. Ex. 3 at 15). That Advisory Opinion does not create a blanket exception to the ban on using City resources for a non-City purpose.

In a 2012 Advisory Opinion, the Board stated that "political activities *always* fall within the prohibition on use of City time or resources" for any non-City purpose (Resp. Ex. 4, Advisory Op. 2012-5 at 2). The Board noted, the "exception to this flat ban, enunciated in Advisory Opinion No. 2009-1" allows some elected officials to use "a City-owned car" for personal purposes, including political activities, "provided that the elected official is in the vehicle during all such use" (*Id.* at 2 n. 1). The 2012 opinion further demonstrates that the 2009 Advisory Opinion's exception for political activity is limited to the use of City-owned vehicles.

---

[3] It appears that the Board's letter was confidential because public disclosure, even with redactions, would have disclosed respondent's identity.

The Board's May 2019 letter did not "reverse" the 2009 Advisory Opinion. Instead, the Board's May 2019 letter responded to the specific questions presented and distinguished between the use of a car and personnel for local activities and the substantial additional travel costs associated with a presidential campaign. The Board concluded that the City should not be required to pay additional travel costs resulting from the Mayor's presidential campaign because that would be for a non-City purpose. And the Board emphasized, "this advice has addressed *only one type of political travel*—travel by the Mayor or members of his immediate family in connection with the Mayor's candidacy for non-City elective office" (Pet. Ex. 2 at 6) (emphasis added).

Respondent points to Council Speaker Vallone's campaigns two decades ago as if they established a binding precedent (Resp. Mem. at 26-27). But respondent offered no evidence to show that out-of-town travel expenses were incurred by NYPD security for those campaigns or the amount of such expenses. Similarly, respondent poses several hypotheticals about future actions by the Board. For example, respondent expresses concern that officers on his security detail could face liability as accomplices (*Id.* at 14). There is no basis for believing that NYPD officers, who are subordinate to the Mayor, would be liable for respondent's failure to reimburse the City. The remote specter of possible action against others does not excuse respondent's actions. Respondent also asks whether NYPD security would be limited if members of the City Council went to Buffalo to announce their candidacy for state office (*Id.* at 16). Such candidates should not assume that the City will pay the travel expenses for their NYPD security details. If those candidates have specific questions, they should seek the Board's guidance and they should recognize the risk of ignoring that guidance.

This case does not concern a Council Speaker's gubernatorial campaign two decades ago or hypothetical Councilmembers' future campaigns for the state legislature. Rather, it is limited to the question of whether the travel costs incurred by NYPD for respondent's presidential campaign served a City purpose. As the Board explained in its May 2019 advisory letter, a presidential campaign is fundamentally different in scope than a run for local office and it involves a significant expenditure of resources. And, unlike a campaign for local office, where it may be difficult to distinguish between the travel costs associated with City and non-City business, the travel costs of providing out-of-town security for a presidential campaign are readily identifiable.

The Board does not question the need for security

Respondent contends that petitioner is "throwing out deference to decades of NYPD practice" and has "abandoned deference to NYPD security decisions" (Resp. Mem. at 12, 30). There is no dispute regarding the need for security. The Board has not interfered with NYPD's assessments of security threats or questioned NYPD's security expertise. There is also no dispute that the City will pay the salaries of the Mayor's security detail. However, the Board maintains that respondent should not expect the City to assume the substantial additional travel expenses caused by his presidential campaign.

In respondent's view, the Board's position creates the risk that a Mayor would forego NYPD security to avoid having to reimburse the City for travel expenses (*Id.* at 33-34). Thus, respondent reasons, the possibility that a future Mayor might exercise exceedingly poor judgment and disregard NYPD's security advice gives him the authority to ignore the Board's advice and compel the City to pay for all costs related to security no matter where and why he travels.

The Board is responsible for interpreting and enforcing the City's conflicts of interest laws. In its 2019 advisory letter, the Board rationally distinguished between costs associated with local security needs and substantial out-of-state travel costs associated with a presidential campaign. The Board found that those additional costs were for a non-City purpose. That conclusion is consistent with the Board's long-standing interest in limiting the extent to which public servants use City resources for political activity. *See Hynes*, Conflicts of Interest Bd. Case No. 2013-771 at 5 (imposing a fine for elected official's using office computers, email, and personnel for his re-election campaign); *Oberman*, OATH 1657/14 at 14 (fine imposed where agency attorney used office phone to perform work on his political campaign); *see also Golden v. Clark*, 76 N.Y.2d 618, 623 (1990) (discussing factors that led to Charter revision "to protect public against corruption and undue influence of a business or political nature").

Respondent contends that the Board's position conflicts with its earlier treatment of the travel costs incurred by NYPD security for respondent's other political trips and his family vacations (Resp. Mem. at 28). He further argues that it is contradictory for the Board to treat the salaries of security personnel differently than travel costs (*Id.* at 22, 24). In reply, petitioner argues that seeking broader support for policies may serve a City purpose and a Mayor can be re-invigorated by vacations, but a candidate's personal quest for the presidency does not serve a City purpose and "a successful campaign would deprive the City of its duly elected leader" (Pet. Mem.

at 15-16). The Board also asserted that security personnel salaries would be similar wherever the Mayor was located, but the significant out-of-town travel costs incurred to provide security for respondent's presidential campaign only served his personal endeavor (*Id.* at 7).

Not all of petitioner's arguments are persuasive. For example, the City might derive more benefit from a Mayor's participation in a policy discussion at a campaign forum than would result from the Mayor's beach vacation. And the City might benefit from having a former Mayor in the White House. Some may argue that the City must cover all travel expenses incurred by NYPD security, regardless of the distance, frequency, or purpose of the travel. However, the fact that reasonable people may interpret the Charter and Board's rules differently does not render the Board's analysis irrational or unreasonable. *See Molinari v. Bloomberg*, 596 F. Supp.2d 546, 579 (E.D.N.Y.) ("The advisory opinions of the Board should be given considerable weight by the courts"), *aff'd*, 564 F.3d 587 (2d Cir. 2009) (citation omitted); *Elcor Health Services, Inc. v. Novello*, 100 N.Y.2d 273, 278-280 (2003) (agency interpretation of a regulation "will not be disturbed in the absence of weighty reasons," and the fact that a regulation could be interpreted differently does not make that interpretation irrational) (citations omitted); *Matter of Schuss*, OATH Index No. 2066/12 at 14 (Mar. 25, 2013) ("An agency's interpretation of a statute which it is charged with enforcing is entitled to deference," as long as that interpretation is not irrational or unreasonable).

It is within the Board's authority to conclude that using City funds to pay out-of-state travel costs associated with a presidential campaign does not serve a City purpose and violates section 1-13 of the Board's rules. Hence, the City should be reimbursed for those costs. To hold otherwise would give respondent, rather than the Board, the sole power to decide that City resources can be expended for his presidential campaign.

This proceeding is not barred by laches

Laches is an equitable doctrine that bars enforcement where there has been an unreasonable and inexcusable delay that causes prejudice to a party. *See Office of the City Clerk v. Metropolitan New York Coordinating Council on Jewish Poverty*, OATH Index No. 1940/12, mem. dec. at 4 (Aug. 30, 2012) (citing *Cortlandt Nursing Home v. Axelrod*, 66 N.Y.2d 169, 177 (1985)). Respondent contends that petitioner unreasonably and unjustifiably delayed the commencement of this action for three years, which created "substantial prejudice," compromised his

"constitutional right to receive and rely on legal counsel," and deprived him of "his right to due process prior to the ordering of any penalty" (Resp. Mem. at 45).

As a preliminary matter, respondent failed to show that petitioner, rather than DOI, was responsible for the bulk of any delay. *See Dep't of Correction v. Roman*, OATH Index Nos. 1026/05, 1926/05 at 22 (Feb. 10, 2006), *appeal dismissed*, NYC Civ. Serv. Comm'n Item No. CD07-22-D (Mar. 5, 2007) (rejecting claim that disciplinary action for fraud committed by a correction officer was barred by laches and finding that five-year delay was caused by DOI rather than the agency that brought the charges). Moreover, petitioner presented credible evidence that DOI acted diligently. Respondent launched his presidential campaign in May 2019. Less than four months later, petitioner asked DOI to investigate. DOI acted reasonably when it combined this investigation with two other similar investigations; DOI made diligent efforts to obtain documents from NYPD, at the height of the pandemic, for all of respondent's campaign trips; and DOI acted prudently by interviewing 15 to 20 witnesses. DOI completed its investigation by interviewing respondent and his wife in July 2021, DOI issued a 47-page report in October 2021, and petitioner served respondent with the petition less than one year later (ALJ Ex. 1; Tr. 19, 40).

Respondent contends that DOI's investigation was redundant because respondent's FEC filings showed that his campaign had not reimbursed NYPD (Resp. Mem. at 45). Thus, respondent suggests, there was no need for a thorough and independent investigation; DOI should simply have relied on respondent's FEC filings (*Id.*). That argument lacks merit. Respondent's campaign filings did not show the travel expenses that NYPD incurred. For that information, DOI needed documents from NYPD and it needed to compare the information that it received from NYPD with the information provided by respondent and his campaign.

According to respondent, he relied on advice from Mayor's Counsel Longani (*Id.* at 42). The Law Department asserted that if there were privileged communication between Mayor's Counsel and the Mayor, the privilege belongs to the City and cannot be waived by respondent (Pet. Ex. 3 at 68; Resp. Ex. 11). Respondent suggests, without citing any authority, that he could have waived that privilege if he was still Mayor. Thus, respondent contends, he was prevented from presenting evidence regarding the advice he received from Longani because petitioner did not bring this proceeding until after he left office (Resp. Mem. at 45).

The central flaw in respondent's argument is that a public servant who uses City resources for a non-City purpose cannot blame that conduct on bad or inadequate advice from counsel. When

Longani sought the Board's guidance in May 2019, he was doing so as Mayor's Counsel and on respondent's behalf. One week later, the Board replied. Without equivocation, the Board advised that travel costs incurred by respondent's security detail for a presidential campaign would constitute the use of City resources for a non-City purpose in violation of the Charter and the Board's rules.

Based on the answers that he gave during the DOI interview, where he conceded that he knew that there was written guidance and he claimed he had received conflicting information, it can be inferred that respondent was aware of the Board's response. If respondent had any doubt or uncertainty about the Board's advice, he could have done what any other City employee is expected to do—he could have asked the Board himself. Instead of seeking clarification from the Board or promptly requesting reconsideration, respondent launched his presidential campaign, used City resources for a non-City purpose, and waited two years before submitting an untimely request for reconsideration (Resp. Ex. 1).

As respondent acknowledged, he knew that Longani had communicated with the Board and that there was written guidance. Respondent knew or should have known of the Board's response, which was quite clear, and he chose to ignore it. Deliberate indifference to the Board's response is not a defense. *See Holtzman v. Oliensis*, 91 N.Y.2d 488, 498 (1998) (rejecting former Comptroller's contention that she lacked actual knowledge of personal benefit she received from a bank's dealings with the City, where evidence showed that staff members, including a top aide and former campaign manager, were aware of the bank's dealings, and Comptroller knew that she had received a personal advantage or exhibited a "studied indifference" to evidence that she had been insulated from such knowledge). As the Court recognized in *Holtzman*, to allow high-ranking public servants to insulate themselves from awareness of conflicts of interest, or to allow them to shift blame to subordinates, "would inevitably undermine enforcement of this important statutory scheme 'to preserve the trust placed in public servants of the city . . . and to protect the integrity of government decision-making.'" *Id.* (citing Charter § 2600).

Even if respondent's attempt to shift blame to Longani could constitute a defense, which it does not, he was not prevented from raising it. During the DOI interview, which took place while respondent was in office and represented by his personal attorney, DOI's Commissioner told respondent that the Law Department allowed him, during that investigative interview, to reveal any communication that he had with Longani. Respondent did not do so. Instead, he told the

interviewers that he was aware that the Board had provided written guidance, he recalled that he had discussed it with NYPD, and he stated his belief that there was "more than one type of guidance provided" (Pet. Ex. 3 at 75-58). Notably, even though he was free to tell the interviewers everything that Longani had told him, respondent offered vague generalities about the specific advice that he supposedly relied upon.

The charges are sustained

The facts of this case are unique. Prior to respondent, it had been 50 years since another incumbent mayor ran for president; long before the Board existed (Tr. 137). But the legal principles are not unique. In response to an inquiry on respondent's behalf, the Board unequivocally advised that the proposed course of action would involve the use of City resources for a non-City purpose. Respondent elected to ignore that advice. As respondent correctly notes, it does not violate the Charter for a public servant to disagree with the Board (Resp. Mem. at 2-3, 4 n. 3). However, the Board acted within its authority and the advice that it provided is consistent with the Charter and its rules. Thus, the charges that respondent acted in conflict with his official duties and used City resources for a non-City purpose should be sustained.

FINDINGS AND CONCLUSIONS

1. Respondent violated section 2604(b)(2) of the Charter by acting in conflict with his official duties, as alleged in the petition.

2. Respondent violated section 2604(b)(2) of the Charter, pursuant to section 1-13(b) of the Board's rules, by using City resources for a non-City purpose, as alleged in the petition.

RECOMMENDATION

Petitioner seeks the maximum allowable fine of $775,000 ($25,000 x 31 campaign trips) for each occasion that respondent used City resources for a non-City purpose (Pet. Mem. at 19). *See* Charter § 2606(b) (authorizing fines up to $25,000 for violations of the conflicts of interest law). In addition, petitioner seeks reimbursement to the City for $319,794.20, the value of campaign-related travel expenses incurred by the security detail (Pet. Mem. at 16, 19). Respondent contends that fines are unauthorized because the alleged violation did not involve conduct prohibited by the Board's rules; the Board failed to comply with the statute's consultation requirement; reimbursement is not authorized; and he cannot be held personally liable (Resp. Mem. at 19-20, 35-36).

Because respondent's conduct violated the Board's rules, a fine may be imposed

Section 2606(d) of the Charter states:

> Notwithstanding the provisions of subdivisions a, b and c of this section, no penalties shall be imposed for a violation of paragraph two of subdivision b of section twenty-six hundred four unless such violation involved conduct identified by rule of the board as prohibited by such paragraph.

Respondent emphasizes that "fairness to public servants dictates that no punishment be imposed for actions not previously identified as prohibited" (Resp. Mem. at 19), quoting Charter Revision Commission, *Report of the NYC Charter Revision Commission* (1988).

In support of his contention that his conduct violated no rule, respondent places great weight on one line in the May 2019 advisory letter (Resp. Mem. at 11, 19, 31). The Board began its discussion by stating, "The questions you have asked are ones of first impression for the Board, not clearly covered by any Board Rules or prior advisory opinions" (Pet. Ex. 2 at 3). That isolated quote ignores the Board's analysis and conclusion. After reviewing relevant provisions of the Charter and the Board's rules, and weighing competing considerations, the Board concluded, "Therefore, requiring the City to pay these additional costs for out-of-City travel incurred as part of the Mayor's campaign for non-City elective office would be a use of City resources for a non-City purpose within the meaning of Board Rules Section 1-13(b)" (*Id.* at 4).

Read in its entirety, the May 2019 advisory letter unequivocally states the Board's position that requiring the City to pay NYPD travel expenses for respondent's presidential campaign

violates Rule 1-13(b). Consistent with section 2606(d) of the Charter, the Board fairly identified the specific rule that prohibited respondent's proposed conduct. Though respondent may disagree with the Board's position, he cannot earnestly maintain that the Board did not identify the relevant rule or prohibited conduct. Thus, the Board may impose a fine.

Consultation requirement

Section 2606(b) of the Charter states:

> Upon a determination by the board that a violation of section twenty-six hundred four or twenty-six hundred five of this chapter has occurred, the board, after consultation with the head of the agency involved, or in the case of an agency head, with the mayor, shall have the power to impose fines of up to twenty-five thousand dollars . . . .

Respondent contends that no fine can be imposed against him because petitioner failed to consult with the "head of the agency involved" or the Mayor (Resp. Mem. at 36). According to respondent, that requirement cannot be satisfied by consulting with him now, because he is no longer a public servant (*Id.* at 37). Respondent also claims that consultation with a current Mayor about a former Mayor would be "equivalent of inviting a fox into a henhouse" (*Id.* at 39 n. 19). Apparently, respondent takes the view that petitioner can never fine a former Mayor, Comptroller, or Borough President without consulting with them before they leave office. The law does not require such an illogical result, which would enable high-ranking elected officials to use the consultation requirement to evade fines. *See Jenkins v. Fieldbridge Assoc.,* 65 A.D.3d 169, 173 (2d Dep't 2009) (declining to interpret the Administrative Code in a manner that would lead to an absurd result).

The obvious design of the consultation requirement is to allow for input from the City official responsible for overseeing a public servant's work. Respondent acknowledges that agencies have a compelling interest in disciplining their employees (Resp. Mem. at 38). Though not required to adopt an agency's recommendation, the Board may wish to consider the agency's input before imposing a fine (*Id.*). When a Mayor, Comptroller, or Borough President violates the conflicts of interest laws, there is no higher-ranking person to consult. Like any other public servant, however, those elected officials may submit comments to the Board before imposition of any penalty. 53 RCNY § 2-03(h) (Pet. Mem. at 18 n. 14). *See Conflicts of Interest Bd. v. Markowitz*, Conflicts of Interest Bd. Case No. 2009-181 at 4 (July 21, 2011), *aff'g* OATH Index

No. 1400/11 (May 5, 2011) (consultation requirement "plainly not intended to include elected officials," such as a Borough President, who is not appointed by or subject to oversight by the Mayor); *Conflicts of Interest Bd. v. Holtzman*, Conflicts of Interest Bd. Case No. 93-121 at n. 3 (Apr. 3, 1996) (consultation requirement does not apply to Comptroller, an elected official who does not report to the Mayor or an agency head).

A $155,000 fine is appropriate

In support of its request for the maximum allowable fine, petitioner correctly contends that repayment alone would be inadequate because it would leave respondent in the same position that he would be in if he had followed the Board's advice from the outset (Pet. Mem. at 17-18). A substantial fine is necessary because respondent, as the City's highest-ranking official, should be held to a strict standard of ethical conduct. Respondent chose to ignore the Board's explicit guidance and violated the Charter and the Board's Rules on 31 occasions. It is also troubling that during his DOI interview respondent repeatedly attempted to shift blame to his lawyers and campaign staff, while failing to recognize his personal responsibility for following the law.

The penalties for high-level officials who violate the conflicts of interest laws range from approximately $1,000 to $7,500 per violation. *See Conflicts of Interest Bd. v. Katsorhis*, Conflicts of Interest Bd. Case No. 94-3451 (Sept. 17, 1998), *aff'g in part, modifying in part*, OATH Index No. 1531/97 (Feb. 12, 1998) ($84,000 fine imposed upon City Sheriff for 17 violations of the Charter, including repeatedly using City resources, including letterhead, for his private law practice, for an average penalty per violation of nearly $5,000); *Markowitz*, Conflicts of Interest Bd. Case No. 2009-181 ($20,000 fine imposed on Borough President who, despite the Board's warning, accepted free travel and accommodations for his wife on three trips to Europe); *Matter of Holtzman*, COIB Case No. 93-121 ($7,500 fine imposed for single violation of the Charter); *see also Conflicts of Interest Bd. v. Sanders* OATH Index No. 747/19 (Dec. 17, 2019), *adopted*, COIB Case No. 2017-110 (Dec. 8, 2020) ($15,000 fine imposed where former City Council Member violated conflicts of interest laws by accepting prohibited valuable gifts on 18 occasions); *Matter of Hynes*, COIB Case No. 2013-771 (Mar. 23, 2018) ($40,000 fine imposed for violating section 2604(b)(2) of the Charter and section 1-13(b) of the Board's rules, where District Attorney used City resources for a non-City purpose by using office computers, email, and personnel for his re-election campaign). Respondent, as the highest-ranking official in the City, repeatedly violated

the Charter and the Board's rules despite specific advice regarding prohibited conduct. Thus, a substantial fine is necessary.

However, petitioner has not shown that it is necessary or appropriate to impose the maximum available penalty of $25,000 for each violation. Unlike the respondents in *Katsorhis*, *Markowitz*, and *Holtzman*, who directly benefited from their violations, respondent received an indirect benefit. Imposing a significant penalty for each violation along with an order to repay $319,794.20 for the misused funds will be a powerful deterrent to other high-ranking elected officials. Contrary to petitioner's suggestion, respondent should not receive an enhanced penalty for "dragging out his repayment for years" (Pet. Mem. at 18). Though respondent ignored the Board's advice, he should not be unfairly penalized for exercising his right to trial. Thus, I recommend a fine of $5,000 for each violation, for a total fine of $155,000.

Repayment

Petitioner seeks an order directing respondent to repay the City $319,794.20 for the campaign-related travel expenses incurred by NYPD's security detail (Pet. Mem. at 16). Repayment is authorized by section 2606(b-1) of the Charter, which states:

> In addition to the penalties set forth in subdivisions a and b of this section, the board shall have the power to order payment to the city of the value of any gain or benefit obtained by the respondent as a result of the violation in accordance with rules consistent with subdivision h of section twenty-six hundred three.

Respondent argues that "in addition" means that reimbursement can only be required where a penalty is imposed and it is not a "standalone sanction." To support this argument respondent relies on language from the 2010 Charter Revision Commission's report discussing the rationale for increasing the maximum fine from $10,000 to $25,000. The Commission noted, "The increased fine, along with the disgorgement requirement, may also have a deterrent effect, and ensure that individuals will not benefit financially from activities that violate Chapter 68" (Resp. Mem. at 35, quoting Charter Revision Commission, *Final Report of the 2010 NYC Charter Revision Commission* at 33-34 (2010).[4]

[4] www.nyc.gov/assets/charter/downloads/pdf/final_report_of_the_2010_charter_revision_commission_9-1-10.pdf.

Here, the Board has authority to impose a fine and one has been recommended. Thus, even under respondent's reading of the statute, the Board may order reimbursement. If no civil penalty or fine is imposed, repayment of the misused City resources can still be ordered. Petitioner correctly contends that repayment is different than a fine or penalty (Pet. Mem. at 17). A penalty is designed to punish a wrongdoer and deter future violations; repayment is designed to make the victim whole.

Respondent's interpretation of section 2606(b-1) of the Charter and the phrase "in addition to" is mistaken. "In addition to" does not mean that a fine is a prerequisite to reimbursement. On the contrary, "in addition to" is synonymous with "besides." *See Adelman v. Adelman*, 191 Misc.2d 281, 285 (Kings Co. Sup. Ct. 2002) (where a statute authorizes punitive damages "in addition" to pecuniary damages, court relied upon dictionary definitions to find that "in addition" means "besides" or "over and above" and rejected construction of the statute that would require pecuniary award as a prerequisite to punitive damages); *see also Mount Lemmon Fire Dist. v. Guido*, 139 S. Ct. 22, 25 (2018) (finding that "also" means "in addition" or "besides"). Repayment can be ordered even if the Board is unable or declines to impose a fine.

Respondent also argues that he cannot be held personally liable for repayment because he did not receive "any gain or benefit," the Board's May 2019 advice letter did not mention that he could be held personally liable, and NYPD never sent him a bill (Resp. Mem. at 25, 32, 36; Tr. 111-12, 136). Those arguments are similarly mistaken.

As petitioner notes, presidential campaigns are very expensive. Making the City pay for the travel costs incurred by his security team benefited respondent because it left him and his campaign with more money to spend elsewhere. Thus, respondent indirectly received a substantial benefit from the misuse of City resources.

In response to Longani's specific request ("[C]an the City pay all costs associated with providing" NYPD security for the Mayor and his family on a political trip?) the Board advised that all other costs associated with the security team's travel for respondent's presidential campaign, "must not be borne by the City. Rather, these costs must be paid or reimbursed by the Mayor's campaign committee" (Pet. Ex. 2 at 5-6). Seizing on the reference to the "campaign committee," respondent claims that he cannot be held personally liable for his security team's travel expenses because the letter does not refer to personal liability (Resp. Mem. at 20).

The Board's letter should not be construed as a waiver of its authority to seek repayment of City resources. Respondent ignored the Board's guidance and used City resources for a non-City purpose. He knew or should have known that one of the remedies for violating the Charter and the Board's Rules is that he would be required to repay the City. Requiring repayment from one who benefits from the misuse of City resources for a non-City purpose is consistent with the statute and Board's precedents. *See Conflicts of Interest Bd. v. Martinez*, OATH Index No. 1354/18 (Feb. 23, 2018), *adopted*, Conflicts of Interest Bd. Case No. 2016-162 (May 14, 2018) (school payroll secretary order to pay $10,000 fine and $2,040 in restitution for misappropriating school funds); *Conflicts of Interest Bd. v. Ponte*, Conflicts of Interest Bd. Case No. 2017-156 (July 12, 2018) (enforcement action brought against former Commissioner of Department of Correction ("DOC") who used his City vehicle for 30 personal trips that were unrelated to a City purpose; settlement reached where former Commissioner agreed to an $18,500 fine after reimbursing DOC for $1,043 for gasoline and $746 for tolls that were paid for with DOC-issued card and E-Z Pass); *Conflicts of Interest Bd. v. Brann*, Conflicts of Interest Bd. Case No. 2017-156b (Nov. 8, 2017) (enforcement action brought against former Deputy Commissioner of DOC who used her City vehicle for a non-City purpose on 16 occasions; settlement reached where former Deputy Commissioner agreed to a penalty of $6,000, to forfeit eight personal days valued at $5,824, and to reimburse DOC for the mileage incurred during the personal trips, valued at $493.67).

The Board issued a specific warning that respondent's conduct would constitute the use of City resources for a non-City purpose, prohibited by section 1-13(b) of the Board's Rules. Petitioner did not have to send respondent a bill before commencing an enforcement action. Rather, respondent should be held to the same ethical standard as a school payroll secretary or DOC official who misuses City resources for a non-City purpose.

In support of his argument that he should not be held personally liable, respondent relies on cases interpreting the City's Campaign Finance Act (Resp. Mem. at 20). *See e.g. Fields v. NYC Campaign Finance Bd.*, 81 A.D.3d 441, 446 (1st Dept 2011) (Campaign Finance Act does not require candidate to use personal assets to repay Campaign Finance Board for unspent funds). However, the cited subsection specifically refers to "excess funds" left over after an election. Admin. Code § 3-170(2)(c) ("candidate and committee shall *use such excess funds* to reimburse the fund") (emphasis added). Thus, courts have interpreted the express language of that statute to

limit liability to excess public matching funds received by a campaign. That statute has no application here.

Respondent also suggests that federal election law preempts the Board's authority to order repayment (Resp. Mem at 46 n. 23; ALJ Ex. 2 at ¶69, citing 52 U.S.C. § 30143(a)). In the May 2019 advisory letter, the Board acknowledged its lack of expertise in federal election law while stating that FEC regulations "appear instructive" and require a campaign or campaign traveler to repay a local government for the use of a private vehicle (ALJ Ex. 2 at ¶ 67; Pet. Ex. 2 at 3, citing 11 CFR § 100.93(e)(3)). Respondent points out that the regulation cited by the Board refers to non-commercial travel aboard government aircraft and a different regulation applies for commercial travel used by respondent's security detail (ALJ Ex. 2 at ¶¶ 67-68, citing 11 CFR § 100.93(a)(2)). According to respondent, the FEC does not require campaigns to reimburse state or local governments for the cost of security personnel who travel with a candidate and do not engage in political activity (Resp. Ex. 2 at 20, citing First General Counsel's Report, *In re Bush*, MUR 5135 at 8 (Mar. 28, 2002), available at www.fec.gov/data/legal/search/enforcement (finding that the State of Texas, then-Governor Bush, and campaign committees did not violate Federal Election Campaign Act ("FECA") by failing to report the value of security personnel provided by Texas during the 2000 primary and presidential campaign).

Rejecting a similar preemption argument, the Court of Appeals has held that FECA did not limit the Board's ability to enforce violations of the City's conflicts of interest laws. *Holtzman*, 91 N.Y.2d at 494. Even if federal campaign finance regulations do not require reporting or repayment of the travel expenses incurred by respondent's security detail, the Board has broad authority to seek repayment for "the value of any gain or benefit obtained by the respondent as a result of a violation." Charter § 2606(1-b). The Board has acted within that authority to seek reimbursement from respondent.

In sum, respondent received a substantial benefit by failing to reimburse the City for travel expenses incurred by NYPD security for his presidential campaign, in violation of the Charter and the Board's Rules. Accordingly, I recommend a $155,000 fine and an order directing respondent to repay the City $319,794.20.

Kevin F. Casey
Administrative Law Judge

May 4, 2023

SUBMITTED TO:

RICHARD BRIFFAULT
Chair

APPEARANCES:

JEFFREY TREMBLAY, ESQ.
CAROLYN LISA MILLER, ESQ.
Attorneys for Petitioner

LAURENCE LAUFER, ESQ.
Attorney for Respondent

AIDALA, BERTUNA & KAMINS PC
Attorneys for Respondent
BY: ARTHUR L. AIDALA, ESQ.