

Advisory Opinion No. 93-28

The Conflicts of Interest Board (the "Board") has received a request for an opinion as to whether, consistent with the conflicts of interest provisions of Chapter 68 of the City Charter, a public servant may be hired to serve as the manager in charge of a particular branch office of a City agency, in light of the fact that her spouse occasionally appears before that agency.

The public servant currently serves the agency on a per diem basis. In those matters where her spouse has represented private interests before the agency, the public servant has always recused herself. In her new full-time position with the agency, the public servant will manage staff and per diem employees only in the particular branch office to which she has been assigned and not in any of the other branch offices.

The agency plans to address any appearance of impropriety by following the procedure summarized below. After the public servant's appointment: (1) all of her spouse's cases will be heard only in the agency's other branch offices, where the public servant

has no supervisory authority; and (2) a memorandum will be sent to all of the agency's per diem and staff employees instructing them that any matter involving the public servant's spouse should not be brought to the attention of the public servant. The public servant's spouse has agreed to abide by these conditions.

It is the opinion of the Board that the public servant may serve as the branch manager, provided that the public servant does not discuss any cases involving her agency with her spouse and that the agency, the public servant and her spouse act in accordance with the procedures summarized above. In addition, any agency matters handled by members or employees of the spouse's firm should be subjected to the same procedures. See Charter Section 2604(b)(3), which provides that no public servant shall use or attempt to use his or her position as a public servant to obtain any financial gain or other private or personal advantage, direct or indirect, for the public servant or any person -- including a spouse -- or firm associated with the public servant, and Charter Section 2604(b)(4), which provides that no public servant shall disclose any confidential information concerning the City or use any such information to advance any direct

or indirect financial or other private interest of the public servant or of any person or firm associated with the public servant.

Under the procedures outlined above, the public servant should not become aware of any matters where her spouse or his firm appears before the agency, but, if, for any reason, she does become aware of such matters, she should recuse herself from consideration or involvement with that matter. The Board understands such recusal to require, among other things, that the public servant not participate in discussions with other agency employees or others regarding cases being litigated by the public servant's spouse and that the public servant does not receive copies of relevant documents. See Charter Section 2604(b)(2), which provides that no public servant shall have any private interest, direct or indirect, which conflicts with the proper discharge of his or her official duties.

Sheldon Oliensis
Chair

Benjamin Gim

Beryl R. Jones

Robert J. McGuire

Shirley Adelson Siegel

Dated: November 30, 1993