

Appearance Before City Agency
Community Boards

Charter Sections 2604(a)(1)(a)
2604(b)(1)(b), (b)(6)

Advisory Opinion No. 96-4

The Conflicts of Interest Board (the "Board") has received a request for an opinion from the Chair of a Community Board, asking for clarification as to the circumstances under which members of a community board or their business associates may represent private interests before the community board.¹ The Chair has asked, among other things, (i) whether a community

¹ The Chair of the Community Board had also asked whether, generally, a community board member may serve on a committee that considers matters involving the community board member's private interests. The Board has previously determined that community board members may serve on any committees, regardless of their private interests. If these community board members wish to participate in board discussions concerning these private interests, they must first disclose the nature and extent of these interests to their boards. Further, these members are not permitted to vote on any proposed board action affecting these matters. See Charter Section 2604(b)(1)(b); Advisory Opinion No. 95-18.

board member may represent private clients before his or her community board; (ii) whether a partner or employee of a private firm in which the community board member has an interest may represent clients before the community board; and (iii) whether a community board member who agrees not to represent clients on matters before a particular committee of the community board may chair such a committee.

For the reasons discussed below, it is the opinion of the Board that neither members of community boards nor their partners or employees in private firms may be retained to represent private clients before the community board or appear before the community board on behalf of these clients. In light of the foregoing, a community board member's agreement not to represent clients before a particular committee would have no bearing on whether he could chair or serve on that committee, because the community board member would only be agreeing to not engage in conduct which already is prohibited by Chapter 68.²

² The relevant factor in determining when community board members may not serve as committee chairs requires an examination as to whether, among other things, the particular committee is likely to have matters before it on a regular basis concerning the

Discussion

1. Community Board Members' Representation of Private Clients Before the Community Board

Pursuant to Charter Sections 2604(a)(1)(a) and 2604(b)(1)(b), community board members may have interests in organizations which have matters before their community boards, and they may represent their own personal interests before their community boards.³

However, community board members may not represent the interests of others, including private clients, before the community boards on which they serve.⁴

members' own personal interests or employment. See Advisory Opinion Nos. 93-2 and 95-18.

³ Pursuant to Charter Section 2604(b)(1)(b), community board members may, upon disclosure of their own personal interests to their respective boards, participate in their boards' actions affecting those interests by, for example, participating in the boards' discussions. These community board members may not, however, "vote on any matter before the community or borough board which may result in a personal and direct economic gain to the member or any person with whom the member is associated."

⁴ While community board members may not represent the interests of private clients before their community boards, on specific matters such as applications for approvals of permits, zoning changes or other specific actions sought by clients, community board members may take positions at board meetings which generally promote their clients' interests.

Charter Section 2604(b)(6) provides that "no public servant shall, for compensation, represent private interests before any city agency or appear directly or indirectly on behalf of private interests in matters involving the city." Charter Section 2601(4) provides that "appear" means to make any communication, for compensation, other than those involving ministerial matters. For community board members, who are not regular employees of the City, this prohibition applies only to their own community boards.⁵

It is permissible for a community board member to have a personal interest in matters before his or her community board. However, a community board member's

⁵ Community board members are considered "public servants" but not "regular employees" of the City for the purposes of Chapter 68. See Charter Section 2601(19), which provides that public servant means "all officials, officers and employees of the city, including members of community boards" See also Charter Section 2601(20), which provides that regular employee means "all elected officials and public servants whose primary employment, as defined by rule of the board, is with the city, but shall not include members of advisory committees or community boards."

representation of the interests of clients before his or her community board is prohibited. The Board has thus determined, pursuant to Charter Section

2604(b)(6), that community board members may not represent private clients before their community boards.

2. Representation of Private Clients Before a Community Board by Partners or Employees of a Firm in Which a Community Board Member has an Interest

Public servants are also prohibited from appearing indirectly on behalf of private clients before the City agencies which they serve. See Charter Section 2604(b)(6). The Board has previously determined that an appearance by a member of a public servant's private firm before the public servant's agency constitutes an indirect appearance by the public servant before the agency. See Advisory Opinion No. 94-24.

In Advisory Opinion No. 94-24, the Board determined that a private law firm in which a high-level, part-time public servant was a partner had to divest itself of cases which would require appearances before the public servant's City agency. In that

opinion, the Board noted that the public servant's recusal from such matters was not sufficient to avoid the public perception that other employees of the

agency could be influenced in their deliberations concerning the firm's cases because of the public servant's partnership in the firm. Citing Charter Section 2604(b)(6), the Board stated that the firm's representation of clients before the public servant's agency "would constitute an indirect appearance by the public servant in such matters...." The Board also indicated that the presence of the public servant's name on the firm's letterhead would constitute "at least an indirect appearance and would serve to notify Agency employees that the public servant is a partner and has an interest in the [f]irm." See Advisory Opinion No. 94-24.⁶

⁶ The rule is different for a former public servant. A former public servant's law firm may appear before the City agency which he or she formerly served. See Advisory Opinion No. 93-11, in which the Board determined, among other things, that another attorney in a former public servant's law firm could appear before the former public servant's City agency within one year after the former public servant's termination of his City employment, provided that the former public servant did not personally appear before his former agency.

It is thus the opinion of the Board that, to the same extent that a member of a community board is prohibited by Charter Section 2604(b)(6) from representing private clients before the community board, a member or an employee of the community board member's private firm is also prohibited from representing such clients before the community board.

3. Chairing of Committees by Community Board Members Who Agree Not to Represent Clients Before Such Committees

As discussed above, community board members may not represent private clients before their own community boards. It follows, therefore, that community board members may not represent private clients before any of the board's committees. An agreement to forgo such representation would of course have no effect on this conclusion, in that this kind of activity is already prohibited by Chapter 68.

Conclusion

It is the opinion of the Board, for the reasons stated above, that neither the members of community

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boards, nor their partners or employees in private firms, may represent private clients before their community boards or community board committees, or appear on behalf of these clients before their

community boards.

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Dated: July 8, 1996